

MISCONDUCT

PURPOSE

- 1 The main purpose of this policy is to protect members of the Church community, and in particular children, youth, and vulnerable adults, from misconduct. It does so by:
 - a) highlighting the seriousness of the issue;
 - b) discouraging discourteous, disrespectful, and injurious behaviour;
 - c) providing victims of misconduct with a mechanism for complaint, leading to investigation and possible sanction;
 - d) guiding those responding to complaints with fair and workable procedures; and
 - e) encouraging conflict resolution.

SCOPE

- 2(1) This policy is one of a number of mechanisms whereby the state and/or the Church investigates and sanctions unacceptable behaviour. Misconduct might lead to one or more of criminal conviction, civil liability, regulatory fine, employment discipline, or ecclesiastical excommunication. Not every form of conduct that might incur sanction falls under this policy. Application of the policy is directed to situations where:
 - a) a victim (or in some cases, a parent or similar representative) complains of harm arising from behaviour that falls within the policy's definition of misconduct;
 - b) the alleged misconduct was committed by someone associated with an Anglican Corporation; and
 - c) the behaviour occurred when that person was acting in an appointed, licensed, or elected office or position, or as an employee or volunteer.
- 2(2) Nothing in this policy should be understood as discouraging good faith reporting of misbehaviour falling outside its scope (such as reporting something witnessed) to the Diocesan Safe Church Officer.
- 2(3) Where a relevant leader learns that discourteous or disrespectful behaviour in a Church connection has led to organizational disfunction or hurt feelings then, even if the behaviour does not amount to misconduct under this policy or result in a complaint, the leader is encouraged to attempt to restore right relations.

DEFINITIONS

- 3 In this policy:

“Anglican Corporation” means the Bishop, the Bishop and Chapter of the Cathedral of Christ Church, the Synod, parish corporations, missions, and for this purpose camps owned or managed primarily by personnel appointed by the Synod or a parish corporation;

“Bishop” means the person holding the office of Bishop of the Diocese and, when the Diocese is vacant or the bishop is on leave, means the Diocesan Administrator or the Commissary;

“bullying” means repeated incidents of negative behaviours by one person towards another so as to cause physical, sexual, economic, social, emotional, or psychological harm;

“child” means a person who is thirteen years of age or younger;

“church” includes a chapel, or any other place dedicated or consecrated as a place of worship and includes a gathering space (inside or outside) connected with the same;

“Church” means the Anglican Church of Canada;

“complainant” means a person making a complaint of misconduct;

“Diocesan Safe Church Officer” or “DSCO” means the principal officer appointed under the Safe Church Regulation;

“Ecclesiastical Court” means the Ecclesiastical Court for the Diocese of Fredericton, as constituted under Canon Eight;

“economic misconduct” means the breach of a position of trust wherein one person takes control of or materially affects another person’s economic resources without prior consent;

“emotional misconduct” means an abuse of authority wherein one person behaves unacceptably in a manner that diminishes another person’s identity, personal dignity, and/or self-worth;

”exploitation” means misconduct that may incorporate harassment, assault, or abuse. It focuses on the power of the perpetrator in relation to the vulnerability of the victim and refers to a breach of trust and/or the act of taking advantage of such vulnerability for one's own gain;

“formal complaint” means a complaint of misconduct that the complainant has designated as formal, or an informal complaint that has remained unresolved and which the complainant consents to becoming a formal complaint;

“informal complaint” means a complaint of alleged misconduct made by someone other than a child, youth, or vulnerable adult, which the complainant has not designated as a formal complaint and involving other than a physical or sexual assault;

“leader” means the person who has general authority for delivery of an activity, event, or program; in parish activities, the leader is (unless the parish corporation has designated otherwise) the incumbent or the senior cleric licensed to the parish and, in the absence of such an appointment or in case of conflict of interest, the territorial archdeacon, but no cleric who has heard a confession from any party to a misconduct shall perform the policy duties of leader;

“misconduct” means unacceptable behaviour, abuse, or maltreatment, and includes physical or sexual assault, bullying, harassment and/or economic, emotional, physical, or sexual misconduct and, for the purposes of this Policy, includes any discriminatory practice described in [Part 1 \(Proscribed Discrimination\)](#) of the *Canadian Human Rights Act* or in the [Human Rights Act](#) of New Brunswick, all of which behaviours constitute immorality;

“Misconduct Complaints Officer” or “MCO” means the principal officer appointed under the Safe Church Regulation;

