

**DIOCESE OF MACKENZIE – FORT SMITH**

**Policy Regarding Allegations of  
Serious Misconduct  
by Employees & Volunteers  
(Clergy, Religious, & Lay Persons)**

**October 1, 2015**

## ***Introduction***

The Diocese of Mackenzie-Fort Smith is committed to both justice and compassion in dealing with serious misconduct of the *all* who work for or volunteer in the Church.

This Policy provides for the safety and pastoral care of complainants, their families and the community at large. Complainants may include, but are not limited to, Minors and Vulnerable Adults.

This Policy is an integral part of the effort to create safe and supportive working and ministry environment in the Diocese.

It does not apply to corporate bodies that have their own Catholic juridical identity such as schools and school boards, and social welfare agencies which are subject to their own policies.

### ***1. General Provisions***

1.1 The Diocese undertakes to investigate carefully any allegation of serious misconduct by anyone employed or volunteering in the Diocese in accordance with the procedures outlined in this policy.

1.2 The Diocese will comply fully with all laws which require the reporting to civil authorities of allegations of serious misconduct.

1.3 Nothing in this policy will limit or restrict in any way the application of canon law or the rights and protections guaranteed to the complainant and the respondent, particularly the right to due process, the right to one's reputation, and the right to be presumed innocent unless proven guilty.

1.4 The primary concern of the Diocese will be the well-being of all persons involved, especially victims and vulnerable person(s), and also person(s) who might be guilty of misconduct.

1.5 The Diocese will maintain the confidentiality of the complainant and the accused person at all times during the process covered by this Policy. However, should the complaint or the circumstances surrounding the complaint become public, the communications requirements will be carried out according to the protocol outlined in Section #7 of this policy.

1.6 This policy in no way restricts the Bishop from exercising his authority.

## ***2. Definitions***

**Serious Misconduct** refers to different forms of misconduct including sexual abuse, physical abuse, financial abuse and other behaviours contrary to the norms of civil or criminal law. It is a form of exploitation which involves the taking advantage of another for one's own benefit, or for the benefit of anyone other than the one being exploited.

Examples of sexual misconduct may include touching or invitation to touch, fondling, exhibitionism, intercourse, involvement in prostitution or child pornography. It includes grooming, that is the engaging in conduct that is designed to select and prepare potential victims to be taken advantage of.

Physical abuse refers to acts of violence or assault likely to result in physical harm. It may include bruising, burns, welts or fractures. Unreasonable force used to discipline a Minor is physical abuse.

Financial abuse involves the misuse or theft of a Complainant's money or property. It includes behaviours such as persuading, tricking or threatening the adult out of money, property or possessions.

**Employees** refers to persons employed by the Diocese, its parishes and/or faith communities, including clergy, religious men and women belonging to Institutes of Consecrated life or Societies of Apostolic Life in its activities in the Diocese. It also includes all lay persons, including Employees and Volunteers. This does not include independent contractors or others. <sup>1</sup>

**Volunteers** refer to persons who undertake assignments of charity or service with the sanction and direction of the Diocese, clergy, staff or men and women belonging to Institutes of Consecrated life or Societies of Apostolic Life. This category includes person receiving stipends. Self-appointed persons who operate without such a sanction or direction are excluded.

**Minor** refers a person under the age of nineteen years.

**Vulnerable Adult** refers an individual at least nineteen years of age who is

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<sup>1</sup> This definition of 'Employees' is for ease of reference for this policy. It is not intended to signify that named Employees are Employees according to the Employment Standards Act.

susceptible to abuse or exploitation by virtue of his/her significant mental or physical impairment.

**Complainant** refers a person who alleges having suffered as a result of serious misconduct by a lay person.

**Respondent** refers to employees or volunteers alleged to have committed an act of serious misconduct.

**Violation of the Ministerial Relationship** usually refers to the alleged abuse of power, betrayal of trust or exploitation of the power imbalance that is inherent in a relationship between a Employee or Volunteer of the Diocese and a person with whom he/she has a ministerial relationship. Because of the imbalance of power between the person who is offering ministry and the person to whom ministry is offered, the apparent consent of a possible victim does not in itself determine whether or not there has been an abuse of power, a breach of trust or an act of exploitation.

