

## **RULES OF ECCLESIASTICAL COURT**

### **1 Definitions and Application**

- a) In these rules,
  - i. "Bishop" means the Bishop of the Diocese of Fredericton
  - ii. "Canon" means a canon adopted by the Diocesan Synod of Fredericton
  - iii. "Canon XVIII" means Canon XVIII of the General Synod which is set out in Schedule to Canon Eight
  - iv. "Chancellor" means the Chancellor of the Diocese of Fredericton and "Vice-Chancellor" means the Vice-Chancellor of the Diocese of Fredericton
  - v. "Committee of Inquiry" means a Committee of Inquiry appointed pursuant to section 6 of Canon Eight.
  - vi. "Court" means the Ecclesiastical Court for the Diocese of Fredericton
  - vii. "Diocese" means the Diocese of Fredericton
  - viii. "Diocesan Council" means the Council elected or appointed by the Diocesan Synod of Fredericton
  - ix. "President" means the person designated by the Diocesan Council pursuant to subsection 4(13) of Canon Eight
  - x. "proceeding" refers to an inquiry by a Committee of Inquiry and a trial or hearing before the Court.
- b) These rules are made pursuant to section 9 of Canon Eight and apply to proceedings before the Court and Committees of Inquiry except when specific provisions of the Canons provide otherwise.
- c) These rules are to be interpreted and applied in ways that encourage inexpensive and timely conclusions of proceedings. The Court may, after consultation with the Chancellor, make other rules, suspend, repeal or vary rules for the purpose of promoting inexpensive and timely conclusions of proceedings and for the purposes of maintaining order before the Court and promoting just practice and procedure.
- d) If additional rules are needed to maintain order and to promote just practice and procedure before a Committee of Inquiry, the Chancellor shall give directions on how to proceed.

### **2 Role of the President**

- a) The President shall be responsible for administrative functions of the Court not provided for in these rules.
- b) Within 3 days after notification of appointment, the President shall call a meeting of the members of the Court and the Chancellor for the purposes of determining the place and time of proceedings and to give such other directions as may be necessary for an orderly and just proceeding.
- c) The President shall preside over the Court and decide all points of order.

### 3 Court Officers

- a) The Chancellor shall appoint a registrar and an usher to serve during the pleasure of the Court with duties defined in these rules or amendments or additions thereto and such other duties as may be prescribed from time to time by the Court.
- b) An appointed Registrar shall be a lawyer authorized to practice law in the Province of New Brunswick of not less than 5 years' standing.
- c) The Registrar shall
  - i. keep a record of the proceedings,
  - ii. attend all proceedings, and
  - iii. perform such other duties as the Court may direct.
- d) The Usher shall organize the place of the proceeding and assume control over it to ensure there is an atmosphere of respect for the Committee of Inquiry or Court and for all persons participating in the proceeding.

### 4 Representation

- a) A person charged with an ecclesiastical offence may be represented at a proceeding by a lawyer or by an agent. If he or she does not have a lawyer or an agent, the Court (or the Chancellor if the proceeding is an inquiry before a Committee of Inquiry) may appoint one to act as the person's representative if it determines representation is required in the interests of justice.
- b) If a proceeding is the trial of a person charged with an ecclesiastical offence or a hearing to determine penalty, the Chancellor shall appoint a lawyer to prosecute.
- c) If the Court considers it necessary, the Court may appoint a lawyer to assist the court.
- d) The Court (or the Chancellor if the proceeding is an inquiry before a Committee of Inquiry) may exclude a lawyer or an agent from providing representation if it finds such person is not competent.

### 5 Disclosure

- a) A person charged with an ecclesiastical offence shall be provided with disclosure of the offence as described in clause 14(b)(i) of Canon XVIII and with disclosure of all information related to the offence which is in the possession or under the control of the Diocese whether or not it is intended to be introduced as evidence and whether it is inculpatory or exculpatory.
- b) The obligation to disclose is continuing.

### 6 Committee of Inquiry

- a) Within 7 days of being appointed, a Committee of Inquiry shall inform the person charged with an ecclesiastical offence, in writing, of the following:
  - i. the purpose of the Committee of Inquiry,

- ii. the right to waive the appointment of a Committee of Inquiry, and
  - iii. the right to be represented by counsel or an agent.
- b) Unless the person charged with an ecclesiastical offence advises the Committee of Inquiry its appointment is being waived, the Committee of Inquiry shall:
- i. consult with the Chancellor and determine the particular questions about which evidence should be heard,
  - ii. give notice of the particular questions to the person charged with an ecclesiastical offence, and
  - iii. give notice to all persons involved of the time and place for the inquiry.

