

Diocese of Antigonish

Nova Scotia

Policy for Responding to Allegations of Misconduct

RATIONALE FOR POLICY

The Diocese of Antigonish is committed to creating a safe environment where the clergy and those responsible for ministry and all diocesan activities maintain the highest ethical standards of mutual respect, responsibility and caring. Accordingly, the Diocese has established this Policy in order to deal with any complaint of misconduct made against a member of the clergy, an employee or volunteer working or ministering in the Diocese. Any person who reports misconduct or abuse will be treated with respect, compassion and understanding.

This Policy complies with the following:

a) The Code of Canon Law and other laws of the Catholic Church.

https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html

b) Protecting Minors from Sexual Abuse: A Call to the Catholic Faithful in Canada for Healing, Reconciliation and Transformation (CCCB, 2018)

https://www.cccb.ca/wp-content/uploads/2019/04/Protecting_Minors_2018.pdf

c) United Nations Convention on the Rights of a Child (November 20, 1989), volume 1577, 3: Article 3

<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

d) Nova Scotia Children and Family Services Act, SNS 1990, c5

<https://novascotia.ca/coms/families/changestocfsa/index.html>

e) Nova Scotia Adult Protection Act, RSNS 1989, c2

<https://novascotia.ca/dhw/ccs/protecting-vulnerable-adults.asp>

f) Canadian Criminal Code, RSC 1985, c C-46

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

DEFINITIONS

In this Policy, the following words shall have the following meanings:

Abuse: any behaviour which causes a person to fear for his or her physical, psychological or emotional well-being, behaviour which a perpetrator knows or ought to know would cause such fear in the other. Such behaviour may or may not be criminal in nature according to provincial or Canadian law.

Abuse Within A Ministerial Relationship: any abuse of power, betrayal of trust, or exploitation of the imbalance of power inherent in a ministerial relationship between a Church representative and the person with whom a ministerial relationship exists.

The apparent consent of a possible victim does not in itself determine whether there has been an abuse of power, breach of trust, or exploitation. Abuse could also include abuses which transpire between one Church representative and another for whom there is an imbalance of power.

The Criminal Code of Canada sets the age of consent for sexual activity at sixteen years; however, when there is a relationship of trust, authority or dependency, the age of consent is eighteen years (R.S.C. 1985, c.C-46, s. 153).

Bishop's Delegate: a person appointed by the Bishop to represent him in receiving complaints of misconduct and conducting or directing investigations of alleged misconduct by a cleric or an employee of the Diocese. Another person shall be selected to serve as the Bishop's Associate Delegate, who will have the same duties and functions as the Bishop's Delegate in the latter's absence or incapacity.

The Bishop's Delegate shall be responsible for:

- ensuring compliance with all provincial reporting obligations, and ensuring cooperation with law enforcement and civil authorities conducting their separate investigations;
- conducting or directing an Informal Process (see Appendix A) or a discreet Preliminary Investigation of an allegation of misconduct or abuse, safeguarding the privacy of an alleged victim and protecting the presumed innocence of a Respondent;

Child: in Nova Scotia, a person who is under the age of 19.

Cleric: a bishop, priest or deacon;

Committee: the Professional Standards Committee, made up of at least three members, advises the Bishop's Delegate when requested on matters related to allegations and known cases of misconduct or abuse. The Committee also advises on matters related to prevention of abuse, and recommendations on policies and procedures for addressing allegations of misconduct;

Complainant: a person who reports an allegation of misconduct; the complainant may be the alleged victim, a third party or an anonymous person;

Diocese: Diocese of Antigonish;

Employee: includes any priest, deacon, employee, or volunteer of the Diocese or one of its parishes or offices;

Misconduct: wrongful or unlawful or abusive behaviour that is motivated by purposeful or premeditated intent or stubborn indifference to the consequences of one's actions. This may include culpable neglect of duties and/or actions that are criminal in nature, including sexual offenses.