“respondent” means a person against whom a complaint of misconduct is made;

“sexual assault” means an assault of a sexual nature that violates the sexual integrity of the person - assaulted. The following shall be considered when applying this definition and this policy:

- i) An “assault” happens when:
 - a) one person applies force to another person or threatens to apply force;
 - b) intentionally; and
 - c) without the other’s consent.
- ii) The assault will be "aggravated" if the person who is assaulted is wounded, maimed, or disfigured or if his or her life is endangered;
- iii) In deciding if an assault is sexual, many factors may be considered, including the part of the body touched or threatened to be touched, the situation in which it occurred, the words and gestures of the person alleged to have committed the assault, and any words and gestures of the person alleged to have been assaulted;
- iv) Gender is not relevant to a determination of whether a sexual assault has occurred;
- v) Sexual offences include:
 - a) aggravated sexual assault;
 - b) bestiality;
 - c) incest;
 - d) inviting a person under the age of fourteen to touch for a sexual purpose;
 - e) sexual assault;
 - f) sexual assault with a weapon or sexual assault causing bodily harm;
 - g) sexual exploitation, which is sexual interference or invitation by a person in a position of trust or authority towards:
 - 1) a young person,
 - 2) a person in a relationship of dependency or,
 - 3) a person with a mental or physical disability; and
 - h) sexual interference, which is sexual touching of a person under the age of fourteen.

Note: Consent is understood as non-coercive. If a victim agrees to any assault under threat, or if consent is obtained by fraud or by the influence of a person in authority over the victim (for example, counselor, cleric, guardian), it will be deemed to be no consent. An accused may show "honest belief" of consent and may not be convicted. However, it is always the case that no consent exists for children under age twelve, under specific circumstances with peers for children aged twelve and thirteen, and consent is not valid with young persons aged fourteen to eighteen if the accused was in a position of authority over them. There are further provisions in the Criminal Code for mentally or otherwise incapacitated or vulnerable children, adolescents, and adults;

“sexual harassment” means behaviour of a sexual nature that is known or ought reasonably to be known to be unwanted or unwelcome, and includes:

- i) Any coercion or attempt to coerce an unwilling person into a sexual relationship, or to subject a person to persistent unwanted sexual attention, or to punish a refusal to comply, or to reward compliance;
- ii) Sexual harassment shall be understood as an exploitation of a power relationship, rather than as an exclusively sexual issue;
- iii) Sexual harassment may involve a wide range of behaviours from verbal innuendo and subtle suggestions to overt demands and unwanted inappropriate physical contact of a sexual nature. It may be one incident or a series of incidents;
- iv) Sexual harassment includes actions that contribute to an environment that is "poisoned" by suggestive pictures or cartoons, and/or other offensive acts; and
- v) Sexual harassment is prohibited by federal and provincial law.

“sexual misconduct” means any act of sexual harassment, sexual assault, sexual exploitation, sexual abuse, or any other sexual activity or conduct (including but not limited to sexual intercourse) in which someone takes advantage of the vulnerability of a person under her or his pastoral care or other guidance or leadership. Such behaviour, no matter by whom initiated, shall be deemed to be sexual misconduct;

“volunteer” means someone appointed or allowed to participate without payment in the delivery of an activity, event, or program and includes anyone who works without payment with children, youth or vulnerable adults;

“vulnerable adult” means a person nineteen years of age or older who, because of age, disability, or other circumstance, whether temporary or permanent, is in a position of dependence on others, or is otherwise at a greater risk than those in the general population of being harmed by a person in a position of authority or trust relative to him or her.

“youth” means a person who is between fourteen and eighteen years of age, inclusive.

PRINCIPLES

- 4(1) These general principles are subject to the Synod’s canons, the General Synod's canons, the Safe Church Regulation, and the more detailed provisions set out elsewhere in this policy.
- 4(2) Anglican Corporations shall provide a safe environment for everyone participating in an activity, event, or program, and everyone invited on to corporation property.
- 4(3) The fundamental safety concern is protecting children, youth, and vulnerable adults. Anyone becoming aware of an incident of possible assault or abuse of a child, youth, or vulnerable adult shall report it immediately to the Minister of Social Development under New Brunswick’s *Family Services Act*, the responsible policing authority, and the DSCO.

