

Diocese of Prince George

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Prince George, BC Canada
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GUIDELINES IN CASES OF ALLEGED SEXUAL ABUSE BY A REPRESENTATIVE OF THE DIOCESE

DIOCESE OF PRINCE GEORGE

**GUIDELINES IN CASES OF ALLEGED SEXUAL ABUSE
BY A REPRESENTATIVE OF THE DIOCESE**

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A. POLICY OF THE DIOCESE

The Diocese of Prince George (the "Diocese") recognizes that sexual abuse by a priest, Religious or lay employee of the Diocese (the "accused") constitutes a serious breach of trust in human relationship and that it can have incalculable affects for the victim and his or her family, for the church and/or school or the community at large and for the accused.

The Diocese maintains a continuing commitment to pastoral care of the victim and the accused in these ways:

1. Speak out against sexual abuse in all its forms
2. Investigate reported instances of sexual abuse
3. Take appropriate steps to ensure that reported cases of sexual abuse do not reoccur
4. Offer comfort and assistance to victims of sexual abuse
5. Where appropriate, provide counseling to the accused
6. Appoint an Advisory Committee to review occurrences reported under these guidelines and to advise the Bishop on the appropriate action to be taken.

B. FOCUS OF THE GUIDELINES

These guidelines, which reflect existing legal principles in Canada and in the Province of British Columbia are in all respects subject to the Code of Canon Law including the inviolability of the Sacramental Seal.

C. COMPLAINTS OF SEXUAL ABUSE OF CHILDREN

Policy:

The law provides special protection for children and imposes a special legal duty on every person who has "reasonable grounds" to believe that a child in need of "protection" as that term is defined in Section 13 of the *Child, Family and Community Service Act, R.S.B.C. 1996 and Amending Acts (the "Act:").* Sections 13 and 14 of the Act are reproduced as Schedule "B" hereto. Whenever a person has reasonable grounds to believe that a child is in need of protection, that person is legally obliged to report the circumstances to a Director appointed under Section 91 of the Act or a person designated by a Director under Section 91 of the Act. Failure to report constitutes an offence under subsection (3) of Section 14 of the Act. (Appendix B)

It follows from a review of the relevant provisions of the Act that the following principles apply:

1. A past, present or reasonably anticipated abuse is legally reportable.
2. To be legally reportable, the incident of abuse must relate to a person who is presently a child and not to an incident involving an adult who was abused as a child.

3. If the information comes from the accused himself or herself, it is reportable unless it was received in a sacramental forum. Care must therefore be taken to caution a person wishing to divulge confidential information about the limits of confidentiality in view of the provisions of the Act.
4. The confessional seal is inviolable despite the requirements of Civil Law including the Child, Family and Community Service Act, although the penitent should be encouraged to make disclosure outside of the confessional.

Procedure:

When a complaint is received regarding a Representative of alleged abuse of a minor, the one receiving the call will immediately determine if child protection and/or the police authorities have been notified. The one reporting is responsible to report to the authorities, but the one receiving the call must be certain that this has happened, even if it means making a call to confirm. The contact person will document this call and the action taken regarding reporting. Appendix C.

The Diocesan authorities will cooperate fully with civil authorities in the investigation.

The follow up procedures in Section E will be followed, ensuring the following points:

- Immediately advise the following persons that such a report has been made:
the Bishop
and the Superior, if the accused is a Religious
- The Bishop's Delegate will assure the parents or guardian that a report has been made
- The appointed member of the Advisory Committee will meet with the accused in order to inform him/her of the allegation and to offer appropriate assistance. The Bishop will, if appropriate, remove the Representative from any place or situation where she/he might be a danger to others or to themselves.
- The Bishop's Delegate shall consult with the lawyer for the Diocese.