### ***3. Reporting Serious Misconduct***

3.1 The Diocese's primary concern is for the care of the complainant and the prevention of any further serious misconduct. Recognizing that coming forward with an allegation of serious misconduct is difficult, the person who first hears the complaint will treat the complainant with respect and compassion.

3.2. **Appointment of the Bishop's Delegate.** The Bishop will appoint a Bishop's Delegate for receiving allegations of Serious Misconduct by Employees and Volunteers (hereafter referred to as the "Bishop's Delegate"), to oversee these policies and to conduct the assessment of an allegation.

A Deputy Delegate for Receiving Allegations of Serious Misconduct by Employees and Volunteers (hereafter referred to as the "Deputy Delegate"), will be appointed to act in all matters covered in these policies when the Bishop's Delegate is unavailable or when the Bishop so requests.

3.3. Allegations of Serious Misconduct can be reported by telephoning, writing, or by meeting in person with the Bishop's Delegate. (Refer to Appendix I).

3.4. The person making the report should provide the Bishop's Delegate with:  
a) name of the Respondent;  
b) name of the Complainant;

- c) a description of the alleged Serious Misconduct, the relevant dates, times and circumstances in which the misconduct occurred; and
- d) names of other persons who may have knowledge of the alleged Serious Misconduct.

### **3.5. Reporting to Civil Authorities.**

a) Any person who has reasonable grounds to believe a Minor is in need of protection is legally required to report this to the civil authorities. (Refer to Appendix II)

b) If the Complainant was a child at the time of the alleged abuse, but is an adult at the time of making an allegation, the Bishop's Delegate will advise the alleged victim of the right to report their allegation to the police. (Refer to Section 5.3) The Diocesan solicitor will be consulted to determine the obligation to report to civil authorities.

### **3.6 Newly Appointed Bishop, Bishop's Delegate or Deputy Delegate.**

a) The Bishop's Delegate will inform any newly appointed Bishop of all cases of allegations, investigations and outcomes once the new Bishop has been installed.

b) Bishop or the outgoing Bishop's Delegate will inform any newly appointed Bishop's Delegate or Deputy Delegate of all cases of allegations, investigations and outcomes.

## ***4. Assessment of Allegations***

**4.1 Initial Assessment.** The initial assessment may be waived in cases where an accusation has come to the Bishop's attention as a result of the filing of criminal charges.

**4.2. Establishment of Advisory Committee.** The Bishop's Delegate will refer issues and allegations of serious misconduct to an Advisory Committee on Serious Misconduct, (hereafter referred to as the "Advisory Committee") set up under the Bishop's direction.

**4.3. Advisory Committee.** An Advisory Committee will be appointed by the Bishop.

a) **Membership.** The Committee will consist of at least five persons and will be composed of the Bishop's Delegate, the Deputy Delegate, a person

knowledgeable in canon law, the Diocesan solicitor and a professional experienced in the treatment of those who have suffered any form of abuse.

b) **Officers.** The Bishop or the Bishop's Delegate will convene the Committee.

c) **Relation to Bishop.** The role of this Committee is consultative to the Bishop. In this capacity, the Committee will assist the Bishop by carrying out its mandate, keeping the Bishop informed and making recommendations to him.

d) **Meetings.**

i) The Committee will meet as needed. The members will take an oath of confidentiality before the first meeting and will not discuss the business of the Committee or information presented to the Committee other than in the course of the exercise of their duties as members of the Committee.

ii) The Bishop or other persons designated by him may attend meetings. Any other person may attend meetings only upon the invitation of and with the consent of the Committee and subject to the requirement of Confidentiality.

iii) In urgent or time-sensitive matters, the Bishop may convene Committee with fewer members at his sole discretion.

#### 4.4 **Legal Counsel.**

a) The Diocesan solicitor will generally attend meetings and sit as a member of the Advisory Committee in order to represent the interests of the Diocese, and to advise on legal questions and possible litigation.

b) Nothing in this policy will limit a respondent's right to outside legal or canonical counsel.

c) No settlement, reached as a result of an allegation of sexual misconduct, shall contain a confidentiality provision, unless requested by the complainant.

