

Canon B-3: SEXUAL MISCONDUCT AND THE DIOCESAN RESPONSE GROUP

1) Theological principles

a) Christ is the foundation of the Church, her fellowship and the model of Christian behaviour (Mark 12.10; 1 Corinthians 1.9). He respected the dignity of all human beings, and particularly those who were weak and vulnerable (Matthew 18.6; John 8.1-11) Sexual misconduct is immoral because it constitutes an abuse of power which demeans the dignity of another, and threatens the fellowship of the Church.

b) When allegations of sexual misconduct are reported, the Church must take the necessary steps to ensure that such reports are handled promptly, fairly and confidentially, so as to preserve the dignity of those involved and to protect the integrity of the Church's fellowship.

c) Special consideration must be given to those who exercise pastoral leadership and care. All pastoral leaders in the Church must pattern their lives in accordance with the gospel of Jesus Christ. They need to be wholesome examples in word and deed for the body of Christ. (I Timothy 3.1-10; Titus 1.5-9; James 3.1; 2 Peter 2.2).

d) At the same time, it must be recognized that allegations may be unfounded or malicious, and that false reports of sexual misconduct can be as damaging to individuals and the fellowship of the Church as true reports (2 Corinthians 12.20; Ephesians 4.31; Colossians 3.8; 1 Peter 2.1).

e) Members of the Church are expected to be vigilant in protecting the Church's integrity, and should not be afraid to come forward with a complaint or seek advice when sexual misconduct is suspected.

f) When a member of the Church falls into sin, the gospel of salvation demands that the Church's response reflect both the justice and mercy of God (Psalm 89.14; Isaiah 30.18).

2) Policies

a) It is the policy of the Diocese of Algoma that sexual misconduct by those who work for the Anglican Church in the Diocese of Algoma, whether lay or ordained, paid or volunteer, will not be tolerated. It must be understood and acknowledged by all who work for the Anglican Church in the Diocese of Algoma that as a condition of their work, they must accept and adhere strictly to the principles established by this Canon in relation to their duties, rights and the functions which they in their respective capacities perform in this Diocese.

b) Sexual misconduct in this Canon shall be: i) deemed to be immoral under the General Synod Canon on Discipline; and ii) an offence in contravention of this Canon.

c) All allegations of sexual misconduct will be taken as serious complaints requiring immediate action and discreet inquiry.

d) Anyone who has reasonable grounds to suspect that a criminal offence has or may have been committed by a Church worker should promptly report the suspicion and the information upon which it is based to the appropriate authorities.

e) Anyone who has reasonable grounds to suspect that a child is or may be in need of protection must promptly report the suspicion and the information upon which it is based to a children's aid society.

(Ontario's Child and Family Services Act, Section 72)

f) It is the policy of the Diocese of Algoma that none of its actions and/or inquiries, authorized by the Canon, be understood to conflict or interfere with the Civil or Criminal Law of Canada, or of the Province of Ontario, and that the rights and protections of all persons affected by such actions and for inquiries under the Common Law and the Constitution of Canada, Constitution Act 1982 (sometimes referred to as the Canadian Charter of Rights and Freedoms) be fully respected and the requirements of this Canon shall in no way be interpreted as depriving or restricting any of the rights and privileges with which such persons are endowed.

g) The role of the Response Group is not investigatory. It inquires into the substance of allegations of sexual misconduct, and makes recommendations regarding Church policy and pastoral care. The Response Group does not bear the responsibility of determining guilt or innocence.

h) In the event that civil authorities become involved in investigating the allegations, nothing shall be done under the provisions of this Canon which might impede or interfere with the investigation, and no action or proceeding shall be taken to interfere with the rights of any person affected by such complaint.

i) In the carrying out of the provisions of this Canon, every effort will be made to ensure appropriate confidentiality.

j) In situations where the complaint becomes a matter before a civil, criminal, or Church court, it should be understood that witnesses may be subject to being called under subpoena. Such witnesses could include members of the Response Group.

