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RULES, ORDERS AND FORMS OF PROCEEDINGS
OF THE SENATE OF CANADA,

TOUCHING

BILLS OF DIVORCE

AND PROCEDURE THEREON,

Adopted by the Senate on Wednesday, 11th April, 1888.



**Rules, Orders and Forms of Proceedings
of the Senate of Canada touching Bills
of Divorce and Procedure thereon
adopted by the Senate, on Wednesday,
11th April, 1888.**

A

At every Session of Parliament a Committee of nine Senators shall be appointed by the Senate to be called "The Select Committee on Divorce," to whom shall be referred all Petitions and Bills for Divorce, and all matters arising out of such Petitions and Bills, and no reference to any Committee other than the said Committee shall be necessary with respect to such Petitions, Bills and matters.

The Committee, unless it be otherwise ordered by the Senate, shall meet on the next sitting day after their appointment and choose their chairman, and five of the Senators on such Committee shall constitute a quorum.

All questions before the Committee shall be decided by the majority of voices, including the voice of the Chairman, who shall have no casting vote.

B

Notice of the day, hour and place of every sitting of the said Committee shall be given by affixing the same in the lobby of the Senate not later than the afternoon of the day before the time appointed for such sitting.

One of the Official Reporters of the Senate, when notified by the Chairman, shall be in attendance at the sittings of the said Committee, and shall take down in shorthand and afterwards extend the evidence of witnesses examined before the Committee, and cause the same to be printed.

C

Evidence taken before the said Committee shall be printed apart from the Minutes of Proceedings of the Senate, and only in sufficient numbers for the use of Senators and Members of the House of Commons, that is to say, one copy for distribution to each Senator and Member, and twenty-five copies to be kept by the Clerk of the Senate for purposes of record and reference.

D

Every applicant for a Bill of Divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during six months before the presentation of his or her petition for the said Bill, in the *Canada Gazette* and in two newspapers published in the District in Quebec, Manitoba, British Columbia or the North-West Territories, or in the County or Union of Counties in other Provinces, wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of papers cannot be found therein, then in an adjoining District or County or Union of Counties. Notices given in the Provinces of Quebec and Manitoba are to be published in one English and one French newspaper, if there be such newspapers published in the District, but otherwise shall be published in each newspaper in both languages. The notice may be in the subjoined form. If a notice given for any Session of Parliament is not completed in time to allow the

petition to be dealt with during that Session, the petition may be presented and dealt with during the next ensuing Session, without any further publication of such notice.

E

A copy of the said Notice shall, not less than one month before the date of the presentation of the Petition, at the instance of the applicant, be served personally on the person from whom the divorce is sought, when that can be done. If the residence of such person is not known or personal service cannot be effected; then, if, on report of the Committee as hereinafter provided for, it be shown to the satisfaction of the Senate that all reasonable efforts have been made to effect personal service and, if unsuccessful, to bring such notice to the knowledge of the person from whom the divorce is sought, what has been done may be deemed and taken as sufficient service.

F

No petition for divorce shall be received after the first thirty days of each session.

G

The petition of an applicant for divorce must be fairly written and must be signed by the Petitioner, and should briefly set forth the marriage, when, where and by whom the ceremony was performed, the grounds on which relief is asked and the nature of the relief prayed, and should also negative condonation, collusion and connivance. The allegations of the petition must be verified by declaration of the Petitioner, under the "*Act respecting Extra Judicial Oaths.*"

H

The applicant shall deposit with the Clerk of the Senate, eight days before the opening of Parliament, a copy, in

the English or French language, of the proposed Bill of Divorce, and therewith a sum sufficient to pay for translating and printing 600 copies thereof in English and 200 copies in French. The translation shall be made by the translators of the Senate, and the printing shall be done by the Contractor.

No petition for a Bill of Divorce shall be presented unless the applicant has paid into the hands of the Clerk of the Senate the sum of Two Hundred dollars (\$200), towards expenses which may be incurred during the progress of the Bill, and the said sum shall be subject to the order of the Senate.

I

The petition when presented shall be accompanied by the evidence of the publication of the notice as required by Rule D, and by declaration in evidence of the service of a copy thereof as provided by Rule E, and by a copy of the proposed Bill. The petition, notice, and evidence of publication and service, the proposed Bill, and all papers connected therewith shall thereupon stand as referred, without special order to that effect, to "The Select Committee on Divorce."

J

It shall be the duty of the Committee to examine the Notice of application to Parliament, the Petition, the proposed Bill, the evidence of publication and of the service of a copy of said notice, and all other papers referred therewith, and if the said notice, petition and proposed Bill are found regular and sufficient, and due proof has been made of the publication and service of the said notice, the Committee shall report the same to the Senate.

If any proof is found by the Committee to be defective

the Petitioner may supplement the same by statutory declaration to be laid before the Committee.