#### 4.5 **Disclosure of Information.**

Information gathered in connection with the processes set forth in this policy will be kept confidential by the Bishop's Delegate, with the exception of the following:

a) updating the Complainant with appropriate and timely information about the actions of the Diocese in response to the complaint;

- b) disclosure to the Respondent of available information concerning the allegation, according to the prudent judgement of the Bishop;
- c) making available all information to the Bishop, the Committee, and other persons the Bishop may designate; and
- d) disclosing of any information as is legally required.

#### **4.6. Immediate Action by the Bishop's Delegate.**

Upon receipt of an allegation, the Bishop's Delegate will:

- a) assess the allegation by considering:
  - i) The source;
  - ii) The substance;
  - iii) The circumstance;
  - iv) Whether there is evidence supporting it;
  - v) Applicable laws, including Canon Law;
  - vi) The wishes of the Complainant.
- b) Report the allegation to the Bishop or, in his absence, the Vicar-General. If the Bishop's Delegate, in consultation with Bishop, concludes that there are no grounds to support the allegation or that there is evidence to show that the complaint has been made maliciously or in bad faith, or is frivolous and vexatious, the Bishop's Delegate may choose not to take further steps;
- c) Inform the Diocesan lawyer and the insurance carrier;
- e) Determine whether the safety of minors or vulnerable adults requires the immediate withdrawal of the respondent from his/her position and promptly communicate a recommendation to the Bishop; a respondent will be given leave of absence immediately upon any allegation of sexual abuse until the matter is fully investigated;
- f) When a complaint involves harassment or exploitation of a ministerial relationship by a clergyman, religious man or woman, or lay ecclesial employee or volunteer - pending the outcome of the Delegates investigation - where it considers it to be in the best interests of the good order of the Diocese, or in the best interests of the Complainant and the Respondent, the Bishop's Delegate may recommend to the Bishop:
  - a. Placing the respondent on paid leave of absence; or
  - b. Placing the respondent in an alternate ministry either with or without restrictions depending on the circumstances.<sup>2</sup>
- g) Meet with the respondent and inform him/her of the allegation, explaining to him/her in advance his/her right to outside legal counsel, and hear any explanation if offered, although any information disclosed is not privileged;

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<sup>2</sup> This applies to cases when the Respondent is in a paid position.

- h) Schedule and give effective notice of a meeting of the Advisory Committee to occur as promptly as possible;
- i) Review the respondent's file, make appropriate inquiries about the allegation, and prepare a report of all available information for presentation to the Committee either orally or in writing at its meeting;
- j) Write a report for the Bishop as soon as practical after the first meeting.

#### **4.7 Role of the Advisory Committee.**

a) The Committee will assess whether an Allegation has at least the appearance of truth. On this basis, the Committee will make recommendations to the Bishop about the following:

- i) if the Respondent has already withdrawn from his/her employment or Volunteer position pending the initial assessment, whether such withdrawal should continue;
- ii) if the Respondent has not withdrawn from his/her employment or volunteer position, whether he/she should withdraw or whether he/she should continue in his/her duties;
- iii) whether the file may be closed at this stage of the proceedings or held open pending action by civil authorities, further inquiries by the Bishop's Delegate, or further deliberation by the Committee;
- iv) what further action is required if the Respondent is believed to have committed the alleged Serious Misconduct;
- v) what further action is required if the respondent is not deemed to have committed the alleged Serious Misconduct but has acted inappropriately;

b) If the Committee determines the allegation to be unsubstantiated, it will recommend that inquiries be terminated, and close the file with a declaration that the respondent was not involved in any wrongdoing.

c) The Committee will provide advice as requested concerning the possibility of a return to employment or volunteer service upon the closure of a case.