## 7 How a Proceeding is Commenced

- a) The Court shall be convened when there is
- i. a referral by the Bishop pursuant to section 4 of Canon Seven for an inquiry relating to the removal of a priest appointed to the position of rector in a parish in the Diocese;
  - ii. a request for a review of the Bishop's exercise of his or her initial jurisdiction pursuant to Canon Eight;
  - iii. a request by the Bishop pursuant to clause 6(3)(a) of Canon Eight for a determination of penalty;
  - iv. a referral by the Bishop pursuant to clause 6(7)(d) or subsection 6(8) of Canon Eight for a trial to determine whether or not a person has committed an ecclesiastical offence;
  - v. a case stated pursuant to section 5 of Canon Eight by the Diocesan Synod of Fredericton or by the Diocesan Council to determine the validity or interpretation of any provision of the Constitution or Canons of the Diocese of Fredericton.
- b) A referral, request or stated case shall be in writing and shall be sent to the Chancellor who shall immediately notify the Chair of the Diocesan Council, or if the referral, request or stated case was made by the Bishop, the Vice-Chair. The Chair or Vice-Chair shall forthwith convene a special meeting of the Diocesan Council to determine the membership of the Court and designate a President.

## 8 Notice of Hearing

- a) The Court shall give reasonable notice of hearing and the question of reasonableness in any case is to be determined by the Court, limited by any time constraints set out in the provisions of the Canons to
- i. the Bishop;
  - ii. the person, if any, who is the subject of the referral or request for review
  - iii. where the matter is a referral for an inquiry under Canon Seven, each lay member of the Parish Corporation who signed the application which resulted in the referral and the Church Wardens of the parish;
  - iv. any other person the Court believes has a sufficient interest in the matter.
- b) The notice of hearing shall include:
- i. a statement of the time, place and purpose of the hearing;
  - ii. a reference to the authority under which the hearing will be held;

- iii. a statement advising the person to whom the notice is directed that the Court may proceed in his or her absence and she or he will not be entitled to any further notice in the proceedings if she or he does not attend; and
- iv. copies of the following documents:
  - A. where the matter is a referral for an inquiry under Canon Seven, the name of the priest appointed to the position of rector in a parish in the Diocese whose removal is sought and a copy of the written application filed in accordance with subsection 4(2) of Canon Seven;
  - B. where the matter is a request for review of the Bishop's exercise of initial jurisdiction made under Canon Eight, a copy of the charge filed under section 6 of Canon Eight,
  - C. where the matter is a request by the Bishop to determine the penalty pursuant to clause 6(3)(a) of Canon Eight, a copy of the charge filed under section 6 of Canon Eight;
  - D. where the matter is a request by the Bishop for the trial of a person pursuant to clause 6(7)(d) or subsection 6(8) of Canon Eight, a copy of the charge file pursuant to section 6 of Canon Eight.
- c) The Court is not obliged to give notice of hearing to a person whose whereabouts cannot, after reasonable inquiry, be ascertained.
- d) Notice of hearing must be served personally and proved by statutory declaration unless such service is accepted by counsel or the agent for the person by personally endorsing the notice of hearing.

## 9 Place of Hearing

The place of all proceedings shall be Fredericton, New Brunswick unless the Committee of Inquiry or Court determines it is more appropriate for the proceeding to be held in another place.

## 10 Attendance

- a) A proceeding shall not commence or continue if any members of the Committee of Inquiry or Court are absent.
- b) The Committee of Inquiry and Court may adjourn a proceeding on such terms as may be just.
- c) Where notice of hearing has been given to a person to whom notice of hearing must be given under these rules and that person does not attend, the Committee of Inquiry or Court may proceed in that person's absence and the absent person is not entitled to any further notice.

## 11 Witnesses and Evidence

- a) Evidence at a proceeding includes oral testimony and documents or other material relevant to the matter about which the Committee of Inquiry or Court must make a decision.

