

Wedding Law: By the Authority Vested in Me . . .

March 8, 2015(2015-03-08T22:40:58+00:00) By Peter Bowal(Posts by Peter Bowal) and Alexandra Brunet(Posts by Alexandra Brunet)



Add getting married to the list of activities in modern Canadian society which today is easy, chock full of options and as quick as you want it. This article is a brief summary of wedding law in Canada.

Federal Marriage Legislation

While our *Constitution Act, 1867*, section 91(26) confers exclusive jurisdiction on “marriage and divorce” upon the federal government, the federal regulatory role over marriage is a modest one.

The *Civil Marriage Act, SC 2005, c 33* was enacted in 2005 to authorize same-sex marriage. Section 2 reads: “Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.” Accordingly, gender is not specified in Canadian marriage legislation. Religious officiants are free to refuse to perform marriages that are not in accordance with their religious beliefs (section 3).

Presumably, civil marriage commissioners with similar religious convictions are not entitled to the same scope of freedom of conscience, although section 3.1 adds that “no person shall be deprived of any benefit . . . of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights.*”

Legal formalities for weddings are minimal. There must be at least two adult witnesses present at the wedding, which must be performed in a language that all understand, or is otherwise interpreted.

Section 2(2) of the *Marriage (Prohibited Degrees) Act, SC 1990, c 46* bars someone from marrying “another person if they are related lineally, or as brother or sister or half-brother or half-sister, including by adoption.” Lineal relationship is not defined, but would include close, direct relatives by blood or adoption such as grandparent-grandchild, parent-child, and siblings. Such prohibited marriages are void [section 3(2)].

The federal *Criminal Code RSC 1985, c C-46* establishes certain “offences against conjugal rights” in sections 290 to 293, namely bigamy, “procuring feigned marriage” and polygamy. Unlawful solemnization of marriage, whether it be an unauthorized officiant or someone who “procures a person to solemnize a marriage knowing he is not lawfully authorized to solemnize the marriage” [section 294(b)] is a crime punishable by imprisonment for up to two years.

Recognition of Foreign Marriages

What about eloping overseas, quickie Las Vegas marriages, beach resort weddings in the Caribbean, or immigrating to Canada as a married person? Generally, a foreign marriage will be legally recognized in Canada if it is legal under the laws of the location where it occurred and if it complies with Canada’s federal laws on marriage, which prohibit marriage between close relatives and being married to only one person at a time.

Provincial and Territorial Marriage Legislation

In the exercise of their constitutional authority over “the solemnization of marriage in the province” [*Constitution Act, 1867*, section 92(12)], all provinces and territories have *Marriage Acts* which have much in common (see [Appendix](#)). This legislation sets out who can solemnize marriages, namely religious representatives or marriage commissioners, and provides a process for registering them. Religious clergy must be ordained or appointed according to the rites of the religion. There are over 8000 clergy registered to perform marriages in Alberta. Marriage commissioners are discussed below.

Legal formalities for weddings are minimal. There must be at least two adult witnesses present at the wedding, which must be performed in a language that all understand, or is otherwise interpreted. The wedding must happen within 90 days of the marriage license being issued, and even on the same day that the license is issued.

Sixteen is the minimum age to marry, and parents or guardians must give written consent for children under 18 years to marry unless the female is pregnant or a mother. If either of the marrying parties has been divorced, proof of that divorce must be provided.

There is significant opportunity to create one’s own wedding ceremony. It can be held anywhere in the province or territory. Civil ceremonies especially are limited only by one’s imagination. They are held in homes, resorts, hotels, restaurants, boats, at one’s workplace or sports events, underwater, in airplanes or skydiving, parks, vehicles, hospitals, amusement rides, and even jails. The mountains are a popular venue. Per capita, there are 15 times more marriage commissioners in Canmore than in Medicine Hat. Weddings can be long or short, big or small, formal or informal, and traditional or original.

Quebec’s marriage laws are in the Civil Code of Quebec and include Civil Unions. The Quebec flag must be displayed in the room in which courthouse ceremonies take place. Even the attire of the clerk or deputy clerk performing the ceremony is regulated.

Certain words of marriage, however, are prescribed. For example, in Ontario the parties must say to each other: “I call upon these persons here present to witness that I, (name), do take you, (name), to be my lawful wedded (wife/husband/spouse).” This is followed by exchanging “I do solemnly declare that I do not know of any lawful impediment why I, (name), may not be joined in matrimony to (name).” The officiant ultimately proclaims “I, (name), by virtue of the powers vested in me by the *Marriage Act*, do hereby pronounce you (party 1) and (party 2) to be married.”

Provincial Differences

Alberta singles out the Bahai faith for special regulation as does Newfoundland and Labrador, which also has special provision for the Labrador Inuit. Saskatchewan has

The federal *Criminal Code RSC 1985, c C-46* establishes certain “offences against conjugal rights” in sections 290 to 293, namely bigamy, “procuring feigned marriage” and polygamy.

special mention for the marriage of Doukhobors. In Ontario, Aboriginals residing on a reserve are exempt from paying marriage license fees.

Quebec’s marriage laws are in the *Civil Code of Quebec* and include Civil Unions. The Quebec

flag must be displayed in the room in which courthouse ceremonies take place. Even the attire of the clerk or deputy clerk performing the ceremony is regulated. The text will be read in either French or English, as preferred by the parties. If they want another language, they must provide an interpreter at their own expense. The form of ceremony is detailed and outlined in the rules.