The Committee may, if the circumstances of the case seem to require it, recommend a particular mode for service of a copy of the Bill upon the party from whom the divorce is sought, before the second reading of the Bill.

K

Upon the adoption of the Report of the Committee, the Bill may be introduced and read a first time.

L

The second reading of a Bill of Divorce shall not take place till after fourteen days from the adoption of the report of the Committee, and a notice of the second reading shall be affixed to the door of the Senate during that period.

A copy of such notice and of the Bill shall, at the instance of the Petitioner, be served personally, if practicable, on the party from whom the divorce is sought, (or served in such other manner as may have been prescribed on Report of the Committee) and proof of such service shall be adduced before the Committee, who shall report thereon to the Senate.

Upon the adoption of the report of the Committee as to the sufficiency of such service the Bill may be read a second time.

M

When the Bill is read a second time, it shall be referred to The Select Committee on Divorce, who shall proceed with all reasonable despatch to hear and to enquire into the allegations set forth in the preamble of the Bill and take evidence touching the same and the right of the petitioner to the relief prayed.

The Committee after such hearing and enquiry shall report thereon to the Senate, and such Report shall be accompanied by the testimony of the witnesses examined and by all papers and instruments put in evidence before the Committee. The minority may bring in a Report stating the grounds upon which they dissent from the Report of the Committee.

When any alteration in the preamble or otherwise in the Bill is recommended, such alteration and the reasons for the same shall be stated in the Report.

When the Committee report that the preamble of the Bill has not been proved to their satisfaction, the report shall state the grounds on which they have arrived at such a decision, and no Divorce Bill so reported upon shall be placed on the Orders of the Day, unless by special order of the Senate.

N

The Chairman of the Committee shall sign, with his name at length, a printed copy of the Bill, on which the amendments recommended shall be fairly written, and shall also sign, with the initials of his name, the several amendments made and clauses added in Committee; and another copy of the Bill with the amendments written thereon shall be prepared by the Clerk of the Committee and filed, or attached to the Report.

O

If adultery be proved, the party from whom the divorce is sought may nevertheless be admitted to prove condonation, collusion, connivance, or adultery on the part of the Petitioner.

Condonation, collusion or connivance between the parties is always a sufficient ground for rejecting a Bill of Divorce and shall be enquired into by the Committee. And

should the Committee have reason to suspect collusion or connivance and deem it desirable that fuller enquiry should be made, the same shall be communicated to the Minister of Justice, that he may intervene and oppose the Bill should the interest of public justice in his opinion call for such intervention.

P

The applicant for divorce as well as the party from whom the divorce is sought may be heard before the Committee by Counsel learned in the law of the Bar of any Province in Canada.

Q

The applicant for divorce, as well as the party from whom the divorce is sought, and all other witnesses produced before the Committee shall be examined upon oath, or upon affirmation in cases where witnesses are allowed by the law of Canada to affirm; and the Rules of evidence in force in Canada in respect of indictable offences shall, subject to the provisions in these Rules, apply to proceedings before the said Committee, and shall be observed in all questions of fact.

R

Summonses for the attendance of witnesses and for the production of papers and documents before the Senate or the Select Committee on Divorce shall be under the hand and seal of the Speaker of the Senate, and may be issued at any time to the party applying for the same by the Clerk of the Senate. Such summonses shall be served, at the expense of the party applying therefor, by the Gentleman Usher of the Black Rod or by anyone authorized by him to make such service. The reasonable expenses of making such service and the reasonable

expenses of every witness for attending in obedience to such summons shall be taxed by the Chairman of the Committee.

S

In case any witness upon whom such summons has been served refuses to obey the same, such witness may by order of the Senate be taken into custody of the Gentleman Usher of the Black Rod, and shall not be liberated from such custody except by order of the Senate and after payment of the expenses incurred.

T

In cases not provided for by these Rules the general principles upon which the Imperial Parliament proceeds in dissolving marriage and the general principles of the rules, usages and forms of the House of Lords in respect of Bills for Divorce may be applied to Divorce Bills before the Senate and before the Select Committee on Divorce.

U

Declarations allowed or required in proof may be made under the Act of the Parliament of Canada entitled "*An Act respecting Extra-judicial Oaths*," before any Judge, Justice of the Peace, Public Notary, or other functionary authorized by law to administer an oath.

V

Rules 72 to 84 both inclusive, are hereby rescinded ; but but all other Rules of the Senate which, by reasonable intendment, are applicable to proceedings in Divorce, shall, except in so far as altered or modified by these Rules, or inconsistent therewith, continue to be applicable to such proceedings.

W

The subjoined forms, varied to suit the circumstances of the case, or forms to the like effect, may be used in proceedings for Divorce.

FORMS.

" A "

NOTICE OF APPLICATION FOR DIVORCE.

