

## MISCONDUCT

### PURPOSE

1 The purpose of this Policy is to protect all members of the Church community and, in particular, children, youth, and vulnerable adults from misconduct in a Church setting.

### DEFINITIONS

2 Definitions for terms may be found in Part 1 of Regulation 4-4: Diocesan Safe Church. In the context of the Safe Church Regulation, the definition of “misconduct” is as follows:

“unacceptable behavior, abuse or maltreatment that includes physical or sexual assault, bullying, harassment and/or economic, emotional, physical or sexual misconduct, and for the purposes of this Regulation, includes any discriminatory practices described in the [Part 1 \(Proscribed Discrimination\)](#) of the Canadian Human Rights Act or the [New Brunswick Human Rights Act](#).”

### PRINCIPLES

- 3(1) The Diocese shall provide a safe environment for its clergy and lay persons.
- 3(2) The Diocese shall protect the safety and well-being of a Complainant, Respondent and other affected persons.
- 3(3) A complaint shall be taken seriously and shall be investigated as quickly as is reasonably possible.
- 3(4) The Diocese shall provide pastoral care to all affected by an allegation of misconduct under this Policy.
- 3(5) Confidentiality shall be respected.
- 3(6) A Complainant shall prove that s/he has been subject to misconduct, and a Respondent is deemed to be innocent until proven otherwise.
- 3(7) A Respondent and a Complainant have the right to be represented by legal counsel or another representative of their own choice.
- 3(8) No person shall interfere with a criminal, civil or administrative investigation.
- 3(9) The Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation, a Diocesan Camp or a Church Leader shall immediately report an incident of sexual assault or abuse of a child, youth or vulnerable adult to the Minister of Social Development under the N.B. Family Services Act [see Chapter F-2.2, Part III, *Protection*

*Services:* <http://laws.gnb.ca/en/showdoc/cs/F-2.2>], and to the responsible policing authority.

- 3(10) No person shall knowingly make a false or vexatious complaint.
- 3(11) A person whose role is identified within this policy and who fails to implement this policy appropriate to his/her responsibility shall be subject to disciplinary action(s) as established by the Diocesan Synod, which could include an oral or written reprimand, suspension with or without terms or dismissal.

## **PREVENTION**

- 4 The Diocesan Synod, the Corporation of the Cathedral of Christ Church, each Parish Corporation and each Diocesan Camp shall ensure that each Leader receives both initial training and periodic refresher training on this policy.

## **ADMINISTRATION**

### **Diocesan Misconduct Complaints Officer**

- 5(1) The Diocesan Council shall appoint a Diocesan Misconduct Complaints Officer.
- 5(2) The term of service of the Diocesan Misconduct Complaints Officer is at the pleasure of the Bishop.
- 5(3) The Diocesan Misconduct Complaints Officer shall report to the Diocesan Council.
- 5(4) The Diocesan Misconduct Complaints Officer shall be responsible for the specific functions assigned to him or her under this policy and for the general administration of this policy.
- 5(5) The Diocesan Council may appoint an Assistant Diocesan Misconduct Complaints Officer.
- 5(6) The Assistant Diocesan Misconduct Complaints Officer shall assist the Diocesan Misconduct Complaints Officer, and shall act in case of the absence or incapacity of the Diocesan Misconduct Complaints Officer, when the office of the Diocesan Misconduct Complaints Officer is vacant or for any sufficient reason, as when the complaint arises in the Diocesan Misconduct Complaints Officer's own parish or there is a similar conflict of interest.

### **Diocesan Misconduct Committee**

- 6(1) The Diocesan Council, in consultation with the Bishop, shall appoint a Diocesan Misconduct Committee (hereinafter referred to as "the Committee") comprising two clergy and two lay members;

- 6(1.1) The initial term of service of Committee members is three years, with appointments made with some view to Committee continuity.
- 6(2) The Diocesan Council, in consultation with the Bishop, shall designate the Chair of the Committee.
- 6(3) The term of service of the Chair of the Committee is at the pleasure of the Bishop.
- 6(4) The Committee shall be responsible for the investigation of all major complaints.

### **Pools of Investigators and Mediators**

- 7(1) The Diocesan Council, as advised by the Chancellor, shall appoint triennially a Pool of Investigators and a Pool of Mediators; the composition of each pool shall take account of experience, training and regional representation.
- 7(2) The Pool of Investigators shall consist of a minimum of three persons.
- 7(3) The Pool of Mediators shall consist of a minimum of three persons.
- 8(1) The Committee may enlist the assistance of one or more Investigators and/or Mediators.
- 8(2) Investigators and Mediators may be compensated by honorarium and recovery of reasonable expenses.