- 4(4) Misconduct complaints shall be taken seriously and investigated diligently. Deadlines set out in the policy shall be adhered to as far as reasonably possible. Where complainant and respondent agree, with the consent of the DSCO, to submit their differences to mediation, investigation will be suspended while that process is active.
- 4(5) The fact that a complaint has been made and an investigation undertaken shall not give rise to an inference of the respondent's guilt. Respondents are deemed innocent unless proven otherwise by clear and convincing evidence, but where investigation of alleged misconduct leads to prosecution in the Ecclesiastical Court, respondents are deemed innocent unless proven otherwise beyond a reasonable doubt.
- 4(6) Complainant and respondent may be advised by legal counsel or other person of their choice and at their expense.
- 4(7) Action under this policy shall be suspended on commencement of proceedings under New Brunswick's *Family Services Act* or criminal proceedings in relation to the same matter, and it shall remain suspended while proceedings are active.
- 4(8) Complaint under this policy is not a substitute for criminal, civil, or administrative proceedings, and no person shall advise a complainant that it is.
- 4(9) The following behaviour, while not falling under this policy itself, may lead to sanction by the relevant employer, superior, or supervisor:
- a) knowingly making a false complaint under this policy;
 - b) knowingly interfering with a criminal, civil, or administrative process relating to alleged misconduct under this policy; or
 - c) knowing neglect or failure by a relevant leader or Synod officer to adhere to this policy.
- 4(10) An Anglican Corporation that is a respondent in a misconduct complaint shall not seek from the complainant a non-disclosure agreement as part of the resolution or mediation process.

PREVENTION

- 5 As provided in the Safe Church Regulation, Anglican Corporations shall ensure that leaders and other personnel receive both initial training and periodic refresher training on this policy.

ADMINISTRATION

Diocesan Safe Church Officer [DSCO]

- 6(1) As provided in the Safe Church Regulation, the Diocesan Council shall appoint a DSCO and may appoint an Assistant DSCO, and it shall establish their terms of office.
- 6(2) The DSCO shall report in writing annually to the Diocesan Council.

- 6(3) The DSCO shall be responsible for the specific functions assigned under this policy and for the policy's general administration.
- 6(4) The Assistant DSCO shall assist the DSCO as the DSCO directs and shall act in case of the absence or incapacity of the DSCO, when the office of DSCO is vacant, or for any sufficient reason when directed by the Bishop, as when a misconduct complaint arises in the DSCO's own parish or there is a similar conflict of interest. When such circumstances arise but there is no Assistant DSCO, the Bishop may make a temporary appointment.

Misconduct Complaints Officer [MCO]

- 7(1) As provided in the Safe Church Regulation, the Diocesan Council shall appoint a MCO and may appoint an Assistant MCO, and it shall establish their terms of office.
- 7(2) The MCO shall report in writing annually to the Diocesan Council.
- 7(3) The Assistant MCO shall assist the MCO as the MCO directs and shall act in case of the absence or incapacity of the MCO, when the office of MCO is vacant, or for any sufficient reason when directed by the Bishop, as when a misconduct complaint arises in the MCO's own parish or there is a similar conflict of interest. When such circumstances arise but there is no Assistant MCO, the Bishop may make a temporary appointment.

COMPLAINT PROCEDURES

Informal and Formal Complaints

- 8 Except when a complaint alleges physical assault or sexual misbehaviour or involves a child, youth, or vulnerable adult, a complainant may choose to proceed informally or formally. Informal complaints are made in the hope of quick restoration of right relations between the parties. They are usually addressed at the local level. Formal complaints typically involve allegations warranting fuller investigation and documentation. They are addressed at the Synod level and over a longer timeframe.

Complaints by or against Children, Youth, or Vulnerable Adults

9. Notwithstanding any other provision in this policy, the following apply where a misconduct complaint is made by or against a child, youth, or vulnerable adult.
 - a) Anyone becoming aware of an incident of possible assault or abuse of a child, youth, or vulnerable adult shall report it immediately to the Minister of Social Development under New Brunswick's *Family Services Act*, the responsible policing authority, and the DSCO. While the Minister of Social Development or a policing authority is investigating such an incident, proceedings under this policy are suspended.
 - b) A complainant or respondent who is a child shall proceed only through a parent, guardian, person *in loco parentis*, or similar representative. A complainant or respondent who is a youth or a vulnerable adult may, at the discretion of the DSCO, proceed either alone or through a parent, guardian, person *in loco parentis*, or similar representative.