Where, in collaboration with civil authorities, it is determined that there is a substance to the allegation that a child has suffered such abuse, and in collaboration with the Ministry of Children, Families and Community Services, the Advisory Committee or its delegate will offer to provide appropriate professional counseling services for the child, the parents and siblings, to begin immediately. Such services will be provided until it is determined that they are no longer necessary, or that the allegation is not substantiated

D. COMPLAINTS OF SEXUAL ABUSE OF ADULTS

(This section includes those who are abused as adults as well as adults who were abused as children)

1. The appropriate response in the case of complaints of sexual misconduct against adults will depend upon whether the complaint is made by the victim or by a third party.
2. Since, unless the adult is an incompetent, an adult victim is able to report the matter to civil authorities, if he or she wishes, there is no legal obligation on the representative to report the incident. The person receiving the report may, however, wish to discuss the option of reporting the matter with the victim, or the party making the complaint. In some cases, the person receiving the report will be morally obliged to report the matter, especially if that seems to be the only way of preventing any reoccurrence.
3. Where the complaint is made by a third party, the person receiving the report can discreetly invite the alleged victim to discuss the matter. Care must be taken not to make allegations of misconduct unless there is reasonable proof that it actually occurred.
4. In all cases, it is open to the person receiving the report of abuse, in consultation with the Advisory Committee, to take and document the following action:
 - a) To offer the assistance of professional counseling to the victim and/or third party
 - b) To assist the victim in withdrawing from the situation that leaves him or her vulnerable to further abuse
 - c) Where practical, to refer the victim to the guardian of the person of the victim where the victim is an incompetent
 - d) In appropriate cases, to refer the matter to the police
 - e) Where appropriate, to offer the necessary professional services to the accused

All actions taken must be documented.

The follow up procedures in Appendix E will be followed.

E. PROCEDURES FOLLOWING ALLEGATIONS OF SEXUAL ABUSE AGAINST A REPRESENTATIVE

Preamble:

1. Special procedures are required when the allegation of sexual abuse is made against a cleric or Religious. The requirements of the civil law regarding children and the general guidelines as outlined above will apply; but, in addition, in all cases (whether adults or children are involved, and whether the abuse is past or ongoing) the matter must immediately be reported to the Bishop's Delegate.
2. The following procedure is intended to reconcile the requirements of the Code of Canon Law, the pastoral responsibilities of the church and the obligations of individuals under the laws of the Province of British Columbia, and of Canada. It outlines the manner in

which the Bishop will normally exercise his authority under, and subject to, the Code of Canon Law in all respects, including the inviolability of the sacramental seal.

The Procedure will be followed in all cases where the Bishop, the Bishop's Delegate, or the Advisory Committee receive information which has at the least the semblance of truth about an offence alleged to have been committed by a person over whom the Bishop has jurisdiction.

3. The Advisory Committee will review occurrences reported under these guidelines, and advise the Bishop on the appropriate action to be taken. The Committee will meet within twenty-four hours of an allegation being received.

Procedure to be followed:

1. The recipient of an allegation to which this Procedure applies will immediately refer it to the Bishop's Delegate, or his alternate, as the case may be.
2. If the allegation is made against a Religious, the Bishop's Delegate will refer it immediately to the competent Superior.

Within twenty-four (24) hours the Superior shall:

- a) Consent to the application of the Procedure in respect of the allegation
- b) Taking the place of the Bishop's Delegate, utilize the Procedure; or
- c) With the approval of the Bishop, invoke the Religious institute's own procedure for dealing with such matters and shall advise the Bishop's Delegate accordingly.

Where the Superior consents to the application of the Procedure, the Bishop's Delegate shall report the outcome to the Superior, and shall answer such inquiries about the progress of the matter as the Superior may make from time to time. Where the Superior proceeds, a report of the outcome shall be made to the Bishop's Delegate, and the Superior shall answer such inquiries about the progress of the matter as the Bishop's Delegate may make from time to time.

3. The Bishop's Delegate will then carry out an assessment of the allegation, according to the criteria in Appendix D, as a matter of urgent priority.
4. The Bishop's Delegate will notify the accused about the allegation as soon as circumstances will reasonably permit.