d) The Bishop's Delegate, either independently or in consultation with the Committee - in cases of alleged harassment of an adult - may recommend to the Bishop an informal resolution process – given that both the complainant and the accused person agree to participate. Such a process may take the form of a “without prejudice” facilitated discussion between the Complainant and the Respondent or other type of mediation, as agreed to by the parties and approved by the Bishop. If such a process does not result in

a resolution of the complaint, a formal investigation may then proceed. At any time during the course of the investigation, if the Bishop's Delegate deems it appropriate and the parties agree, further informal resolution meetings may take place. All informal resolution discussions arranged by, or which occur with the approval of the Bishop, shall be "without prejudice" and not be referred to in any investigation or report. If a resolution is achieved, a resolution agreement shall be drawn up, signed by both parties and ratified by the Bishop, as may be recommended by the Bishop's Delegate. A copy of the agreement shall be maintained on file.

e) The Committee will recommend to the Bishop, from time to time, any changes in this policy seen as necessary.

4.8 If civil or criminal proceedings are taking place, canonical inquiry may be delayed until the matter has been resolved before the courts. In all cases, the continuation of the investigation would be at the discretion of the Diocese, taking into account the factors relating to the case, and/ or other circumstances.

4.9 Regardless of the outcome of an allegation of serious misconduct, a record of every allegation and its findings will be kept.

## ***5. Assistance to Those Affected***

5.1 **Commitment.** The Diocese is committed to the pastoral support of complainants, their families, *the parish at large* and other persons affected by an alleged incident. The Diocese will also identify professional and other resources to support complainants and others. It will consider each request for payment of counseling or treatment fees.

5.2 **Complainant Assistance Committee.** The Complainant Assistance Committee will ensure that individualized support is available to complainants and advise the Bishop regarding the responsibilities of the Diocese in each case.

- a) **Membership.** The Committee will consist of the Bishop's Delegate or Deputy Delegate (Appendix I), a pastor, and a person professionally qualified and experienced in the field of behavioural sciences and any other official as required. The Diocesan solicitor may, as required, attend and assist at any meetings of this Committee.
- b) The Bishop's Delegate will convene the Committee.
- c) The role of this Committee is consultative to the Bishop.

**5.3 Right of Confidentiality.** Respect for the complainant's right to privacy and confidentiality is to be observed. However, this is necessarily limited when:

- a) a possible danger of self-harm by the Complainant or any other person, suicide risk is identified ;
- b) a possible danger to others, not limited to on-going serious misconduct by the Respondent is identified;
- c) any record of the allegation, including verbal conversations as recalled by the person receiving the allegation, are subpoenaed by a court of law;
- d) the person receiving the allegation is required by civil or ecclesial law to report the allegation to the appropriate authorities.

The person receiving the allegation should explain to a Complainant his/her Obligation to Report to civil and ecclesial authorities, who can then take appropriate action to prevent further offences, work toward healing of all those affected, and maintain Church discipline.

**5.4 Assistance to Minors or Vulnerable Adults.** If the Complainant is a Minor or Vulnerable Adult, the Bishop / or Bishop's delegate will take guidance from appropriate authorities prior to conducting an investigation until any criminal or child protection investigation is completed. When it is deemed appropriate, a suitable representative of the Diocese will meet with the parents/guardians to offer appropriate professional and pastoral support. If such support is not desired, advice should be available to them as to where to obtain appropriate professional help for the minor or vulnerable adult.

**5.5. Assistance to Parishes/ Communities.** If possible, the Diocese will attempt to make an individual or team to assist parishes adversely affected by the allegations of Serious Misconduct with the aim of promoting healing and reconciliation within the community.

**5.6. Basis for Providing Prompt Assistance.** Any and all assistance rendered to a Complainant will be understood as reflecting the Church's pastoral compassion and concern. Those seeking such assistance must recognize that no admission of liability or responsibility or of an individual's guilt is conveyed by the readiness of the Diocese to provide professional or other assistance before the facts are adjudicated by the Diocese, the Church or a civil process.

It should be noted that conversations and support offered are admissible as evidence in a court of law.

## ***6. Return to Employment or Volunteering***

The Diocese recognizes its responsibility to protect minors and vulnerable adults.

6.1 It will not permit any Employee or Volunteer to return to employment or volunteering if that individual has been convicted of or has admitted to sexual abuse of a Child or Vulnerable Adult.