- c) A complaint by or against a child, youth, or vulnerable adult that alleges physical assault or sexual misbehaviour shall be handled as a formal complaint. In any other circumstance, the DSCO may permit the complainant to choose to proceed informally, and the DSCO may handle the complaint personally or request the leader to do so.
- d) Except where a complaint alleges physical assault or sexual misbehavior against a child, youth, or vulnerable adult, the DSCO may, at the request of the parties, refer the complaint to mediation.

Informal Complaints

- 10(1) The victim of alleged misconduct may make an informal complaint, either orally or in writing, to the relevant leader within four weeks of the incident giving rise to the complaint, but complaints alleging physical assault or sexual misbehaviour must be made as formal complaints.
- 10(2) Where a complainant has chosen to proceed informally, the leader shall prepare an initial summary of the complaint for the information of the respondent and then meet with the parties, initially separately, to develop an understanding of the general context of what happened, offer counsel, and work with them towards restoring right relations.
- 10(3) Statements by parties made in the course of working towards resolution of an informal complaint are treated as made “without prejudice”. Should the informal complaint later become a formal complaint, statements made at the informal stage are disregarded.
- 10(4) An informal complaint should be settled within twenty-one days of receipt. Settlement occurs when the complainant and respondent agree in writing on the resolution.
- 10(5) The leader or other person settling an informal complaint shall immediately submit a written summary of the disposition to the DSCO and the territorial archdeacon.
- 10(6) An informal complaint remaining unsettled within twenty-one days of receipt shall, with the consent and cooperation of the complainant, be transmitted in writing to the DSCO, who shall process it as a formal complaint.

Formal Complaints

- 11(1) A formal complaint is initiated when the DSCO receives the complainant’s completed Misconduct Complaint Form (Appendix 1) and Consent for Release of Information and Acknowledgement of Limited Confidentiality (Appendix 2). If requested, the DSCO shall offer the complainant assistance in completing the complaint form from a disinterested person.
- 11(2) Formal complaints must be filed within six months of the circumstances, or latest circumstance, giving rise to the complaint. The DSCO may extend this time limit where the complainant’s case seems plausible, the delay in complaining seems reasonable under

the circumstances, and it appears that the respondent will not be prejudiced unduly by the extension.

- 11(3) A complaint alleging physical assault or sexual misbehaviour will always be treated as a formal complaint.
- 11(4) Where an informal complaint remains unresolved and becomes, with the consent and cooperation of the complainant, a formal complaint, statements made by anyone at the informal stage are disregarded and the complaint is investigated afresh.
- 11(5) On receiving a formal complaint, the DSCO may request the complainant to amplify it, setting a time limit for doing so. If the DSCO considers that the complaint (or amplified complaint) is made in good faith and falls within the policy then, within seven business days of receipt, the DSCO shall:
 - a) where appropriate, notify the Synod's insurer and, if feasible, the insurer of any other relevant Anglican Corporation, of the existence of the complaint;
 - b) notify the relevant territorial archdeacon, and others as appropriate, of the existence of the complaint;
 - c) transmit the complaint to the respondent, together with a copy of the Misconduct Policy, setting a two-week time limit for reply to the complaint, and informing the respondent that any reply will be shared with the complainant;
 - d) transmit to the respondent a copy of the Consent for Release of Information and Acknowledgement of Limited Confidentiality (Appendix 2) and invite the respondent to sign and return it;
 - e) where the circumstances of a relevant Anglican Corporation seem to require pastoral intervention, notify the Bishop of this; and
 - f) depending on the nature of the complaint and the function of the respondent, advise the Bishop or the relevant Anglican Corporation that the respondent's license for ministry or employment (stipendiary or voluntary) be suspended temporarily.
- 11(6) Notwithstanding subsection 11(5), where multiple formal complaints are received in relation to the same respondent and/or circumstance, the DSCO may delay processing some of them while others go forward.
- 11(7) As soon as possible following receipt of the respondent's reply, or after the expiration of the two-week time limit for the respondent's reply, the DSCO shall appoint one or more disinterested investigators ("investigator") to undertake a fair and full investigation of the complaint. In making this appointment the DSCO shall consider the nature of the complaint in relation to the gender of an investigator.
- 11(8) At the request of the parties, the DSCO may at any time refer a complaint to mediation.
- 11(9) The DSCO does not investigate, mediate, or assess the merits of a complaint but has managerial oversight of its investigation or mediation, and shall:
 - a) notify the parties of the appointment of the investigator;

- b) endeavour to ensure that the investigation (or mediation) process is carried out diligently;
- c) facilitate the interaction of parties with the investigator or mediator;
- d) make budgetary recommendations and logistical arrangements appropriate to the investigation or mediation;
- e) offer the parties pastoral support from disinterested persons of the gender of their choosing; and
- f) inform the parties that they may be assisted in the complaint process by legal or other advisors of their choosing and at their own expense.