3. Definitions

a) Persons governed by this Canon are those who work for the Anglican Church in the Diocese of Algoma, whether lay or ordained, paid or volunteer.

b) Child: in this Canon means a person who is, or appears to be, under the age of 16 years or who is 16 or 17 years old and subject to a child protection order.

c) Sexual misconduct for the purposes of this Canon is any of the following conduct by persons governed by this Canon:

- i) sexual exploitation, or
- ii) sexual harassment, or
- iii) sexual assault (also called sexual abuse).

d) Sexual exploitation is a betrayal of trust in a relationship involving any form of sexual contact or an invitation to sexual contact with an adult by a person in a position of authority, trust or power.

e) Sexual harassment is behaviour that undermines, coerces, intimidates, humiliates or demeans an individual on the basis of gender, including, without limiting the generality of the foregoing, sexually oriented humour, unwelcome social invitations, comments about appearance, and undesired physical contact. The harasser may be of the same or opposite gender and may be a parishioner, volunteer, co-worker, member of the clergy, or any other person. Harassment may take the form of an isolated incident or a series of incidents.

f) Sexual assault (or sexual abuse) involves sexual activity against another person without his or her consent.

g) Consent is not possible in a relationship with a child or with an incapacitated adult.

h) Complainant: the person or persons bringing the complaint.

i) Respondent: the person who is accused of sexual misconduct.

4. Initial jurisdiction

a) Where it has been alleged that sexual misconduct has occurred by a person governed by this Canon, other than a bishop, the Diocesan Bishop shall have initial jurisdiction with respect to whether misconduct has occurred and the penalty for it.

b) Where it has been alleged that sexual misconduct has occurred and the person against whom the allegations has been made is a bishop subject to the jurisdiction of the Metropolitan, then the Metropolitan shall have initial jurisdiction in conformity with the Canons of the Ecclesiastical Province of Ontario.

c) Where the Bishop has declined to appoint a Response Group, the Executive Committee of the diocese may, either at its own instance, or the petition of the complainant, refer the matter to the Response Group provided that no such referral shall detract from or in any way interfere with the initial jurisdiction of the Bishop.

5. Diocesan Response Group

a) Composition

- i) Members of the Response Group shall be chosen for an inquiry from a list of appropriate potential members selected by each Deanery.
- ii) Each Deanery Council shall in its last meeting prior to the convening of Synod select at least three potential members of a Response Group, for a term running from regular Synod to regular Synod.
- iii) In selecting potential members, special consideration shall be given to the qualifications listed below (sections vi-vii).
- iv) No person who has a conflict of interest with respect to a complaint shall sit as a member of the Response Group for that complaint.
- v) A person has a conflict of interest with respect to a complaint if the person is so connected with the complaint itself or with a person who has an interest in the complaint, as to have, or appear to have, a bias with respect to the complaint. In those cases where there is a conflict of interest evident on the part of the members of the Diocesan Response Group that cannot be reconciled, the Bishop shall appeal to the Metropolitan for an appointment of a qualified person from another Diocese in the province.
- vi) The Response Group shall be composed of three members made up as follows:
 - 1) a licensed priest or deacon of the diocese who has held a bishop's license for a minimum of five years;
 - 2) a lawyer;
 - 3) and an additional person, clerical or lay.
- vii) In selecting members for the Response Group at the deanery or Episcopal level, special consideration shall be given to those with particular knowledge through training or experience in the areas of human relationship and/or sexual misconduct.
- viii) The Response Group shall have at least one member of each gender.
- ix) The members of the Response Group shall be appointed by the Bishop after consultation with the Archdeacons from the lists provided by the Deaneries. In the event that the Deanery lists do not contain individuals qualified to serve on the Response Group under the terms above, the Bishop

shall, after consultation with the Archdeacons, appoint to the Response Group any suitable individual who is a member of the Anglican Church of Canada and resident in the Diocese of Algoma. The Bishop shall inform the complainant and respondent of the membership of the Response Group before the Response Group begins its inquiry.

6. Term of office

The term of office of the Response Group will be for the duration of the inquiry and will continue until the conclusion of that inquiry, even in the event that the inquiry continues beyond the time of the diocesan synod at which the term of the Response Group members would normally terminate.

7. Chair The Response Group will select its own chairperson from its members.

8. Alternates

a) If a vacancy in the membership of the Response Group occurs after the inquiry has begun, the Bishop shall consult with the remaining members of the Response Group and shall either:

- i) continue the inquiry with the remaining members solely;
- ii) appoint a replacement member and continue the inquiry;
- iii) direct that a new inquiry be undertaken with a replacement member or members; or
- iv) terminate the inquiry altogether.