Policy: this Policy for Responding to Complaints of Misconduct;

Respondent: means a cleric (priest or deacon), employee or volunteer of the Diocese against whom an allegation of misconduct is made;

Sexual Abuse: is always an abuse of power. In this document, sexual abuse refers to actual or threatened physical intrusion of a sexual nature against a person, whether by force or under unequal or coercive conditions. This is a broad term which includes a number of acts, including rape, sexual assault, sexual activity with a minor. Sexual abuse (in this document) includes any misconduct or act deemed a sexual offence according to the Criminal Code of Canada, the laws of the province, or the canon law of the Catholic Church. Mistaken belief in the age of the minor is not a defense. Sexual abuse can also be "non-contact abuse", for example sexual exploitation, sexual harassment, indecent exposure and lascivious acts.

Superior: means the person to whom an employee reports;

Vulnerable Person: a term used in canon law to describe anyone in a state of infirmity, or physical or mental deficiency, or of deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence. A person may also be vulnerable due to a ministerial or other relationship in which there is an inherent imbalance of power which may be exploited. The term Vulnerable Person (in this document) also includes any Vulnerable Adult, i.e., an "adult in need of protection" as defined in the Nova Scotia Adult Protection Act, RSNS 1989, c 2.

Zero Tolerance: is a term used to convey clearly that no one who has sexually abused a minor or vulnerable person shall remain in active ministry in the Diocese. Furthermore, no priest will be accepted for ministry or residence in a parish in the Diocese without full disclosure by his Bishop or Superior of any allegation of sexual misconduct in the cleric's past.

BASIC PRINCIPLES

1. The objective of this Policy is to ensure that proper procedures are followed so that all individuals and groups affected by allegations of misconduct by a cleric or employee of the Diocese are dealt with properly and fairly.
2. The purpose of the procedure is to establish the truth while protecting a victim's right to privacy and the presumption that a person is innocent until proven guilty.
3. The primary concern is for victims of abuse or misconduct, and their families. Concern is also important for any individuals, parishes or Diocesan communities affected by allegations of misconduct or abuse.
4. This Policy applies to every bishop, priest, deacon, employee, and volunteer of the Diocese in any of its parishes, offices, programs or ministries.
5. This Policy does not preclude an alleged victim from seeking legal counsel or seeking a civil remedy, either through the courts or under the Nova Scotia Human Rights Act. If there is notice that civil proceedings have commenced or may be commenced, any procedures under this Policy will be suspended or terminated, except for the provision of pastoral care as outlined in the Policy.
6. Fairness to an alleged victim and a Respondent (person alleged to have committed an offense) requires that a complaint be investigated as soon as practicable. The timelines are generally followed but extensions for significant cause may be allowed by the Bishop's Delegate.
7. Any allegation will be investigated to the extent possible whether it is made by an alleged victim, a third party or an anonymous person. Any allegation about a person who is deceased or unable to speak in his/her own defense will be investigated to the extent possible.
8. If an allegation has been made against a non-incardinated cleric (that is, a priest or deacon ministering in our Diocese but belonging to another Diocese) or a member of a religious community, the Bishop's Delegate will advise the competent Bishop or Superior immediately. That Bishop or Superior will promptly invoke their own procedures, or consent to this diocesan procedure being undertaken.
9. All reports of allegations, and all steps taken in response to an allegation are to be documented in writing and kept confidential to the extent possible.
10. The sacramental seal of confession is inviolable in any and all circumstances. What is revealed in confession is subject to the seal and cannot be revealed.
11. Permanent records of all allegations of sexual misconduct made against a Respondent (cleric or employee) are to be kept. These records are not to be cleaned or destroyed, even after the death of the Respondent. This includes keeping detailed and accurate records and logs of all activities undertaken in response to a complaint. These records are to be kept in a safe and secure area in the Chancery Office.