11(10) If the respondent declines to reply substantively to the complaint or to cooperate in its investigation, the investigation will continue.

Complaint Investigation and Report

12(1) Investigation of a formal complaint shall be completed within sixty days of the DSCO's receipt of the complaint (or amplified complaint). In consideration of the practicalities of the investigation, the DSCO may extend this time limit.

12(2) The investigation report shall include or address at least the following points:

- a) names of the parties, persons interviewed and anyone who declined being interviewed;
- b) description of the procedure the investigation followed;
- c) confirmation that all investigators were present at all interviews;
- d) the written complaint;
- e) the respondent's written response;
- f) description of the complainant's and respondent's participation in the process;
- g) other relevant documents;
- h) confirmation that all relevant documents submitted by a party or witness were shared with both parties, and a description of any redacting or summarizing the investigator did before a document was shared;
- i) whether at any point both parties met together with the investigator, and whether and to what extent they (or someone on their behalf) had an opportunity to question the other party;
- j) admissions by the parties;
- k) confirmed findings of fact;
- l) unconfirmed or disproved allegations;
- m) deductions from the findings of fact;
- n) a factual conclusion, if possible;
- o) recommendations for resolution, if any; and
- p) where there was more than one investigator, confirmation that the report reflects the views of all of them.

- 12(3) The investigation report shall be submitted to the DSCO, who may ask the investigator for further investigation of particular points or for amplification of the report's text on particular points.
- 12(4) The DSCO shall submit the investigation report (or amplified report) to the MCO, making no comment on the merits of the complaint.

MCO Decision and Recommendation

- 13(1) Unless the MCO requests amplification of the investigation report on particular points, the MCO shall transmit the report to the parties on condition that they might share it only with confidential advisors and invite them to submit written comments on it, setting a deadline for such comments and noting that any comment by one party would be shared with the other.
- 13(2) After sharing each party's written comments with the other, the MCO shall invite the parties to separate on-the-record meetings to hear them address the questions of guilt and sanction, setting a deadline for the holding of such meetings.
- 13 (3) Within twenty-one days of the later of the meetings mentioned in subsection (2), the MCO shall
 - a) inform the parties in writing of the MCO's determination on the question of guilt and, if relevant, recommendation to the Bishop on the question of sanction, giving reasons. A finding of guilt shall be based on evidence that is clear and convincing; a recommendation on sanction shall take into account the frequency and severity of the misconduct; and
 - b) transmit to the Bishop the investigation report, the parties' responses, and the MCO's written determination on the question of guilt and, if relevant, recommendation on sanction.

Bishop's Decision

- 14(1) Within twenty-one days of receipt of a MCO recommendation on sanction, the Bishop shall communicate to the parties the Bishop's determination on sanction. Subject to subsection 15(5), sanction may take the form of:
 - a) training or on-site supervision;
 - b) oral or written reprimand;
 - c) suspension (or recommendation to the relevant Anglican Corporation for suspension) with or without terms from function or employment; or
 - d) dismissal (or recommendation for dismissal to the relevant Anglican Corporation) of a person in clerical or lay employment or voluntary function.
- 14(2) Subject to subsection 15(5), the Bishop shall dismiss any lay Synod employee or volunteer found liable criminally or under a misconduct complaint of sexual assault of a

child, youth, or vulnerable adult, and the Bishop shall advise any relevant Anglican corporation to do the same.

- 14(3) The Bishop shall not allow a person found liable under the Misconduct Policy to participate or work in any capacity in a Synod activity, event, or program unless the MCO certifies that the person has completed re-training on both the Misconduct Policy and the Safe Church Regulation, and the Bishop shall advise any relevant Anglican Corporation to do the same.
- 14(4) In response to a request for a reference or reference check, the Bishop or relevant Anglican Corporation shall disclose information relating to:
- a) any disciplinary action taken under s. 14(1) (b), (c) or (d); and
 - b) a decision in any criminal, civil or administrative proceeding in relation to the same matter as the complaint.