### **MAKING A COMPLAINT**

- 9(1) A minor complaint shall be submitted either orally or in writing to the Leader.
- 9(2) A major complaint shall be submitted in writing to the Leader and the Diocesan Misconduct Complaints Officer by completing Appendix 1 (Diocesan Misconduct Complaint Form).
- 9(3) A written complaint, whether minor or major, shall be submitted to the Diocesan Misconduct Complaints Officer within twelve months after the alleged misconduct event took place.
- 9(4) The Committee may extend, at its sole discretion, the time limit given in s. 9(3) for the filing of a written, major complaint.
- 10 The Diocese, Corporation of the Cathedral of Christ Church, a Parish Corporation, a Diocesan Camp and any other party to a complaint under this Policy shall comply with the procedure set out in Appendix 2 (Complaint Procedure).
- 11 A Complaint shall be tracked by the Diocesan Misconduct Complaints Officer as set out in Appendix 3 (Tracking a Misconduct Complaint Form).

- 12 A third party who, honestly and in good faith, believes there has been a violation under this Policy, may bring the matter to the attention of a Leader or the Diocesan Misconduct Complaints Officer, and encourage the potential Complainant to make a complaint.
- 13 The parties to a complaint may engage in mediation at any time in a proceeding, as per s. 20 (Mediation), except when the alleged misconduct is subject to s. 3(9).

## **DECISION AND RESOLUTION**

- 14(1) On receipt of the Investigation Report the Diocesan Misconduct Complaints Officer may request the Misconduct Committee to supplement it on specific points.
- 14(2) The Diocesan Misconduct Complaints Officer shall, within twenty-one days of the receipt of the Investigation Report and any supplementary report, make a finding on whether the complaint is substantiated or not, or, if appropriate, refer it to mediation (as per s. 20).
- 15(1) If the Diocesan Misconduct Complaints Officer determines a complaint has been substantiated; s/he may impose a penalty on the Respondent, or may refer the matter to the Minister of Social Development, the responsible policing authority or another external authority.
- 15(2) Following receipt of the Investigation Report or the failure of mediation, the Diocesan Misconduct Complaints Officer may dismiss the complaint or impose a penalty, including:
  - a) Oral reprimand;
  - b) Written reprimand;
  - c) Suspension with or without terms;
  - d) Recommendation to the Bishop that a Cleric or a layperson in a leadership role be dismissed from a Clerical position, lay employment, or a volunteer position.
- 15(3) The Diocesan Misconduct Complaints Officer shall give a written decision, with reasons, on the discipline to be invoked and shall provide a copy to the Complainant, Respondent and the Bishop.
- 15(4) If a complaint is found to be false or malicious, discipline under this Policy may be imposed on the Complainant.
- 16(1) A party may appeal the decision of the Diocesan Misconduct Complaints Officer as per s. 15(3), in a written submission to the Bishop within thirty days.
- 16(2) The Bishop shall make a decision on the appeal (as per s. 16(1)) within sixty days.
- 17(1) The Bishop shall revoke the license of a Cleric found guilty of the sexual assault of a child, youth, or vulnerable adult in a criminal proceeding.

- 17(2) Any layperson, employee or volunteer found guilty of sexual assault of a child, youth, or vulnerable adult in a criminal proceeding shall be dismissed from employment and/or removed as a volunteer with the Church.
- 18(1) If a Respondent is found to be in violation of the Misconduct Policy specifically, or the Safe Church Regulation in general, then the Respondent shall complete full-scope training on both the Misconduct Policy and the Safe Church Regulation.
- 18(2) A Respondent subject to s. 18(1) may not participate or work, in any capacity, in another Church activity, event or program anywhere within the Diocese of Fredericton until the training specified in s. 18(1) has been completed to the satisfaction of the Diocesan Misconduct Complaints Officer.
- 18(3) The Diocesan Misconduct Complaints Officer, in co-operation with the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp, and after consultation with the Bishop, shall decide if a guilty Respondent, who has completed the training to a satisfactory level pursuant to s. 18(2), may again participate or work, in any capacity, in a Church activity, event or program that involves either a child, youth and/or vulnerable adult in the Diocesan Synod, the Corporation of the Cathedral of Christ Church, any Parish Corporation, and/or a Diocesan Camp.
- 18(4) The Diocesan Misconduct Complaints Officer shall issue a written decision on the eligibility of a guilty Respondent (as per s. 18(3)) within sixty days of receiving a request for Reinstatement of Privilege from the Respondent, the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp.
- 18(5) The decision of the Diocesan Misconduct Complaints Officer as per s. 18(4) shall be final and not appealable.
- 19 In response to a request for a reference check in relation to employment or work, the Bishop shall disclose information relating to:
- a) Any disciplinary action taken under s. 15(2) (b), (c) or (d), or s. 18(2), and;
  - b) A decision in any criminal, civil or administrative proceeding in relation to the same matter of the complaint.