9. Responsibilities

a) The Response Group will be responsible for making an inquiry into the allegations referred to it by the Bishop and for providing a final written report.

b) The Response Group may at any point in the inquiry make recommendations for dealing with all people affected by the allegations, including but not limited to the following:

- i) the complainant, and the family and friends of the complainant;
- ii) the respondent, and the family and friends of the respondent;
- iii) the congregation or other Church community immediately involved;
- iv) any others who may be affected by the allegations.

c) Every effort will be made to ensure that all members of the Response Group are present at interviews with the respondent and witnesses, but an interview may proceed with only two members physically present.

10. Procedure

a) When a complaint with regard to sexual misconduct is made, it shall be reported immediately to the Bishop. If the complaint is against the Bishop, it shall be reported immediately to the Metropolitan of the Ecclesiastical Province of Ontario. Complaints made to the Metropolitan will be dealt with in accordance with the Provincial Canons.

b) If the Bishop is uncertain as to the Bishop's obligation under law to inform civil authorities of the complaint, the Bishop shall consult with the Chancellor.

c) In the event that the complaint does not require the involvement of the civil authorities, the Bishop may consult with the Diocesan Response Group to determine what course of action should be followed.

d) If there is reason to believe that the complainant is a child or a person who is otherwise legally incapacitated, the person to whom the allegation is made shall immediately inform the appropriate authorities as required by the laws of the civil Province of Ontario, and cooperate in any investigation.

e) The Response Group shall meet with the complainant to hear the complaint. The Response Group will inform the complainant of the right to have legal representation at this meeting, and in cases where the complainant is a child or person who is otherwise legally incapacitated, of the requirement of having a parent or legal guardian present. In the event that no such parent or legal guardian exists, the Response Group shall refer the matter to the Bishop who will appoint an appropriate individual to represent such child or legally incapacitated person.

f) The complainant will be assured that, under the process of this Canon, it is not necessary to meet the respondent face to face during the inquiries by the Response Group. Such a meeting will only be arranged with the permission of the complainant. The complainant will be informed that future proceedings may require such a meeting.

g) 1) Unless prohibited by police or court procedure, the Response Group will obtain a written complaint:

i) from the complainant if the complainant is an adult;

ii) from the parent or individual with legal custody if the complainant is a child or a person who is otherwise legally incapacitated; in the event that

no such parent or legal guardian exists, the Response Group shall refer the matter to the Bishop who will appoint an appropriate individual to represent such child or legally incapacitated person

2) If the complainant is unable to write their own statement then arrangements will be made to have the complainant's statement videotaped.

h) The Response Group shall provide a copy of the written complaint to the respondent within forty eight (48) hours after it has been received. Unless prohibited by police or court procedures, the Response Group, or its delegate, will meet with the respondent and his or her legal counsel, if the respondent has chosen to have counsel present, to hear the response to the complaint. If the respondent is a child or person who is otherwise legally incapacitated, he or she must have a parent or legal guardian present. In the event that no such parent or legal guardian exists, the Response Group shall refer the matter to the Bishop who will appoint an appropriate individual to represent such child or legally incapacitated person

i) If the Respondent does not have immediate access to legal counsel, reasonable time will be given for that to happen before the Response Group meets with the respondent.

j) In the course of an inquiry and any disciplinary action that might need to follow, the Bishop will appoint experienced, well-respected priests to act as a Chaplain to the Complainant and family and to the Respondent and family to assure a pastoral ministry is maintained.

k) During such an inquiry the respondent may be inhibited from the performance of any of the duties of office pursuant to the provisions of section 15 of Canon XVIII - DISCIPLINE of the General Synod of the Anglican Church of Canada.

l) Any resignation or withdrawal from Church membership, office, or holy orders of a respondent while under inquiry by the Response Group will not necessarily terminate the inquiry.

m) At the end of its inquiry the Response Group shall recommend in writing, with reasons, that the Bishop:

i) dismiss the complaint; or

ii) take disciplinary action; or

iii) take such other actions as seem appropriate.

n) The Bishop shall report a decision, in writing, to the complainant, respondent, Response Group, and, where appropriate, affected Church communities.

o) No action or other proceedings may be commenced in any court against the Bishop, any member of the Diocesan Response Group, or their delegates, for any act in good faith in the execution of their duties under this Canon.

11) This Canon shall be so interpreted as to include and reflect the foregoing theological principles and policies.

12) The provisions of any act or Canon identified in this Canon by any number shall include the same provisions under whatever number they may appear in any amendment or any successor act or Canon.