6.2 If the Committee determines any allegation to be unsubstantiated, it may recommend that that the respondent return to his/her position. If the allegation is public, reasonable and appropriate steps will be taken by the Diocese to attempt to repair damage done to the respondent's reputation.

6.3 A return to employment and/or volunteer service will be considered on a case by case basis for:

- a) serious misconduct other than allegations of sexual abuse of a minor or vulnerable adult where there was a conviction or admission to culpability;
- b) cases where there was an inconclusive result of an investigation into an allegation.

6.4 If there is doubt whether serious misconduct has occurred, the Bishop, in consultation with the Advisory Committee, will determine if a return to employment or volunteer service is appropriate.

6.5 The Diocese is bound by the applicable juridical norms (e.g. Articles of Incorporation, bylaws, policies, etc.) and any other provision under Canon Law. A Bishop shall ensure adherence to the requirements of these norms and of Canon Law.

## ***7. Communications***

The person(s) who oversees communications will take direction from the Bishop, who will normally consult with the Bishop's Delegate, prior to making comments on behalf of the Diocese. The Communications Director is responsible for communicating with parishes, the media and individuals, as required, to keep them apprised as to the Diocesan response to any allegation of Serious Misconduct.

APPENDIX I

***To report an abuse by a lay employee or volunteer, please contact:***

Gerri Fletcher, **Bishop's Delegate for Receiving Allegations of Serious Misconduct by Lay Persons**

Tel: (867) 920-2129

Cell: (867) 444-9383

Email: [religious.ed@theedge.ca](mailto:religious.ed@theedge.ca).

If not available, please contact:

Sr. Mary Lee Prysbylski, **Deputy Delegate for Receiving Allegations of Serious Misconduct by Lay Persons**

Tel: (867) 920-2129

Cell: (867) 873-5592

Email: [smarylee@northwestel.net](mailto:smarylee@northwestel.net).

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***To report an abuse by a member of the clergy, please contact:***

Rev. Joseph Daley, **Bishop's Delegate for Receiving Allegations of Serious Misconduct by Clergy:**

Tel: (867) 688-1590

Email: [jdaley@theedge.ca](mailto:jdaley@theedge.ca).

If Delegate is not available, please contact:

Jim Lynn, **Deputy Delegate for Receiving Allegations of Serious Misconduct by Clergy**

Tel: 867 920-2129

Cell: 867 (867) 444-0111

Email: [chancery.mackenzie@theedge.ca](mailto:chancery.mackenzie@theedge.ca).

## **APPENDIX II**

### **Definition of “Child”**

The *Child, Family and Community Service Act*, Part 1 .1

A "**child**" means a person under 19 years of age and includes a youth.

### **Obligation to Report to Ministry of Children and Family Development**

The *Child, Family and Community Service Act*, Part 3, Division 1, states:

13. (1.1) A child needs protection in the following circumstances:
- (a) if the child has been, or is likely to be, physically harmed by the child's parent;
  - (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
  - (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
  - (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
  - (e) if the child is emotionally harmed by the parent's conduct;
  - (f) if the child is deprived of necessary health care;
  - (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
  - (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
  - (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
  - (j) if the child's parent is dead and adequate provision has not been made for the child's care;
  - (k) if the child has been abandoned and adequate provision has not been made for the child's care;
  - (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or

unable to resume care when the agreement is no longer in force.

- (1.2) For the purpose of subsection (1) (b) and (c) and section 14 (1) (a) but without limiting the meaning of 'sexually abused' or 'sexually exploited', a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,
  - (a) encouraged or helped to engage in prostitution, or
  - (b) coerced or inveigled into engaging in prostitution.
- (2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe
  - (a) anxiety,
  - (b) depression,
  - (c) withdrawal, or
  - (d) self-destructive or aggressive behaviour."
- 14. (1) A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.
- (2) Subsection (1) applies even if the information on which the belief is based
  - (a) is privileged, except as a result of a solicitor-client relationship, or
  - (b) is confidential and its disclosure is prohibited under another Act.
- (3) A person who contravenes subsection (1) commits an offence.
- (4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.
- (5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information."
- (6) A person who commits an offence under this section is liable to a fine of up to \$10,000 or to imprisonment for up to 6 months, or to both.
- (7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.