Notice is hereby given that (*name of applicant in full*) of the _____ of _____, in the county (or district) of _____, in the Province of _____, (*here state the addition or occupation, if any, of applicant*), will apply to the Parliament of Canada, at the next session thereof, for a Bill of Divorce from his wife (or her husband), (*here state names in full, residence or addition or occupation, if any, of the person from whom the divorce is sought*), on the ground of (*adultery, adultery and desertion, or as the case may be*).

Dated at _____	} Signature of applicant or of solicitor for applicant.
Province of _____	
day of _____ 188 .	

(When any particular relief is to be applied for, the nature thereof should be briefly indicated in the notice).

"B"

**DECLARATION AS TO SERVICE OF NOTICE WHEN
MADE PERSONALLY.**

PROVINCE OF _____ } I, A. B., of the
COUNTY (or district) OF _____ } of _____ in the county
To WIT: _____ } (or district) of _____
_____ } in the Province of _____
_____ } (occupation) do solemnly de-
clare:—

1. That on the _____ day of
A.D. 188 _____, I personally served C. D. (*names of person
served*) with a true copy of the notice hereto attached
and marked "A," by giving the said copy to and leaving
it with the said C. D. at (*state place of service*).

2. That I know the said C. D. and that I believe him to
be the person described in the said notice as the husband
of E. F. therein named.

(*Add any statements made by C. D. to the person effecting
the service showing identity*).

And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the "*Act
respecting Extra-Judicial Oaths*."

Declared before me, at the _____ of _____
_____ in the county of _____, in the _____
Province of _____, this _____ day of _____
A.D. 188 _____ } *Signature of
declarant.*

NOTE.—*Exhibits attached to the declaration should be
verified under the hand of the public functionary before
whom the declaration is made.*

GENERAL FORM OF PETITION.

To the Honorable the Senate of Canada in Parliament assembled :

The petition of A.B. of the _____ of _____, in the County of _____, in the Province of _____, the lawful wife of C. D., of, &c. (*state names in full, residence and occupation*).

HUMBLY SHEWETH :

1. That on or about the _____ day of _____, A.D. 18 _____, your petitioner, then A. X. (*spinster, or as the case may be,*) was lawfully married to the said C. D. at _____

2. That the said marriage was by license duly obtained (*or as the case may be*) and was celebrated by _____

3. That at the time of the said marriage your petitioner and the said C. D. were domiciled in Canada, and have ever since continued to be and are now domiciled in Canada.

(*All facts as to the residence and domicile of the parties at and since their marriage should be stated with particularity*).

4. That after her said marriage your petitioner lived and cohabited with her said husband at _____, and that there are now living issue of the said marriage _____ children, viz.: Mary D., born the _____ day of _____, 18 _____, and Elizabeth D., born the _____ day of _____, A.D. 18 _____

5. That on or about the _____ day of _____, A.D. 18 _____, at the _____ in the _____, the said C. D. committed adultery with one G. H. _____ of _____, spinster, and since then on divers occasions has committed adultery with the said G. H.

6. That your petitioner ever since she discovered her said husband had committed the said adultery has lived separate and apart from him and the said C. D. has not since cohabited with your petitioner.

7. That your petitioner has not in any way condoned the adultery committed by the said C. D., and that no collusion or connivance exists between myself and the said C. D. to obtain a dissolution of our said marriage.

Your petitioner therefore humbly prays :

That your Honorable House will be pleased to pass an Act dissolving the said marriage between your petitioner and the said C. D. and enabling your petitioner to marry again, and giving to your petitioner the custody of the said Mary D. and Elizabeth D., and granting your petitioner such further and other relief in the premises as to your Honorable House may seem meet.

And as in duty bound your petitioner will ever pray.

Signature of Petitioner.

“ D ”

DECLARATION VERIFYING PETITION.

PROVINCE OF } I, A. B., of the
 COUNTY (or District) OF } of _____, in the County
 To Wit: } of _____, in the Province
 } of _____, (occupation, if
 } any. In the case of the wife be-
 ing the applicant, say “wife of C. D.” and give names,
 residence and occupation or addition of the husband), the
 petitioner in the foregoing petition named, do solemnly
 declare :—

1. That, to the best of my knowledge and belief, the allegations contained in the paragraphs of the foregoing petition, numbered respectively _____, are, and each of them is, true.

2. (If any matter is alleged, of which the petitioner has not personal knowledge, add "That, with respect to the matters alleged in the paragraphs of the foregoing petition, numbered respectively _____, I am credibly informed and believe them, and each of them, to be true.")

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the "Act respecting *Extra-Judicial Oaths*."

Declared before me, at the	of	} Signature of Declarant.
, in the County of	,	
in the Province of	,	
day of	, A.D. 188 .	

True copy of the foregoing Rules as adopted by the Senate of Canada, Wednesday the Eleventh of April, A.D. 1888.

EDOUARD J. LANGEVIN,
Clerk of the Senate.