Further Action:

1. After considering the report of the Bishop's Delegate, the Advisory Committee will determine whether further action is warranted in respect of the allegation
2. The appropriate disposition of each case will depend on its particular circumstances. The Advisory Committee may recommend that matters be referred to the police, a Director, medical professionals, therapists, social workers, social agencies, or any other person or agency as the case and the law may require. It is expected that in most cases the criminal justice system will be involved. In deciding on the disposition of a particular case, the following factors may be considered:
 - a) The nature of the offence
 - b) Frequency of the offence
 - c) The existence of a relationship of trust between the victim and the alleged accused
 - d) Whether or not the victim is in need of protection from this accused, or other possible perpetrators
 - e) Whether or not the victim wishes to make the incident public
 - f) Which person or agency is best equipped to provide therapy, support and comfort to the victim, according to the victim's wishes
 - g) Whether the accused has taken positive steps to correct his or her behavior
 - h) Whether or not there is a possibility, however slight, of a recurrence of the abuse
 - i) Whether or not the accused voluntarily came forward seeking help and therapy
 - j) Whether or not the accused acknowledges that his or her conduct is wrong and indefensible
 - k) Whether or not the accused has received therapy or counseling and the recommendations that have arisen therefrom
 - l) Whether or not professional therapists believe that the accused can be assisted by counseling
 - m) Whether or not professional counselors and therapists believe that the accused is a danger to others, and whether the accused has offended on previous occasions
 - n) Which person or agency is best equipped to ensure that the accused will not re-offend
3. For the continued emotional health of the accused, he/she may be referred immediately for professional counseling or for psychological evaluation and assessment, even if the accusations are found to be without substance. The accused cannot be compelled or coerced to do so (Can.220)
4. Where the evaluation recommends a program of treatment for the accused:
 - The accused will be referred to a treatment service to begin the program of treatment, where the accused is a priest
 - The evaluation will be referred to the competent Superior for action, where the accused is a Religious
 - The accused will be advised of the recommendation, where the accused is a lay person

5. Where evidence shows that the accused may be at least partly imputable for his or her actions, the Bishop's Delegate may offer to the accused one or more of the following choices:
 - To submit the allegation to an Arbitral Tribunal appointed by the Bishop for adjudication
 - To resign
 - To retire
 - To petition for a rescript from the Apostolic See returning him to the lay state

The accused shall indicate a choice in writing.

6. The Bishop's Delegate will consult with the Advisory Committee to determine whether it is appropriate to recommend that a canonical penal trial be commenced against the accused, where:
 - The accused refuses to cooperate with the Bishop's Delegate in carrying out his/her responsibilities under the Procedure
 - The accused refuses to exercise the choice offered by the Bishop's Delegate under #5 above
 - In the opinion of the Bishop's Delegate there is another sufficient ground

In all cases where the civil authorities are involved the canonical penal trial should be delayed until the civil proceedings have been completed in order to protect the rights of the accused.

7. The Bishop's Delegate will report to the Bishop on the outcome of the Procedure, including the recommendations of the Advisory Committee, to assist the Bishop in determining the matters referred to in c. 1718
8. Where appropriate the Advisory Committee may recommend the re-employment of lay personnel or the return of a priest or Religious to the ministry, either conditionally or unconditionally. The following factors may be considered:
 - The nature of the offence
 - The outcome of any program of therapy, and the recommendations of the professional therapists
 - The risk of re-offending, and the protection of the public
 - The wishes of the victim, the parish, the priest or employee, the Council of Priests, and the Catholic Community
 - The effect of re-employment or return of the priest on the church and on Catholic institutions
 - All other relevant considerations

Protocol:

1. In order to assist the lawyers for the Diocese, a written record will be kept of all steps taken from the moment the allegation is first received. The record may be required to prove the rights of the accused were fully respected if he or she has recourse to the Holy See against the action of the Bishop or of the persons involved.
2. The Bishop's Delegate and Advisory Committee may at any time make use of such consultants as may be considered necessary, including medical doctors, psychologists, mental health professionals, social workers, canonists, and the lawyer of the Diocese
3. Persons carrying out responsibilities under this Procedure will, in consultation with the Bishop's Delegate cooperate with civil authorities carrying out statutory responsibilities subject to the inviolability of the sacramental seal (c. 983-984).
4. At no time should the Bishop or any priest involved in the Procedure hear the Sacramental Confession of the accused
5. During the assessment great care should be exercised in making public statements about the allegations, and the confidentiality of the Procedure should be preserved

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APPENDIX A: DEFINITIONS OF TERMS:

Advisory Committee:

A committee of individuals appointed by the Diocesan Bishop to perform the functions contemplated by these guidelines. The committee, in addition to the Bishop's delegate, may include a canonist, a member in good standing of the Law Society of British Columbia, a member in good standing of the College of Physicians and Surgeons, a qualified Social Worker and one or more additional members appointed by the Bishop. The members of the Advisory Committee will serve and hold office on the committee at the pleasure of the Diocesan Bishop

Allegation:

An oral or written statement of alleged fact to be relied on in support of a report of sexual abuse.