## **MEDIATION**

- 20(1) The parties to a complaint may engage in mediation at any time in a proceeding, by executing the Mediation Agreement set out in Appendix 4, except when the alleged misconduct is subject to s. 3(9).
- 20(2) The Diocesan Synod, Corporation of the Cathedral of Christ Church, a Parish Corporation, or a Diocesan Camp, as applicable, shall be responsible for the costs of mediation, including the Mediator, with the exception that the Complainant and the

Respondent shall each be responsible for their own legal, administrative or other related expenses.

- 20(3) If the matter is referred to mediation, neither the Diocesan Misconduct Complaints Officer nor the parties shall take any further legal action.
- 20(4) The mediation process shall be completed within sixty days.
- 20(5) If mediation fails, the parties shall resume the investigative and/or decision-making process.

## **PASTORAL CARE AND COUNSELING**

- 21(1) The Diocesan Misconduct Complaints Officer shall, without delay, offer pastoral care and/or counseling assistance to the Complainant, the Respondent, and their families.
- 21(2) Where appropriate, the Bishop may direct and provide resources for pastoral care and counseling services to the affected Church community.
- 21(3) Notwithstanding s. 21(1) and 21(2), no person who is a party to, or a witness in, the proceeding of a major complaint investigation shall provide pastoral care or counseling services to any of the parties affected by the allegation of misconduct.

## **CONFIDENTIALITY**

- 22(1) Except when otherwise required by law, all proceedings under this Policy shall be confidential.
- 22(2) Except when otherwise required by law, all documents that form part of a proceeding under this Policy shall be confidential.
- 22(3) Notwithstanding s. 22(1) and 22(2), the Bishop may, after consultation with the Diocesan Misconduct Complaints Officer and the Diocesan Chancellor, require that proceedings be held in public, and/or that details of the complaint and/or a document be disclosed to the public.

## **EXTERNAL COMMUNICATIONS**

### **External Authorities**

- 23(1) The Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation and/or a Diocesan Camp shall co-operate and share information relating to a complaint with an external investigating authority, including the NB Minister of Social Development, a police authority, the Canadian or New Brunswick Human Rights Commission or other body.

- 23(2) The Diocesan Misconduct Complaints Officer shall, upon written request, make a report of the incident(s) to an external investigating authority, as per s 23(1).

### **Media and the Public**

- 24(1) The Diocesan Misconduct Complaints Officer shall be the sole media spokesperson for the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp in relation to any matter under this Policy, unless directed otherwise by the Bishop.
- 24(2) The Diocesan Communications Officer shall assist in the preparation of all media announcements under this Policy.
- 24(3) The names of the alleged Complainant(s), Respondent(s), other witnesses or third parties shall remain confidential unless the Bishop, upon consultation by the Diocesan Misconduct Complaints Officer, determines that some of or all such information should be disclosed in accordance with s. 22 (Confidentiality).

### **RECORDS MANAGEMENT**

- 25(1) The Diocesan Misconduct Complaints Officer shall, in accordance with the Diocesan Privacy Policy, retain in a central and secure location all records for a minimum of thirty-five years, including but not limited to:
- a) All summaries of minor complaint settlements.
  - b) All major complaints;
  - c) Findings, recommendations, and reports of the Committee;
  - d) Findings, recommendations, and reports of the Investigator(s)
  - e) Information made available by a Mediator to the Diocesan Misconduct Complaints Officer or the Committee;
  - f) All written decisions and other communications by the Diocesan Misconduct Complaints Officer and/or the Bishop.
  - g) All communications by the Diocesan Synod, Corporation of Christ Church Cathedral, a Parish Corporation or a Diocesan Camp relating to a complaint under this Policy.
- 25(2) At the conclusion of the time limit specified in s. 25(1) hereof, the Diocesan Synod, the Corporation of the Cathedral of Christ Church, each Parish Corporation or Diocesan Camp shall transfer the record(s) to the Diocesan Archivist in accordance with Canon Five.