- b) A Committee of Inquiry or Court may allow particular evidence or facts to be proved by statutory declaration.
- c) A Committee of Inquiry, the Court, a prosecutor (if one is appointed) and a person charged with an ecclesiastical offence (or his or her lawyer or agent) may summon witnesses to give evidence and to produce in evidence documents or other materials even if there is a statutory declaration of the witness in evidence.
- d) Witnesses shall be examined under oath or affirmation and may be examined by a prosecutor, the person charged with an ecclesiastical offence (if she or he is represented by a lawyer or agent, the lawyer or agent) and by each member of a Committee of Inquiry or Court. The President shall exercise control over the examination of witnesses to prevent harassment or embarrassment and may disallow any question that is vexatious or irrelevant.
- e) A witness to a proceeding may be advised of his or her rights by counsel or an agent but the counsel or agent may take no other part in the proceeding without leave of the Committee of Inquiry or Court and, where a hearing is held in camera, the counsel or agent for a witness is not entitled to be present except when that witness is giving evidence.
- f) A summons to a witness shall be served personally and proof of service shall be by statutory declaration. If personal service cannot be reasonably effected, substituted service may be made and the manner of substituted service and proof thereof shall be determined by the Registrar.
- g) When a person served with a summons does not attend, the person is guilty of contempt and the Committee of Inquiry or Court may deal with the contempt summarily and order the person to pay costs incidental to service of the summons and any other costs incurred as a result of his or her failure to attend.
- h) The Committee of Inquiry or Court may take notice of any generally recognized scientific or technical facts, information, or opinions.

## 12 Open Hearing

- a) All proceedings of a Committee of Inquiry and the Court shall be open to the public except where the Committee of Inquiry or the Court is of the opinion a person's rights to be protected from the potential harm of disclosure of information of an intimate, financial or personal nature are more important than the public right to know.
- b) The Court may cause any person to be removed from the place of proceeding where the person engages in misconduct which interrupts the proceeding so that to continue with the person present would not be feasible.

## 13 Procedure

- a) All proceedings shall be conducted according to the principles of natural justice provided for in section 14 of Canon XVIII.

- b) The procedure for receiving evidence shall be:
  - i. if the proceeding is a referral by the Bishop pursuant to section 4 of Canon Seven for an inquiry relating to the removal of a priest appointed to the position of rector in a parish in the Diocese, in accordance with the procedure described in subsection 4(7) of Canon Seven.
  - ii. if the proceeding relates to a request for a review of the Bishop's exercise of his or her initial jurisdiction pursuant to Canon Eight:
    - A. evidence offered by the person requesting the review of the Bishop's exercise of his or her jurisdiction,
    - B. evidence offered by the Bishop, and
    - C. evidence from any other person whose evidence the Court considers may be of assistance.
  - iii. If the proceeding relates to a request by the Bishop pursuant to clause 6(3)(a) of Canon Eight for a determination of penalty or a referral by the Bishop pursuant to clause 6(7)(d) or subsection 6(8) of Canon Eight for a trial to determine whether a person has committed an ecclesiastical offence:
    - A. evidence offered by the prosecutor,
    - B. evidence offered by the Bishop,
    - C. evidence from any other person whose evidence the Court considers may be of assistance, and
    - D. evidence from the person charged with having committed an ecclesiastical offence, if the person wishes to offer evidence.
- c) If the proceeding relates to a case stated pursuant to section 5 of Canon Eight by the Diocesan Synod of Fredericton or by the Diocesan Council to determine the validity or interpretation of any provision of the Constitution or Canons of the Diocese of Fredericton the Court shall hear evidence it considers may be of assistance in the order determined by it to be most appropriate.

#### 14 Decision

- a) The Court shall give its final decision or order in writing, within one year from the date on which the Diocesan Council appointed the Court, and the decision or order shall include the findings of fact.
- b) The Registrar of the Court shall send a copy of the Court's final decision or order
  - i. to the Bishop;
  - ii. to the Diocesan Council;
  - iii. to any person who was a party to the proceeding; and
  - iv. to the Diocesan Synod of Fredericton, if the proceeding involved a stated case.

#### 15 Records

- a) The Registrar of the Court shall compile a record of each proceedings of a Committee of Inquiry and the Court. Each record shall include the complaint, notices of hearing, proof of service, all documentary evidence, transcripts of oral evidence, determinations and reasons, and judgments and orders.

- b) The Registrar of the Court shall forward each record of a proceeding to the Diocesan Archives within 45 days after the Committee of Inquiry or Court has made its decision.

## 16 Costs and Expenses

Costs and expenses of a proceeding shall be determined and paid in accordance with section 10 of Canon Eight.

## 17 Appeals

- a) Any judgment or order of the Court may be appealed. An appeal shall be in accordance with the provisions of Canon XVIII and Canon V of the Synod of the Ecclesiastical Province of Canada.
- b) When a person gives notice of appeal from a conviction or penalty, the penalty shall not be enforced until further order of the court of appeal.
- c) When a priest appointed to the position of rector in a parish in the Diocese appeals an order for removal as rector of the parish made as a result of proceedings under Canon Seven, the order of removal shall not be enforced except by order of the court of appeal.

Adopted  
10 June 2006