Bishop's Delegate:

A priest appointed by the Diocesan Bishop to sit on the Advisory Committee.

Civil Law:

Common law principles and statute law in force in the Province of British Columbia.

Cleric:

A priest (which includes a bishop) or a deacon.

Diocesan Bishop:

Either the Bishop of the Diocese or his designate, but where the Bishop is the accused, the Bishop will be the Metropolitan having authority for the Diocese or his designate.

Incompetent:

A person who has attained at least the age of nineteen (19) years but who, as the result of disease of the mind or as a result of diminished mental capacity, is not legally competent, according to the civil law of the Province of British Columbia.

Minor or Child:

A person who has not attained the age of nineteen (19) years.

Accused:

A representative of the Diocese investigated by the Bishop's Delegate and the Advisory Committee with respect to an alleged sexual abuse.

Representative:

A cleric, Religious or lay employee or functionary of the Diocese.

Religious:

A person who is a vowed member of a religious congregation or order, Institute of Apostolic Life or other recognized institute.

Sexual Abuse:

- a) Subjection of a child to or participation with a child in a "sexual act" whether or not such an act would constitute an offence under the Criminal Code of Canada, or

- b) Subjection of an incompetent to or participation with an incompetent in a "sexual act" whether or not such an act would constitute an offence under the Criminal Code of Canada, or
- c) An act of a sexual nature between a representative and a third party (who is not the representative's spouse) where the representative and the third party are engaged in a relationship based upon the tendering by the representative to the third party of instruction, counseling, advice or other help requested by the third party or someone on behalf of the third party and tendered by the representative either totally or partially arising out of his duties as a representative.

Third Party:

A person who is an adult and is competent and who is in relationship with a representative.

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APPENDIX B: MINISTRY OF CHILD AND FAMILY DEVELOPMENT

Child, Family and Community Service Act

Part 3 -- Child Protection

Division 1 -- Responding to Reports

When protection is needed

- 13** (1) A child needs protection in the following circumstances:
- a) if the child has been, or is likely to be, physically harmed by the child's parent;
 - b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
 - c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
 - d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
 - e) if the child is emotionally harmed by the parent's conduct;
 - f) if the child is deprived of necessary health care;
 - g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
 - h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
 - i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being
 - j) if the child's parent is dead and adequate provision has not been made for the child's care;
 - k) if the child has been abandoned and adequate provision has not been made for the child's care;
 - l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.
- (2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe
- a) anxiety,
 - b) depression,
 - c) withdrawal, or
 - d) self-destructive or aggressive behavior.

Duty to report need for protection

- 14** (1) A person who has reason to believe that a child needs protection must promptly report the matter to a director or a person designated by a director.
- (2) Subsection (1) applies even if the information on which the belief is based
- a) is privileged, except as a result of a solicitor-client relationship, or
 - b) is confidential and its disclosure is prohibited under another Act.
- (3) A person who contravenes subsection (1) commits an offence.
- (4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.
- (5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.
- (6) A person who commits an offence under this section is liable to a fine of up to \$10,000 or to imprisonment for up to 6 months, or to both.
- (7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.

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APPENDIX C: PROCEDURES FOR REPORTING ALLEGED CHILD ABUSE

A Gatekeeper who suspects abuse or has received a report or disclosure is responsible for reporting the abuse directly to the intake social worker of the Ministry of Social Services Family and Child Service Office closest to the child/adolescent's residence. This responsibility is not discharged by reporting to anyone other than a Ministry of Social Services Social Worker.