### **POLICY REVIEW AND AUDIT**

- 26 The Diocesan Misconduct Complaints Officer, in consultation with the Misconduct Committee, shall present a report at each regular meeting of the Synod, which shall include:

- a) Statistics on the number of complaints made under this Policy since the last report;
  - b) The number of complaints resolved and in what manner they were resolved, and;
  - c) Recommendations, if any, for changes to this Policy.
- 27(1) The Diocesan Council shall ensure that an audit of the processes under this Policy is undertaken at least once every three years.
- 27(2) The Diocesan Council, through the Diocesan Human Resources Committee, shall review this Policy at least once every three (3) years.

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4 October 2014  
Revised  
5 October 2017  
23 February 2019

## Appendix 1 – Diocesan Misconduct Complaint Form

Please use a pen, not a pencil. Be sure to complete Sections A through I, inclusive of the form. Contact the Diocesan Misconduct Complaints Officer or the Leader of the event, activity or program if you need any assistance to complete the form. Submit the completed form to either the Diocesan Misconduct Complaints Officer or the Leader. Please sign and date each page of the form, and each additional page that you may attach.

### Timeline to Submit Your Complaint:

The Diocesan Misconduct Complaints Officer must receive your complaint within twelve months after the alleged misconduct event took place.

### SECTION A: Complainant's Name and Age

A1: Name of Complainant (Please print):			
Street or Mailing Address:			
Town/City and Province	Postal Code	Email Address (if known)	Telephone or Cellular Phone Number (include area code)

A2: \_\_\_\_\_  
 Birthdate (yyyy/mm/dd)

\_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_ pages  
 Complainant's Signature Date (yyyy/mm/dd)

**SECTION B – Who are your complaining about? (The Respondent)**

<b>B1:</b> Name of person (Please print):			
Street or Mailing Address:			
Town/City and Province	Postal Code	Email Address (if known)	Telephone or Cellular Phone Number (include area code)

**Additional Respondent(s)**  
**(2)**

<b>B2:</b> Name of person (Please print):			
Street or Mailing Address:			
Town/City and Province	Postal Code	Email Address (if known)	Telephone or Cellular Phone Number (include area code)

**(3)**

<b>B3:</b> Name of person (Please print):			
Street or Mailing Address:			
Town/City and Province	Postal Code	Email Address (if known)	Telephone or Cellular Phone Number (include area code)

\_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_ pages  
Complainant's Signature                      Date (yyyy/mm/dd)

**SECTION C** – Identify the Leader(s) and the Church activity, event or program where the alleged misconduct took place.

“Leader” means a leadership role in an activity, event or program by a lay person or religious leader in which s/he has authority for the delivery of the activity, event or program.

<p><b>C1: Name of Leader (1), (Please print):</b></p> <p>Telephone or Cellular Number (Include area code):</p> <p>Email Address:</p>
<p>Name of Co-Leader (2), (Please print):</p> <p>Telephone or Cellular Number (Include area code):</p> <p>Email Address:</p>
<p>Name of Co-Leader (3), (Please print):</p> <p>Telephone or Cellular Number (Include area code):</p> <p>Email Address:</p>
<p>Name of the Church Event, Activity or Program where the alleged misconduct took place:</p>
<p>Location of the Church Event, Activity or Program where the alleged misconduct took place:</p> <p>Street Address (Please Print): _____</p> <p>Town/City: _____</p> <p>Province: _____ Postal Code: _____</p> <p>Telephone Number (include area code): _____</p>

\_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_ pages  
Complainant's Signature Date (yyyy/mm/dd)

## SECTION D – Identify the Type of Alleged Misconduct

### D1: Definition of Misconduct:

“misconduct” means unacceptable behaviour, abuse or maltreatment that includes physical or sexual assault, bullying, harassment and/or economic, emotional, physical or sexual misconduct, and for the purposes of this Regulation, includes any discriminatory practices described in the [Part 1 \(Proscribed Discrimination\)](#) of the Canadian Human Rights Act or the New Brunswick Human Rights Act.

### D2: Burden of Proof and Presumed Innocent:

In accordance with s. 3(6) of the Diocesan Misconduct Policy, a Complainant shall prove that s/he has been subject to misconduct, and a Respondent is deemed to be innocent until proven otherwise.

### D3: Check off one or more boxes that you believe represents a true and accurate account of the type of misconduct:

- |  |  |
|--|--|
| <input type="checkbox"/> Physical assault                              | <input type="checkbox"/> Sexual assault                  |
| <input type="checkbox"/> Bullying (Physical, Emotional, Psychological) | <input type="checkbox"/> Harassment (Physical or Sexual) |
| <input type="checkbox"/> Economic misconduct                           | <input type="checkbox"/> Emotional misconduct            |
| <input type="checkbox"/> Physical misconduct                           | <input type="checkbox"/> Sexual misconduct               |

Note: Definitions for each type of misconduct are provided in Part 1 of the Safe Church Regulation (Definitions of Terms).

