70224 - Is Divorce through Lawyers Valid in Islam?

the question

I would like to know if i will divorce my wife according to canadian law, i mean through lawyer, is it enough to divorce in this way or also islamically i have to give her like by email or etc. please advise me.

Summary of answer

If the lawyer is going to utter the words of divorce or write them down on your behalf, there is nothing wrong with that, and the divorce takes place thereby, and there is no need for you to utter the words of divorce, or to write them down and send them to your wife.

Detailed answer

Praise be to Allah.

What is Sunnah Divorce and How Should it Be Performed?

If a man wants to divorce his wife in a Sunnah divorce, then he should divorce her once (one pronouncement of divorce) when she is not menstruating and he has not had intercourse with her since her menses ended, or when she is pregnant, then he should leave her until her `Iddah has ended, then she will be divorced but it will be a revocable divorce, and he cannot take her back unless it is with a new marriage contract and a new Mahr.

Ibn Qudamah (may Allah have mercy on him) said: What is meant by a Sunnah divorce is the divorce which is in accordance with the command of Allah and the command of His Messenger (peace and blessings of Allah be upon him); it is divorce during the time when the wife is pure (i.e., not menstruating) and he has not had intercourse with her (since her last menses), then he leaves her until her `Iddah is over.

There is no difference of scholarly opinion concerning the fact that if he divorces her during the time when she is pure (i.e., not menstruating) and he has not had intercourse with her (since her last menses), then he leaves her until her `Iddah is over, then he has acted in accordance with the Sunnah, and has divorced her as enjoined by Allah. This was stated by Ibn `Abd Al-Barr and Ibn Al-Mundhir. Ahmad said: The Sunnah divorce is one pronouncement of divorce, then he should leave her until she has had three menstrual cycles. Malik, Al-Awza`i, Ash-Shafi`i and Abu `Ubayd said something similar. (End quote from *Al-Mughni,* 7/278)

The Importance of Uttering or Writing Divorce Words in Islam

It is essential to utter the words in the case of divorce, or to write them with the intention of divorcing, whether he sends the letter to her or not. In the case of divorce, it is not sufficient to have the intention without uttering or writing down the words.

Ibn Qudamah (may Allah have mercy on him) said:

Divorce does not take place without uttering the words of divorce, except in two cases: The first case is where the man is unable to speak, such as one who is mute; if he issues a divorce by means of gestures, then his wife is divorced. This was the view of Malik, Ash-Shafi`i and As-hab Ar-Ra'i, and we do not know of anyone who disagreed with them.

The second case is when divorce is written down. If he intended it, then his wife is divorced. This is the view of Al-Shafa'i, An-Nakha'i, Az-Zuhri, Al-Hakam, Abu Hanifah and Malik, and it is narrated from Ash-Shafi`i. (End quote from *Al-Mughni*, 7/373)

Can a Lawyer Divorce on Behalf of the Husband?

It is permissible to delegate someone else in the case of divorce, i.e., the husband may say to someone else: I appoint you to divorce my wife (inform her that she is divorced), or he may delegate his wife to divorce herself. If the person appointed issues the divorce or the wife divorces herself, then divorce takes place.

But the husband does not have the right to appoint someone else to issue a threefold divorce, rather he may appoint someone to issue one pronouncement of divorce only, because it is not permissible for the husband to issue a threefold divorce, so it is even less permissible for his representative to do so.

The lawyer is your delegate or representative in issuing the divorce to your wife.

Based on that, if the lawyer is going to utter the words of divorce or write them down on your behalf, there is nothing wrong with that, and the divorce takes place thereby, and there is no need for you to utter the words of divorce, or to write them down and send them to your wife.

And Allah knows best.