Appeal

- 15(1) Within twenty-one days of receipt of the MCO's determination on the question of guilt or the Bishop's determination on the question of sanction, either party may make a written appeal to the Bishop to reverse the MCO's or the Bishop's determination, transmitting a copy of the appeal to the other party. The sole grounds of appeal are that the determination in question demonstrably misunderstood some core fact, demonstrably failed to take due account of some core circumstance, or was tainted by bias or improper motive on the part of the decision-maker.
- 15(2) The Bishop shall allow the other party an opportunity to make a written response to the appeal, setting a deadline for doing so.
- 15(3) Within twenty-one days of receipt of the response provided for in subsection 15(2) or of expiry of the time for making a response, the Bishop shall transmit to the parties the Bishop's written decision allowing or dismissing the appeal, with reasons.
- 15(4) In carrying out the Bishop's role under this policy, the Bishop may be assisted at any point by the Chancellor, Vice Chancellor, or other confidential advisor.
- 15(5) Where a respondent is a cleric or is what Canon XVIII of the General Synod refers to as a lay person appointed, elected, or commissioned to an office in the Church, and the respondent declines to submit to a determination of guilt or sanction under this policy, the Bishop or complainant may frame the misconduct complaint as a charge against the respondent in the Ecclesiastical Court. In such case, the charge will proceed in accordance with Canon Eight of this Synod, subject to the procedural safeguards of Canon XVIII.

Special Complaint Circumstances and Procedures

- 16(1) A complaint against the DSCO shall be submitted directly to the Assistant DSCO, if any, or to the Bishop.

- 16(2) Where a complaint is made against the Bishop, the DSCO shall request the Metropolitan of the Province to investigate and determine the complaint.
- 16(3) Where a complaint is made against the Metropolitan and the Metropolitan is also the Diocesan Bishop, the DSCO shall request the Primate or the next senior diocesan bishop in the Province to investigate and determine the complaint.

CONFIDENTIALITY & RECORDS MANAGEMENT

- 17(1) In investigating, mediating, recording, and archiving misconduct complaints, Synod officers, staff, and investigatory and mediatory personnel shall make every reasonable effort to maintain the confidentiality of persons involved and information received. However, there may be occasions where evidence gathered in the investigation process must be disclosed to public authorities as part of some legal process, or where concerns over safety or prevention may warrant some disclosure. There may also be times where, after consultation with the DSCO, the Bishop will determine that, under the particular circumstances of the situation and after informing the parties, limited information should be disclosed, including to the media. This might include announcement that a complaint against a respondent had been dismissed.
- 17(2) The DSCO shall retain in a central and secure location for a minimum of thirty-five years the following records: summaries of informal complaint settlements, formal complaints, investigation reports and appended documents, documents provided to mediators, settlement agreements, and written decisions by the MCO and the Bishop.
- 17(3) At the conclusion of the time limit specified in s. 17(2), the DSCO shall transfer the records to the Diocesan Archivist in accordance with Canon Five.
- 17(4) Except as provided elsewhere in this policy, personal information collected in the investigation, decision-making, and reporting process shall be managed in accordance with Policy B-4 (Privacy).

MEDIATION

- 18(1) Except when the alleged misconduct is sexual assault or involves a complaint by a child, youth, or vulnerable adult, the parties to a complaint may, with the permission of the DSCO, engage in mediation at any time by executing the Mediation Agreement set out in Appendix 3.
- 18(2) The Synod shall be responsible for the direct costs of mediation, including the mediator, but the complainant and respondent shall be responsible for their own legal and other expenses.
- 18(3) During the mediation, other stages in investigation or decision-making of the alleged misconduct are suspended.
- 18(4) The mediation process not completed within sixty days of the signing of the mediation agreement is deemed to have failed and to be at an end.

18(5) If mediation fails, the investigative and/or decision-making process shall resume.

POLICY REVIEW AND AUDIT

- 19(1) The DSCO and MCO shall report to each regular meeting of the Synod, with :
- 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.
- 19(2) The Diocesan Council, through the Human Resources Committee or otherwise, shall review this policy at least once every five years.

Adopted
4 October 2014
Revised
5 October 2017
23 February 2019
26 February 2026 for 1 June 2026 enactment

Appendix 1 – Misconduct Complaint Form

The Misconduct Complaint Form is for recording a formal complaint of misconduct against a cleric, lay employee, or volunteer in the Diocese of Fredericton. The person filling out a complaint is the complainant. The person being complained about is the respondent. Include as much information as possible. A fillable complaint form is available on the Synod website [here](#). In most cases you have six months after the event occurred to submit a complaint but complaints should be made as soon as you can.