- Discriminatory practice (Check off one or more boxes that apply)
- |   |  |   |  |
|---|--|---|--|
| <input type="checkbox"/> Race             | <input type="checkbox"/> Ancestry                      | <input type="checkbox"/> National Origin    | <input type="checkbox"/> Place of Origin     |
| <input type="checkbox"/> Colour           | <input type="checkbox"/> Religion                      | <input type="checkbox"/> Marital Status     | <input type="checkbox"/> Mental Disability   |
| <input type="checkbox"/> Age              | <input type="checkbox"/> Sex                           | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Physical Disability |
| <input type="checkbox"/> Political Belief | <input type="checkbox"/> Social Condition              | <input type="checkbox"/> Employment Status  | <input type="checkbox"/> Voluntary Status    |
| <input type="checkbox"/> Family Status    | <input type="checkbox"/> Gender Identity or Expression |   |  |

\_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages  
Complainant's Signature Date (yyyy/mm/dd)











**SECTION I - Complainant's Declarations and Understandings.** Read the following four statements. Sign and date after each statement. If the Complainant is a child or youth, then the parent or guardian shall sign below each statement as well.

**I1:** I am making a complaint under the Diocesan Safe Church Regulation – Diocesan Misconduct Policy. I declare the information I have provided on this form to be true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date (yyyy/mm/dd)

\_\_\_\_\_  
Complainant's Parent or Guardian Signature  
(If the Complainant is a child)

\_\_\_\_\_  
Date (yyyy/mm/dd)

**I2:** I understand that if my complaint is accepted by the Diocesan Misconduct Complaints Officer, then a copy of the accepted complaint will be sent to the Respondent(s):

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date (yyyy/mm/dd)

\_\_\_\_\_  
Complainant's Parent or Guardian Signature  
(If the Complainant is a child)

\_\_\_\_\_  
Date (yyyy/mm/dd)

**I3:** I understand that the Diocesan Synod, the Corporation of the Cathedral of Christ Church, the Parish Corporation or the Diocesan Camp, as applicable, will also send any supporting medical information and other important record or document to the Respondent(s) during the investigation process:

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date (yyyy/mm/dd)

\_\_\_\_\_  
Complainant's Parent or Guardian Signature  
(If the Complainant is a child)

\_\_\_\_\_  
Date (yyyy/mm/dd)

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**I4:** I have signed, dated and numbered each page, including each additional page attached, of this complaint form:

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date (yyyy/mm/dd)

\_\_\_\_\_  
Complainant's Parent or Guardian Signature  
(If the Complainant is a child)

\_\_\_\_\_  
Date (yyyy/mm/dd)

Remember to provide the diocesan misconduct complaints officer with any changes to your contact information as the Diocese may close your complaint as having been abandoned if you are unable to be contacted.

Adopted  
4 October 2014  
Revised  
5 October 2017

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## Appendix 2 –Complaint Procedure

### General

- 1(1) A Complainant or a Respondent who is a child shall proceed only through her or his parent, guardian, a person *in local parentis*, or other legal representative.
- 1(2) A Complainant or a Respondent who is a youth or a vulnerable adult may, at the discretion of the Diocesan Misconduct Complaints Officer or the Misconduct Committee, proceed either alone or only through her or his parent, guardian, a person *in local parentis*, or other legal representative.
- 2 The Complainant may withdraw his/her complaint at any time with the permission of the Diocesan Misconduct Complaints Officer.
- 3 The Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp may assist the Complainant and Respondent to meet the requirements of this policy.
- 4 The Diocesan Misconduct Complaints Officer may refer a matter falling under the scope of this Policy to the Committee on his or her own motion, notwithstanding that no major complaint has been filed.
- 5 The Diocesan Misconduct Complaints Officer, or any other person, shall immediately report an alleged incident of sexual assault or sexual harassment of a child, youth, or vulnerable adult to the Minister of Social Development under the NB Family Services Act [Chapter F-2.2, Part III, *Protection Services*: <http://www.gnb.ca/0062/PDF-acts/f-02-2.pdf>, and to the responsible policing authority.