REPORT OR DISCLOSURE OF ALLEGED ABUSE	SUSPICION OF ABUSE
<u>A Gatekeeper receives a report or disclosure of alleged abuse</u>	<u>A Gatekeeper suspects that a child/adolescent is being abused</u>
Document indicators, statements and observations	Document indicators, statements and observations
↓	↓
Report the matter immediately to the intake social worker in the appropriate Family and Child Service Office	Consult with other agency staff who know the child. Consult when necessary with the Intake Social Worker of the Ministry of Social Services to determine if there is enough information to continue a report
↓	↓
Consult, when necessary, with the agency supervisor or a Ministry of Social Services Social Worker	Report, if abuse is still suspected, to the Intake Social Worker in the appropriate Family and Child Service Office
↓	↓
Inform the agency supervisor immediately and document in appropriate case files	
↓	
Do not contact the child/adolescent's parent(s)/guardian(s) This is the responsibility of the investigating social worker	
↓	
The investigating social worker must notify the police immediately where it appears that abuse may have occurred	
↓	
The Social Worker and Police consult immediately and plan a joint response The Social Worker will interview the child as soon as possible, within 24 hours	

Justice Institute of B.C.

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Checklist for Reporting Alleged Child Abuse

When calling the Ministry of Social Services to report a suspicion or disclosure (allegation) of abuse, be sure to have the following information with you by the telephone:

Information about Child/Adolescent

- child's name and address (previous surnames, if any)
- gender
- date of birth
- language(s) spoken
- special needs of child, if any (i.e. hearing impaired, mentally disabled, etc.)
- siblings' names, ages and schools
- name(s) of parent(s)/guardian(s), address and phone numbers (both home and work)
- language(s) spoken by parent(s)/guardian(s)
- time child usually arrives at agency (e.g. school, daycare, recreational program, etc.)
- time child usually leaves agency; if child is picked up, when and by whom

A. Your Concerns

- description of the incident, situation, statement, behavior and physical symptoms, which lead you to suspect abuse, including dates and times these were evident
- if child reported or disclosed abuse, the nature and circumstances of the report and the child's statements
- name of child's social worker, if applicable

B. Initial Contact with Family and Child Services Office of Ministry of Social Services

When contacting the Ministry of Social Services district office closest to the child's residence, record the following information in the case file (or appropriate document):

- the phone number of the Ministry of Social Services office
- the Social Worker's name and title
- the action proposed by the Ministry of Social Services, including whether the child will be interviewed at the agency, when and by whom

C. Do not contact the child's parents, this is the responsibility of the investigating social worker.

- Record the Social Worker's responses to the following
 - Who will contact the child's parent(s)/guardian(s)?
 - When will the parent(s)/guardian(s) be contacted by MSS?
 - What your response should be if parent(s)/guardian(s) come to pick up the child before they are contacted by MSS?

Taken from: Responding to Child Abuse and Neglect, A Guide for Vancouver School Board Employees

**DIOCESE OF PRINCE GEORGE--
SEXUAL ABUSE ADVISORY COMMITTEE**

CHECKLIST FOR REPORTING ALLEGED CHILD ABUSE

When calling the Ministry have this information ready:

Date: _____

Caller's name: _____ , _____
(Relationship to child)

CHILD

Legal last name: _____

First name: _____ **aka** _____

Date of birth: _____ **Age in years in months:** _____ M F

Child's current address: _____

Phone Number (Home) _____ **(Other)** _____

Name of Parent/Guardian: _____

Language spoken by child and family: _____

Phone Number (Home) _____ **(Other)** _____

Who has legal custody? _____

Presenting issues:

(Description of the incident, situation, statement, behaviors and physical symptoms, which lead you to suspect abuse, including dates and times these were evident)

Is the child in danger or at risk? _____

Does the child have allergies? _____

Does the child have any medical condition? _____

MINISTRY CONTACTS:

Ministry of Child and Family Development

- **INTAKE AND INVESTIGATION**

1441 - 7th Avenue

Prince George, BC V2L 3P3

Phone: (250) 565-4300

Fax: (250) 565-4216

- (250) 565-4367 Northern Regional Office
- (250) 565-4313 Manager of Child Protection
- (250) 565-4367 Alcohol and Drug
- (250) 565-6876 Protection
- (250) 565-4300 Resources (foster homes)
- (250) 565-6890 Services for persons with Mental Disabilities
- (250) 565-6215 Youth Around Prince George
- MCFD web: www.gov.bc.ca/mcf/