Marriage Law in Alberta

Marriage Licenses

The marrying parties must present proof of identification, proof of age, parents’ birthplace and names, including the mother’s maiden name and, if applicable, final

divorce papers. This information is online under the Vital Statistics department of the Service Alberta ministry. The marriage license is for record keeping only. One does not have to qualify beyond demographics or pass a test of skill to get this license. The marriage license is surrendered to the officiant at the wedding and is not returned to the couple.

Issuers of marriage licences are private parties appointed by the province for up to 5 years, much in the same way as Marriage Commissioners as described below.

Couples receive an unofficial Marriage Statement certificate after the ceremony. The marriage should be registered by the officiant at Alberta Vital Statistics Registry, from which the newlyweds can then apply to obtain an official Certificate of Marriage.

Civil Ceremonies

Civil weddings are a popular option because they can be fast, convenient, informal and secular. Don't be surprised if, while on a walk or in a hotel, you are asked to be a witness to someone's wedding. Civil weddings are just as legal as religious ceremonies. The legislation permits civil weddings to be followed by religious ceremonies, if the parties desire.

For civil weddings, a private, registered Marriage Commissioner must be contracted to officiate at the ceremony. That individual may also assist with the wedding plans and documentation. Commissioners generally charge \$300 to \$500. A full listing of these Commissioners is available online at the Service Alberta website, from all registry agents and even in map form at the Government of Alberta website. They cannot themselves perform religious elements (such as readings and prayers) in the ceremonies but any participant in the ceremony can do that.

Becoming a Marriage Commissioner

Alberta appoints both permanent (actually only for up to five years) and temporary Marriage Commissioners to perform civil (non-religious) marriages in their communities. *Permanent* Marriage Commissioners must be 18 years old, fluent in written and spoken English, resident in Alberta where they perform marriages, and possessed of a driver's licence and own vehicle. The position profile calls for customer service experience, good presentation and public speaking skills and access to the

Generally, a foreign marriage will be legally recognized in Canada if it is legal under the laws of the location where it occurred and if it complies with Canada's federal laws on marriage, which prohibit marriage between close relatives and being married to only one person at a time.

Internet. There is a roster of several hundred permanent Marriage Commissioners. Most communities are covered and there are no current openings. When an opening appears, a four- page application form, cover letter, resume and two letters of reference must be submitted by the closing date. Candidates are interviewed.

Temporary Marriage Commissioners are appointed for one day (24 hours) up to three times each calendar year. These temporary appointments are curiously restricted to current or former: judges, members of a provincial legislature, members of the House of Commons or Senate, and permanent Marriage Commissioners from other Canadian jurisdictions. Any former permanent Alberta Marriage Commissioner in good standing may also be appointed a temporary Marriage Commissioner. In special cases where it is clearly verified that no current permanent Marriage Commissioner is available, a temporary Marriage Commissioner who does not fall into one of the above categories can be appointed. One occasionally hears how a parent obtains the temporary authorization on the basis that a child's wedding will be in a very remote wilderness location which is not serviced by other appointees.

Other than this official category status, temporary Marriage Commissioners have the same qualifications, except that they can come from anywhere in Canada to perform marriages for one day in Alberta.

Certificate of Marriage

Couples receive an unofficial Marriage Statement certificate after the ceremony. The marriage should be registered by the officiant at Alberta Vital Statistics Registry, from which the newlyweds can then apply to obtain an official Certificate of Marriage.

Conclusion

Marriage remains an important social institution, but it has undergone a major revolution in the last generation. People who marry do so at an older age. A growing number of single parents raise children. Common law relationships enjoy many of the same legal protections as officiated, witnessed and registered marriages. Same sex marriages are legal and commonplace. The overall marriage rate has declined to where fewer than two-thirds of Canadian families are headed by married couples. There are now more single-person households than couples with children.

It is not surprising, therefore, that wedding and marriage law has adapted to reflect those numerous choices and freedoms. Those who choose to marry no longer have to be 'solemn', nor exchange elaborate promises to 'honour and obey' each other in a church before a community of witnesses. If they choose marriage, they have a range of thoroughly modern options available to them in Canada to get the job done.

[#1]

Appendix: Provincial Marriage Legislation

British Columbia: *Marriage Act, RSBC 1996, c 282*

Alberta: *Marriage Act, RSA 2000, c M-5*

Saskatchewan: *Marriage Act, 1995, SS 1995, c M-4.1*

Manitoba: *Marriage Act, CCSM c M50*

Ontario: *Marriage Act, RSO 1990, c M.3*

Newfoundland and Labrador: *Marriage Act, SNL 2009, c M-1.02*

Prince Edward Island: *Marriage Act, RSPEI 1988, c M-3*

Yukon: *Marriage Act, RSY 2002, c 146*

Northwest Territories: *Marriage Act, RSNWT 1988, c M-4*

Nunavut: *Marriage Act, RSNWT (Nu) 1988, c M-4*

New Brunswick: *Marriage Act, RSNB 2011, c 188*

Nova Scotia: *Solemnization of Marriage Act, RSNS 1989, c 436*

Quebec: *Rules respecting the solemnization of civil marriages and civil unions, CQLR c CCQ, r 3*

Filed Under: 39-4: Romance and the Law

Tagged With: legislation, marriage

Authors:

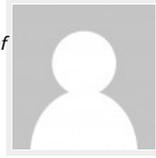
Peter Bowal

Peter Bowal is a Professor of Law at the Haskayne School of Business, University of Calgary in Calgary, Alberta.



Alexandra Brunet

Alexandra Brunet recently earned a B.Comm. from the Haskayne School of Business, University of Calgary (2015).



COPYRIGHT © 2018