### Tracking a Complaint

- 6 A complaint shall be tracked by the Diocesan Misconduct Complaints Officer using Appendix 3, (Tracking the Diocesan Misconduct Complaint Form)

### Making a Complaint

- 7(1) A Complainant may make a minor complaint (as per s. 8) or a major complaint (as per s. 9) against a Respondent.
- 7(2) If the Complainant is a child, youth or vulnerable adult, then either the Complainant, the Leader or other person, shall within twenty-four (24) hours inform the Diocesan Misconduct Complaints Officer of the complaint.

## **Minor Complaint**

- 8(1) A Complainant may make a minor complaint either orally or in writing to the Leader.
- 8(2) Where the Complainant is an adult, other than an vulnerable adult, the Leader may investigate and settle the complaint;
- 8(3) Where the Complainant is a child, youth or vulnerable adult, the Diocesan Misconduct Complaints Officer may personally settle it as a minor complaint or request the Leader to do so.
- 8(4) Upon settling a minor complaint, the Leader or the Diocesan Misconduct Complaints Officer, as the case may be, shall submit a written summary to the Territorial Archdeacon and the Office of the Diocesan Misconduct Complaints Officer not later than twenty-one (21) days after the complaint arose.
- 8(5) If a Leader or the Diocesan Misconduct Complaints Officer fails to settle a minor complaint it shall be investigated as a major complaint.

## **Major Complaint**

- 9(1) A Complainant shall complete the Diocesan Misconduct Complaint Form (Appendix 1), and submit it as the written complaint to the Leader and the Diocesan Misconduct Complaints Officer within twelve (12) months of the alleged misconduct.
- 9(2) The Committee may extend, at its sole discretion, the time limit given in s. 9(1) for the filing of a written, major complaint.
- 9(3) Except in unusual circumstances, the Diocesan Misconduct Complaints Officer shall immediately refer a major complaint to the Committee and inform the Territorial Archdeacon(s) and the Parish Corporation(s) of the complaint.
- 9(4) The Diocesan Misconduct Complaints Officer shall advise the Complainant and Respondent of their right to legal counsel.
- 9(5) The Diocesan Misconduct Complaints Officer shall, within five days, provide the Respondent a written notification of receipt of a major complaint.
- 9(6) The Diocesan Misconduct Complaints Officer shall provide a copy of the written major complaint to the Respondent and the Leader of the activity, event or program in which the complaint arose.
- 9(7) The Diocesan Misconduct Complaints Officer may recommend to the Bishop that s/he suspend the license of a Cleric who is a Respondent in a major complaint, and the Bishop shall make a decision on this recommendation within ten days.

- 9(8) The Diocesan Misconduct Complaints Officer may recommend to the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp that it suspend, with or without pay, a Synod, Cathedral, Parish or Camp lay employee who is a Respondent in a major complaint, and the Diocesan Synod, the Corporation of the Cathedral of Christ Church, the Parish Corporation or the Diocesan Camp shall make a decision on this recommendation within ten days.
- 9(9) The Diocesan Misconduct Complaints Officer may recommend to the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp that is suspends, with or without pay, a Synod, Cathedral, Parish or Camp Volunteer who is a Respondent in a major complaint, and the Diocesan Synod, the Corporation of the Cathedral of Christ Church, the Parish Corporation or the Diocesan Camp shall make a decision on this recommendation within ten (10) days.
- 9(10) The Committee shall investigate a major complaint under this Policy.
- 9(11) The Committee shall commence an investigation immediately upon receipt of a major complaint.
- 9(12) Notwithstanding ss. 9(10) and 9(11), all investigations and proceedings under this Policy shall be suspended following the commencement of proceedings under the New Brunswick [Family Services Act](#) or criminal proceedings in relation to the same matter. Investigations and proceedings will recommence when the Complainant indicates in writing to the Diocesan Misconduct Complaints Officer that the involvement of Social Development and/or law enforcement has concluded.
- 9(13) No person, including the Diocesan Misconduct Complaints Officer, the Committee, an Investigator, a Mediator, and/or the Leader, shall under any circumstances advise the Complainant that the procedure under this Policy is a substitute for criminal, civil, or administrative proceedings outside the Policy.

### **Major Complaint Investigation Report**

- 10(1) The Committee shall complete its complaint investigation and submit an Investigation Report to the Diocesan Misconduct Complaints Officer within ninety days of receipt of the complaint.
- 10(2) The Committee may delegate to an Investigator the tasks of completing the complaint investigation and preparing a draft Investigation Report.
- 10(3) The Investigation Report shall conform to the following minimum requirements:
- a) The names of the parties and persons interviewed;
  - b) The written complaint, including the date the conduct subject to the complaint allegedly arose;
  - c) The Respondent's response to the complaint;
  - d) Confirmed findings of fact;

- e) Unconfirmed allegations;
- f) A factual conclusion, if possible;
- g) Deductions from the findings of fact;
- h) Recommendations;
- i) The name(s) of the person(s) who prepared the report;
- j) The date of the report.