If the Complaint form is not immediately available, record as much of the information below as possible, remembering to date and sign each page:

- Your name, age, and contact information;
- Who was involved, and any contact information you have;
- What misconduct you want to report;
- When it happened;
- The Church activity, event, or program where the incident occurred and the location; and
- The name of the leader or leaders in charge, and any contact information known.

Misconduct is a broad term that includes physical or sexual assault; bullying; harassment; economic, emotional, physical, or sexual misconduct; and any discriminatory practices. Definitions are provided in the Misconduct Policy and are summarized below:

Physical or sexual assault means an assault on a person that violates their physical or sexual integrity, respectively.

Bullying involves repeated incidents of negative behaviours by one person towards another person or persons that causes physical, sexual, economic, social, emotional, or psychological harm.

Harassment means unwelcome comments, unacceptable behaviour, or other conduct which is known or ought reasonably to be known to be offensive, demeaning, humiliating, derogatory or otherwise disrespectful of another person. It may be sexual or non-sexual in nature.

Economic misconduct is where one person takes control of or materially affects another person's economic resources without prior consent. It is a breach of a position of trust.

Emotional misconduct occurs when one person behaves unacceptably in a manner that diminishes another person's identity, personal dignity, or self-worth.

Physical misconduct means unacceptable behaviour by one person, including physical assault, that affects the bodily integrity and/or security of another person, other than sexual misconduct.

Sexual misconduct means any act of sexual harassment, sexual assault, sexual exploitation, sexual abuse, or any other sexual activity or conduct in which someone takes advantage of the vulnerability of a person under her or his pastoral care, guidance, or leadership.

Discriminatory practice may be based on race, colour, national origin, ancestry, place of origin, creed or religion, age, physical or mental disability, family status, sex, sexual orientation, gender identity or expression, social condition, and political belief or activity.

Misconduct Complaint Form

Use a pen, not a pencil. Be sure to complete Sections A through I, inclusive of the form. Fill it with the information you have available. **Contact the Diocesan Safe Church Officer or the leader of the event, activity, or program if you need any assistance to complete the form.** Submit the completed form to the Diocesan Safe Church Officer. Please sign and date each page of the form, and each additional page that you may attach.

Timeline to Submit Your Complaint:

In most cases the Diocesan Safe Church Officer must receive your complaint within six months after the alleged misconduct event took place.

SECTION A – Your personal information.

A1: Name (<i>please print</i>):			
Street or mailing address:			
Town/city and province	Postal code	Email address	Telephone number (<i>include area code</i>)

A2: _____
Birthdate (*yyyy/mm/dd*)

Your signature

Date: (*yyyy/mm/dd*)

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SECTION B – Who are your complaining about (the respondent)?

B1: Name of person (<i>please print</i>):			
Street or mailing address:			
Town/city and province	Postal code	Email address	Telephone number (<i>include area code</i>)

Are you complaining about anyone else? (Additional respondents)

B2: Name of person (<i>please print</i>):			
Street or mailing address:			
Town/city and province	Postal code	Email address	Telephone number (<i>include area code</i>)

B3: Name of person (<i>please print</i>):			
Street or mailing address:			
Town/city and province	Postal code	Email address	Telephone number (<i>include area code</i>)

Your signature

Date:

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SECTION C – Identify the leader(s) and the church activity, event, or program where the alleged misconduct took place. Fill in as much information as you are able. Please print.

<p>C1: Name of Leader (1):</p> <p>Telephone number (<i>include area code</i>):</p> <p>Email address:</p>
<p>Name of Co-Leader (2):</p> <p>Telephone number (<i>include area code</i>):</p> <p>Email address:</p>
<p>Name of Co-Leader (3):</p> <p>Telephone number (<i>include area code</i>):</p> <p>Email address:</p>
<p>Name of the church event, activity, or program where the alleged misconduct took place:</p>
<p>Location where the alleged misconduct took place</p> <p>Street Address:</p> <p>Town/city and province: Postal code:</p> <p>Telephone number (<i>include area code</i>):</p>

Your signature

Date:

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SECTION D – Identify the type of alleged misconduct.

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](#).

D1: 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 the Misconduct Policy (Definitions).

- 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 | | |

Your signature

Date:

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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 Safe Church Regulation – 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.