After hours emergency line: Social Worker

Emergency line for Ministry of Children and Family Development and Ministry of Human Resources. Social Worker made available to those in need of immediate assistance and cannot wait for office hours to speak to worker: 1-800-663-9122

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APPENDIX D: PROCEDURES

Assessment of Reported Incident:

1. The Bishop's Delegate will begin with a careful assessment of the facts and circumstances, and assess the imputability of the alleged offence.
2. Care is to be taken that this assessment does not call into question anyone's good name. Care must be taken to be absolutely correct in the terms used in the dialogue.
3. A written record shall be kept of the assessment, so that the lawyers for the Diocese can be fully informed.
4. The Bishop's Delegate will meet with the person or persons making the allegation, with the accused and with any other person as may seem appropriate.
5. Where there are reasonable and probable grounds to believe that the allegation is of substance, and a child is involved, the policy and procedures in Section C will apply.
6. The Advisory Committee may recommend to the Bishop, after considering the information available:
 - That after being advised of the allegation, the accused be given an immediate leave of absence
 - That in the case of a priest or Religious, the person will immediately move from the current residence to an appropriate residence assigned by the Bishop pending the outcome of the Procedure
 - That where authority is exercised under the above two subsections pending the outcome of the Procedure, the accused, whether cleric, Religious or lay, not be returned to the ministry or employment where he or she was assigned
 - That in the case of a priest, all faculties be removed
 - That the accused have no further contact, direct or indirect, with a named individual
 - That appropriate steps be taken to provide support and counselling to the parish involved
 - That such other action be taken as seems appropriate in the particular case
 - Where the Advisory Committee determines that the allegation is frivolous, the assessment will be concluded, and the concerned persons will be so advised. The Bishop's Delegate will tactfully and publicly welcome the accused back in the most appropriate timing and placement.

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APPENDIX E: DIOCESAN PROCEDURES

1. Immediately after being advised of an allegation, the accused is given an Administrative leave.
2. The accused will be assigned by the appropriate authority* to another residence where room and board will be provided by the Diocese or the Congregation. A car will be provided if necessary and if there is one available.
3. The Diocesan or Congregation Law Firm will be asked to provide legal counsel at the Diocesan/Congregation expense. A list of Canonists will be available for the accused.
4. Medical benefits will continue to be covered and a stipend will be given to the accused.
5. There will be no further appeal if the accused is found not guilty.
6. The accused will be returned to ministry as soon as possible after the end of proceedings if possible. At the discretion of the Bishop a different ministry may be suggested.

*The appropriate authority is the Congregation for Religious Priests, the Diocese for Diocesan priests.

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APPENDIX F: CANONICAL LEGISLATION

Canon 983 #1 The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for a reason whatsoever, whether by word or in any other fashion.

#2 An interpreter, if there is one, is also obliged to observe this secret, as are all others who in any way whatever have come to a knowledge of sins from a confession.

Canon 984 #1 The confessor is wholly forbidden to use knowledge acquired in confession to the detriment of the penitent, even when all danger of disclosure is excluded.

#2 A person who is in authority may not in any way, for the purpose of external governance, use knowledge about sins which has at any time come to him from the hearing of confessions.

Canon 1718 #1 When the facts have been assembled, the Ordinary is to decide:

1^o whether a process to impose or declare a penalty can be initiated;

2^o whether this would be expedient, bearing in mind Canon 1341:

3^o whether a judicial process is to be used or, unless the law forbids it, whether the matter is to proceed by means of an extra-judicial decree.

#2 The Ordinary is to revoke or change the decree mention in #1 whenever new facts indicate to him that a different decision should be made.

#3 In making the decrees referred to in #1 and #2, the Ordinary, if he considers it prudent, is to consult two judges or other legal experts.

#4 Before making a decision in accordance with #1, the Ordinary is to consider whether, to avoid useless trials, it would be expedient, with the parties' consent, for himself or the investigator to make a decision, according to what is good and equitable, about the question of harm.