### **Special Complaint Circumstances**

- 11(1) Where a complaint is made against either the Bishop or the Diocesan Misconduct Complaints Officer, it shall be submitted directly to the Chair of the Misconduct Committee, and the Committee shall investigate the complaint.
- 11(2) Where a complaint is made against the Diocesan Misconduct Complaints Officer, or concerns his/her parish or there is a similar conflict of interest, the Bishop shall determine the complaint.
- 11(3) Where a complaint is made against the Bishop, the Metropolitan of the Province shall determine the complaint.
- 11(4) Where a complaint is made against the Metropolitan, and the Metropolitan is also the Diocesan Bishop, the Diocesan Misconduct Complaints Officer shall request the Primate or another Bishop from the Province to determine the complaint.
- 11(5) Where a complaint is made against a member of the Misconduct Committee, the member shall not participate in the proceedings and the remaining members of the Committee shall complete the investigation and/or mediation of the complaint.
- 12 A Cleric who has heard a confession from any party to a proceeding under this Policy shall disclose that fact to the Diocesan Misconduct Complaints Officer and shall not participate further in the proceeding.

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4 October 2014  
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5 October 2017  
23 February 2019

### Appendix 3 – Tracking the Diocesan Misconduct Complaint Form

The Office of the Diocesan Misconduct Complaints Officer shall complete the following information on receipt of this complaint form, and update this section from time to time throughout the complaint resolution process.

**1 Date the Misconduct Complaint Form Was Received:** \_\_\_\_\_  
(by the Leader or the Diocesan Misconduct Complaints Officer) (yyyy/mm/dd)

**2 Date of the Most Recent Misconduct Event:** \_\_\_\_\_  
(yyyy/mm/dd)

**3 Assess the Elapsed Period After The Misconduct Event:**

Have twelve months elapsed between the misconduct event (s. 2) and the receipt of the Diocesan Misconduct Complaint Form (s. 1)? No  Yes

If Yes, the Diocesan Misconduct Complaints Officer shall advise the Misconduct Committee that a Complaint has been received that is outside of the prescribed time limit of twelve months, and the Committee shall decide if the time limit is to be extended based on the gravity of the Complaint. The Misconduct Officer will inform the Complainant that either the limitation of twelve months has elapsed, in accordance with Section 9(3) of the Diocesan Misconduct Policy, and advise the Complainant that there will be no investigation or further action concerning this complaint or that the time limit has been extended to receive and investigate the Complaint accordingly

**4 Assess if this is a Minor Complaint or a Major Complaint:**

“minor complaint” means a complaint of alleged misconduct that is, to the knowledge and belief of the Leader, an isolated incident that does not allege assault, and is made by someone other than a child, youth or vulnerable adult, and may be informally resolved to the satisfaction of the Leader and the parties to the complaint. A minor complaint may be communicated to either the Leader or The Diocesan Misconduct Complaints Officer, and may be either written or oral.

“major complaint” means a complaint of misconduct that is not a minor complaint.

Minor Complaint

Major Complaint

For a Minor Complaint, the Leader or Diocesan Misconduct Complaints Officer shall submit a written summary of an oral complaint, or this complaint form completed by the Complainant, to the Territorial Archdeacon within 21 days after the complaint arose, in accordance with s. 8(4) of Appendix 2: “Complaint Procedure” of the Diocesan Misconduct Policy.



### Appendix 4 – Mediation Agreement

THIS IS A MEDIATION AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

B E T W E E N: \_\_\_\_\_

- and -

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- and -

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Name of Mediator

## **1 AGREEMENT**

The parties agree:

- (1) To attempt to settle a controversy through the mediation process on the terms contained in this agreement;
- (1) That the parties will be present at mediation or will have a representative present who will have authority to settle the case on the spot;
- (2) That the parties enter in this mediation with the intent to work towards a mutually acceptable settlement and will conduct themselves in good faith at all times;
- (3) That the mediation will be closed and all discussions between the parties will be confidential and no communication made by the parties or by the mediator will be admissible in evidence at any subsequent proceeding except as mutually agreed;
- (4) This agreement will continue in force from the date of the signing until it either is replaced by another agreement, or the mediation process is terminated, or the mediation process is extended for a further period, each condition being subject to the mutual consent of both parties.