12. All reports of allegations, and all information regarding a complaint and any resulting investigation under this policy are to be kept confidential to the extent possible. To protect the parties' rights to privacy, police access to diocesan records will require a search warrant.
13. Every effort will be made by the Diocese to ensure that a victim of misconduct and his/her family receive pastoral support during their time of crisis. The Diocese may fund appropriate, certified counselling services on a "without prejudice" basis
14. The Respondent's Superior shall ensure the Respondent has access to pastoral support.
15. The Diocese will not initiate settlement agreements that contain a confidentiality or non-disclosure clause.
16. A newly-appointed Diocesan Bishop is to be informed by the outgoing or former Diocesan Bishop or his Delegate(s) of all allegations of sexual misconduct or abuse allegedly or actually perpetrated by any diocesan priest, deacon, employee or volunteer.
17. This Policy shall be reviewed every four years.

REPORTING MISCONDUCT

18. Any person may contact the Bishop's Delegate to report an allegation of misconduct by a cleric or employee of the Diocese:

Rev. Douglas MacDonald
1-902-794-3951
fatherdouglas@gmail.com
or
Norma Blinkhorn
1-902-539-6188/1-800-656-5311
normablinkhorn@hotmail.com
19. The complaint ought to include an account of the incident(s), date(s), time(s), name of the alleged victim and the Respondent(s), name of witness(es), if any. If the alleged victim is a child or a vulnerable adult according to Nova Scotia law, mandatory reporting duties must be observed.
20. If the sexual activity forming the basis of the complaint may be defined as criminal under the Canada Criminal Code, the Bishop's Delegate must encourage the alleged victim to report this matter to law enforcement. The Bishop's Delegate may assist the person to do so.
21. To report sexual misconduct or abuse by a bishop, a person may contact the Metropolitan Archbishop OR the Papal Representative to Canada OR the Holy See. Any investigation of a bishop will be undertaken by a third-party outside the Diocese where the bishop holds/held office. Contact information and general information about procedures can be provided by the Bishop's Delegate(s).

22. Once the Bishop's Delegate receives a complaint, and if he/she has reasonable suspicion that an offense may have occurred, he/she will proceed according to this Policy, either with an Informal Process or a Preliminary Investigation.
23. The Diocesan legal counsel is to be notified of any complaint of misconduct, and he/she will in turn advise the insurer of a potential claim.
24. If the alleged victim agrees, and if appropriate, depending on the seriousness of the offense, the Bishop's Delegate may initiate an Informal Process. In all other cases, the Bishop's Delegate will initiate or direct a discreet Preliminary Investigation.
25. If a Preliminary Investigation is to proceed, the Bishop's Delegate will inform the Bishop. The Bishop will decide if a Respondent is to be placed on administrative leave, or removed from ministry, and if an alternate appropriate residence should be required, pending the outcome of a preliminary investigation. These restrictions imply no inference of guilt and may be reviewed periodically.
26. If the alleged victim is an adult, the Bishop's Delegate should advise that they have the right to independent legal counsel, and the right to make a report to civil authorities. If an adult victim is unable or unwilling to report to civil authorities, and if the alleged offense may be considered criminal under the Canada Criminal Code, the Bishop's Delegate shall consult the Diocesan legal counsel to determine that they should make a report to civil authorities.
27. In the event of a criminal or civil trial involving a member of its clergy, employee or volunteer, the Bishop's Delegate will assign someone to monitor the proceeds when this is deemed appropriate.

THE PRELIMINARY INVESTIGATION

29. The Bishop's Delegate meets with the alleged victim (if the report was made by another person) as soon as possible, and no later than one week of receipt of a complaint. The Bishop's Delegate, after hearing the facts and circumstances of the alleged incident(s) will explain the Preliminary Investigation process, including possible limitations on confidentiality.
30. Unless it would impede the investigation, the Bishop's Delegate contacts the Respondent and informs him or her that he/she is the subject of an allegation of misconduct and that a Preliminary Investigation is being initiated.
31. The Respondent is invited to respond to the allegation but cannot be compelled. If the Respondent declines to respond to the complaint, the investigation will proceed.