Your signature

Date (yyyy/mm/dd)

Parent or guardian’s signature for a child

Date (yyyy/mm/dd)

I2: I understand that if my complaint is accepted by the Diocesan Safe Church Officer, then a copy of the accepted complaint will be sent to the respondent(s):

Your signature

Date (yyyy/mm/dd)

Parent or guardian’s signature for a child

Date (yyyy/mm/dd)

I3: I understand that the investigator will ask the Diocesan Synod, the Corporation of the Cathedral of Christ Church, the Parish Corporation, or the Diocesan Camp, as applicable, to provide relevant medical information and other important records or documents and that the investigator will share relevant information with the respondent(s):

Your signature

Date (yyyy/mm/dd)

Parent or guardian’s signature for a child

Date (yyyy/mm/dd)

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

Your signature

Date (yyyy/mm/dd)

Parent or guardian's signature for a child

Date (yyyy/mm/dd)

Remember to provide the Diocesan Safe Church Officer with any changes to your contact information.

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Appendix 2 – Consent for Release of Information and Acknowledgement of Limited Confidentiality

Concerning the complaint between _____ (Complainant) and _____ (Respondent), which was signed on _____, 20__.

1. Complainants, respondents, and witnesses are advised to read the Diocesan Synod of Fredericton's [Misconduct Policy](#).
2. In investigation and adjudication and/or mediation of Misconduct Policy complaints, Synod officers, staff, investigators, and mediators will make every reasonable effort to maintain the confidentiality of information received during the process arising from the complaint, subject to the exceptions noted below.
3. There will be times when some otherwise confidential information may be disclosed by compulsion of law, or for purposes of conducting a full and fair investigation, or where safety or prevention issues exist, or where insurers need to be notified, or where aspects of the matter have become public knowledge already and some statement needs to be made, or where the Parties have waived confidentiality.
4. Information provided by the complainant will be released to the respondent and information provided by the respondent will be released to the complainant. (Personal contact information of the Parties will be redacted.) However, in unusual circumstances and with the permission of the Diocesan Safe Church Officer, an investigator might release to the other party only a summary or partial redaction of a document, rather than the full text.
5. All other information collected as a result of the investigation will be released to the Parties as the investigator (consulting as necessary with the Diocesan Safe Church Officer) deems relevant and necessary for fair process.
6. Investigation may proceed in the absence of information or cooperation from the respondent. Investigators will note in their report the extent to which the complainant and respondent have or have not cooperated.
7. Investigators will advise witnesses that any information they provide, either verbally or in writing, will be released to the complainant, respondent, and other persons as relevant and necessary for fair process.
8. While investigation or mediation of the complaint is ongoing, anyone involved in the process as a complainant, respondent, or witness is advised strongly not to discuss the complaint, incident, investigation, or mediation with others unless necessary to obtain advice about rights or in consulting a support person.
9. The Parties are advised that information collected through the investigation or mediation and disclosed to them is disclosed for the sole purpose of assisting them through the process and to ensure that the respondent, in particular, is able to respond to the complaint fully. Parties are advised strongly not to disclose information

further, unless required by an investigative agency, the courts, or other public authority.

10. As noted above, if legal proceedings commence regarding the Parties to a Misconduct complaint, the Diocesan Synod may be required by law to release information and documents to the courts or other public authority.
11. If the Parties have questions regarding their rights and responsibilities in the investigation or mediation, they are advised to speak initially with the Diocesan Safe Church Officer.
12. This confidentiality and disclosure advisory is not intended to, and should not in any way, dissuade a complainant or respondent from seeking legal counsel or dissuade a complainant from seeking a remedy through the courts or under Human Rights legislation.
13. Anglican Corporations that become respondents to a Misconduct complaint will never seek a non-disclosure agreement from the complainant as part of the resolution or mediation process.

I acknowledge receipt of a copy of, or link to, the Misconduct Policy.

I have read and agree with this notice regarding limited confidentiality and release of information gathered in the Misconduct Complaint process.

Signed: _____ Date: _____

Witness: _____ Date: _____

Appendix 3 – Mediation Agreement

THIS IS A MEDIATION AGREEMENT made this day of _____, 20__.

B E T W E E N:

- and -

- and -

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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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 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 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.

- (2) The mediator will not disclose information to anyone who is not a party to the mediation except:
 - i. with the consent of all parties;
 - ii. where required by law;
 - iii. 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) Where a mediation process is entered with the consent of the Diocesan Safe Church Officer, the Diocesan Synod, the Corporation of the Cathedral of Christ Church, a Parish Corporation, or a Diocesan Camp, as the case may be, 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, and other 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) A mediation process not completed within sixty days of the signing of the mediation agreement is deemed to have failed and to be at an end.

- (4) 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.
- (5) 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 they have read this agreement and agree 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