



Topic: "Detailed Proof of Marriage"

Opinion by: Justice Doug Campbell

Date: January 16, 2015

See: Fm. Law Practice Tips: Issue No. 8: ".....Divorce in the Courtroom"
Fm. Law Practice Tips: Issue No. 9: " Alternative Proof....."

This memorandum was prepared by Justice Doug Campbell in reply to the request of ACJ O'Neil as outlined in his Notice to the Bar dated November 6, 2014. It represents Justice Campbell's personal viewpoint and may or may not require some adjustment to conform to the preferences or practices of individual Judges. That will be left up to the Judge and the lawyer, if any, involved. Readers who make use of the within material do so therefore at their own discretion and subject to their own judgment.

- Formulation: 1)** *When the long form NS Registration of Marriage is not available, proof of the marriage can be achieved from evidence of the details of the marriage ceremony if a recognized solemnization had occurred.*
- 2)** *This requires proof of capacity to marry; that the ceremony meets all of the requirements of the Solemnization of Marriage Act; and that the officiant had authority.*
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Context:

Family Law Practice Tips, Issue No. 8 ..."Proof of Marriage".... was written as if the long form of "Registration of Marriage" in Nova Scotia is available. This current issue discusses a substitute method of proving the marriage. It should be read in conjunction with Issue No. 8.

No divorce can be granted unless it is proved that the parties are legally married. The Court's jurisdiction arises in part from the fact of a legal marriage. So, the object here is to prove the existence of the marriage (see the Solemnization of Marriage Act, RSNS 1989, c 436 for those legalities; herein: "the Act").

The following questions are examples that could be used when documentary proof of the solemnization of the marriage is insufficient or unavailable:

1) Q: "Were you married in a religious (or you might ask, as the case may be, a civil) ceremony?"

A: "yes"

2) Q: "What was the title of the person who conducted the ceremony"?

A: Judge (or Catholic Priest, or United Church Minister, or Clergyman, etc.)

[Note: If the answer shows that that person held an office or title that is likely to be recognized by this Court, no follow-up question about authority would be needed; otherwise elaboration as to that person's credentials to conduct a marriage should be offered. For example, "clergyman" is not a term that has a definite meaning. See the Act and Regulations for a list of recognized officiants].

The following questions should only be asked if the answers support the purpose (which would be determined by Counsel before-hand). These would need to be adapted to the situation:

3) Q: Were you over the age of 19 years at the time of that wedding?

A: "Yes";

4) Q: And was the Respondent also over that age?

A: "Yes" (if not for either spouse, see the requirements of the Act in Sections 20 and 21 for compliance).

5) Q: (for marriages in NS,) Was a Marriage License issued for this marriage prior to the ceremony?

A: "Yes" (See Section 15 of the Act)

I would accept it as a given that the issuance of a license means that all of the many requirements of the Act must have been met by that officiant (and this witness would not know many of these facts), but see the Act in case a Judge requires proof of those many requirements. Also, if the marriage was governed by another Jurisdiction, reference to the relevant Legislation should be made to see whether its requirements were obvious and whether, if so, they were either met or assumed to be met.

6) Q: "Was there an exchange of vows between you and the Respondent?"

A: "Yes" (See Section 23 of the Act).

7) Q: "Was there an exchange of rings?"

A: "Yes" (This is optional and only adds to the Validity issue)

8) Q: "Was there a pronouncement by the Officiant as part of the ceremony?"

A: "Yes"

9) Q: "What was that pronouncement?"

A: e.g. "She said: I pronounce you to be spouses of each other' ", etc.

10) Q: "Were there formal witnesses at the ceremony?"

A: "Yes"

11) Q: "How many witnesses were in attendance?"

A: "2". (In NS there is a requirement for 2 Witnesses over the age of 16)

12) Q: "Did they sign a document as witnesses?"

A: "Yes"

13) Q: "Was your marriage registered with a registry?"

A: "Yes"

14) Q: "What is the name of that Registry?"

A: "State of California"

[Obviously, the client must be prepared for the questions and answers ahead of time. The goal is that the answers must prove the existence of a legitimate solemnization of the marriage by a person legally qualified to do so between 2 people who had the capacity to marry and that it should be recognized in Canada and in Nova Scotia.]