32. The Respondent is to be provided with a copy of this Policy. At the same time, the Bishop's Delegate describes the Preliminary Investigation process, explains limitations on confidentiality and advises the Respondent of his/her right to seek independent legal counsel.
33. Financial support and considerations related to the housing of Respondent clergy are dealt with in accordance with appropriate Diocesan Policies.
34. The alleged victim and the Respondent will be advised not to contact each other pending the outcome of the Preliminary Investigation.
35. The Bishop's Delegate must offer the alleged victim and the Respondent and their families the support of diocesan resources. If law enforcement has begun an investigation, this support will be offered, provided law enforcement officials agree that it will not impede their investigation.
36. The Bishop's Delegate will interview witnesses, if any and review any documentation, including diocesan archival records, that may be relevant to the complaint.
37. The Bishop's Delegate may make use of consultants as may be considered necessary, such as medical doctors, psychologists, mental health professionals, and canonists.
38. When the Preliminary Investigation is completed, the Bishop's Delegate will consult with the Committee, and after hearing their advice, prepare a report of the preliminary findings to the Bishop, with recommendations.

THE OUTCOME OF THE PRELIMINARY INVESTIGATION

39. If, after receiving the report of the Bishop's Delegate, the Bishop determines that an allegation of misconduct or abuse against an employee is founded, and depending on the severity of the offense, he may direct one of the following:

counselling sessions, sensitivity training, a written warning or reprimand, an assigned on-site supervisor, transfer or limitations placed on function, suspension without pay, termination of employment or ministry, a formal canonical inquiry, or other appropriate measures he considers appropriate to the circumstances.
40. When the Bishop determines that there is a credible allegation against a cleric of sexual misconduct/abuse involving a person under the age of eighteen the local Bishop is obligated to refer the matter to the Holy See's Congregation for the Doctrine of the Faith (CDF). The CDF will determine whether or not a formal canonical inquiry is to be undertaken, and will direct the Bishop on how to proceed.
41. In cases pertaining to clerics, the CDF will make the definitive canonical judgment on the innocence/guilt of the cleric and his suitability/unsuitability for ministry, as well as the

consequent imposition of canonical penalties, the most grave being dismissal from the clerical state.

42. If the Bishop determines that an allegation of misconduct against a cleric is founded, and if the nature of the offense does not require referral to the CDF, he may order one of the following actions:

counselling sessions, sensitivity training, a written warning or reprimand, an assigned on-site supervisor, transfer or limitations placed on function, suspension of employment or ministry, removal from canonical office or other appropriate measures he considers appropriate to the circumstances.
43. If it is determined that an allegation is unfounded, completely lacks credibility and was initiated maliciously, appropriate disciplinary action is taken by the Bishop. Further, in these circumstances, the Bishop shall take measures to restore the reputation of the wrongly accused, which measures shall depend upon the publicity given to the accusation.
44. The Bishop's Delegate to meet with the alleged victim as soon as possible to inform him/her of the findings of the Preliminary Investigation. The Bishop's Delegate will also inform the Respondent of the Bishop's decision.
45. When requested, or when he believes it would be beneficial, the Bishop and/or his representative may meet personally with an abuse victim. Such a meeting will be deferred if civil and/or criminal proceedings are underway or are anticipated.
46. The Bishop's Delegate must consult with the Committee and recommend to the Bishop whether a public statement concerning the allegations should be issued by the diocesan spokesperson. All public statements must have due regard to the confidentiality of the parties as well as the principle of innocent until proven guilty.
47. If the alleged misconduct or abuse occurred in a place of ministry of the Diocese, the Bishop's Delegate must consult with the Committee to determine whether to appoint a crisis response team to provide appropriate short-term support for the pastoral needs of the place of ministry.
48. Unless a case has been referred to the CDF, an appeal of the Bishop's decision may be made within thirty (30) days.
49. When an Employee is suspended or has limitations placed on his/her functioning, his/her status may be reviewed after one year. The review is conducted by the Bishop's Delegate, in consultation with the Committee. The Bishop determines whether to lift the suspension or change the Respondent's limitations.