## **2 IMPARTIALITY OF THE MEDIATOR**

- (1) The parties acknowledge that the mediator is an impartial third party and that the mediator's role is to assist the parties to negotiate a voluntary settlement of issues arising between them. As such, the parties acknowledge that the primary responsibility for resolving their disputes rests with them and not with the mediator, who acts as a facilitator only. It is understood by the parties that the mediator will not represent either of the parties in any subsequent legal proceedings between them.

## **3 ACKNOWLEDGEMENTS BY THE PARTIES**

- (1) The parties acknowledge that the mediator will not give legal advice or a legal opinion with respect to individual rights, obligations and entitlements under the laws of the Province or any other jurisdiction.
- (2) The parties further acknowledge that they have been specifically advised by the mediator to obtain independent legal advice during the course of mediation.
- (3) If one of the parties refuses to obtain independent legal advice, he or she hereby agrees to indemnify and save the mediator harmless from any and all liabilities arising out of or related to any mediated settlement.

#### **4 MEDIATOR'S CONFIDENTIALITY**

- (1) During the mediation process the mediator may disclose to either or both parties any information provided by the other party unless the disclosing party has specifically requested the mediator to keep the information confidential.
  - i. The mediator will not disclose to anyone who is not a party to the mediation except:
    - ii. with the consent of all parties;
    - iii. where required by law;
    - iv. where the information suggests an actual or potential threat to human life or safety.

#### **5 NO SUMMONS OR SUBPOENA**

- (1) It is agreed that none of the parties will call the mediator as a witness to testify as to the fact of mediation or as to any oral or written communication made during mediation, nor will the parties summon, subpoena, or seek access to any document prepared for or in connection with mediation including any records, notes or work product of the mediator.

#### **6 MEDIATION SESSIONS**

- (1) The mediator will schedule the time and place for the mediation sessions in consultation and with the consent of the parties.

#### **7 COSTS OF MEDIATION**

- (1) The Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation or a Diocesan Camp shall be responsible for the costs of mediation, including the Mediator, with the exception that the Complainant and the Respondent shall each be responsible for their own legal, administrative or other related expenses.

#### **8 REPORT BY MEDIATOR**

- (1) If an agreement has been mediated, the mediator will prepare interim minutes of settlement respecting agreements reached on issues of dispute.
- (2) If no agreement is reached on the issues, the mediator will prepare reports stating only whether or not mediation was successful and outlining the process followed.

#### **9 TERMINATION OF MEDIATION**

- (1) Any of the parties has the right to withdraw from the mediation process at any time during mediation on notice to the mediator and the other party.
- (2) The mediator has the right to suspend or terminate the mediation process at any time when in his or her opinion continuation of the process would result in harm or prejudice to one or both parties.
- (3) This agreement will continue in force from the date of the signing until an agreement is reached or the mediation process is terminated or the mediation process is extended with the mutual consent of both parties for a further period.
- (4) The confidentiality, admissibility, compellability of the mediator or the mediator's notes, the liability of the mediator, and the without prejudice clauses of this agreement remain in effect indefinitely with regard to any information obtained through the mediation process (discussions) that is subject to this agreement.

## **10 UNDERTAKINGS**

- (1) Both the Complainant and the Respondent hereby undertake to make full disclosure of all relevant information reasonably required by the mediator to understand the outstanding issues.
- (2) Neither the Complainant nor the Respondent, or anyone acting on their behalf, will initiate or take any fresh steps in any legal proceeding between them while the mediation is in process.

## **11 GOVERNING LAW**

- (1) This agreement will be governed by and construed according to the laws of New Brunswick.

## **12 SEVERABILITY**

- (1) The invalidity or enforceability of any provision of this agreement will not affect the validity or enforceability of the other provisions and any invalid provision will be severable.

## **13 CLOSED MEDIATION**

- (1) The parties understand and acknowledge that their discussions are confidential and on a "without prejudice" basis and that no party will use any disclosures or discussion against the other in any subsequent legal proceedings. Further, this

paragraph may be pleaded as a complete bar to disclosure of any discussions, documents, interim agreements, notes or materials relating to this mediation, with the exception of a full and final agreement executed by the parties and confirmed by counsel for each of them or a report stating only that no agreement was reached.

**14 EXECUTION OF AGREEMENT**

- (1) The parties each acknowledge that (s/)he has read this agreement and agrees to proceed with mediation in accordance with the terms and voluntarily enters into the execution of this agreement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Complainant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mediator

Adopted  
4 October 2014  
Revised  
5 October 2017