Canon 1341 The Ordinary is to start a judicial or an administrative procedure for the imposition or declaration of penalties only when he perceives that neither by fraternal correction or reproof, nor by any methods of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.

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APPENDIX G: EXAMINATION OF THE RIGHTS OF PRIESTS ACCUSED OF MISCONDUCT

NATIONAL FEDERATION OF PRIESTS' COUNCIL

Rev. Gregory Ingels, J.C.D.

April 17, 2002

- I. The Church's canonical tradition includes procedures to examine issues of alleged misconduct.
 - A. These procedures are guided by principles that protect the rights of all parties, the victims, the faithful and the accused, and provide the means of arriving at just and equitable resolutions.
 1. In the best case scenario, diocesan policies and procedures make use of the principles of universal law and provide for the rights of all involved parties.
 2. Unfortunately, recent experience suggests that some in positions of authority are not using these procedures in a correct or competent fashion.
 - a) They simply ignore applicable canonical principles and procedures and act arbitrarily on their own initiative; or
 - b) They act on the basis of diocesan procedures or policies which have failed to take into regard the rights and protections of the Church's universal law.
 - c) It also appears that those in authority are being guided by civil authorities, insurance companies or others who are not familiar with canonical rights or procedures
- II. The investigation of an allegation of misconduct should be guided by diocesan policies and procedures which themselves reflect the principles found in the Code of Canon Law
 - A. When an Ordinary has probable knowledge that an offense has taken place, he should implement a preliminary investigation.
 1. He can utilize the services of a delegate or an investigative team if he wishes, but any final determinations must be made by the Ordinary
 2. He need not inform the accused priest of the preliminary investigation unless he intends to exclude him from ministry or place him in a special residence.
 3. If the Ordinary does elect to exclude the accused priest from ministry or place him in a special residence during the course of the investigation, the procedure outlined in canon 1722 must be followed:
 - a) The priest must be cited and his right of defense must be provided for:
 - (1) by assisting him in finding canonical representation, and
 - (2) providing him the opportunity of responding to the accusations that have been made.
 - b) The Promoter of Justice must be consulted.
 - (1) He is bound by office not simply to prosecute a case but to see that the safeguards and requirements of the law are being equitably applied.

- (2) His responsibilities extend not only to the investigation of the case but also the rights of the victims and those of the accused, though he does not and cannot represent the accused.
 - c) Once the penal procedure is concluded or abandoned, all restrictions to the priest's ministry must cease.
4. During the course of the investigation, the needs of any victimized party must be examined and a decision made to address these issues at once or as part of the final determination at the conclusion of the process.
 - a) Victimized parties have the right to place a petition before the bishop or a competent tribunal to seek repair of damages.
 - b) These issues can be resolved directly by the Ordinary or by the competent tribunal if the Ordinary does not act.
5. During the course of the investigation, the accused priest cannot be compelled or coerced to confess an offense (canon 1728, §2).
6. During the course of the investigation, the accused priest cannot be compelled or coerced to undergo a psychological assessment against his will (canon 220).
7. During the course of the investigation, the Ordinary must determine whether a criminal process can be pursued in light of the period of prescription.
 - a) Sexual crimes not reserved to the Congregation for the Doctrine of the Faith or not involving a minor have a period of prescription of five years from the date of the last offense (canon 1362).
 - b) Sexual crimes involving a minor which are reserved to the Congregation for the Doctrine of the Faith have a period of prescription of ten years which runs from the eighteenth birthday of the accused.
 - c) Other crimes reserved to the Congregation for the Doctrine of the Faith have a period of prescription of ten years from the date of the last offense.
8. Before concluding the investigation, the Ordinary must examine the accusation in light of canon 1341 and determine:
 - a) whether he is dealing with an individual who is sick and in need of help, or
 - b) whether he is dealing with an individual who has committed a crime and must be punished.
- B. If the Ordinary concludes that the priest is psychologically or mentally ill and that this has gravely affected his imputability (i.e., personal responsibility) for his actions at the time of the offense, no penalty can be imposed at any time.
 1. He can be removed from ministry on the basis of canon 1044, §2,2, once the Ordinary has consulted an expert who confirms the psychological or mental illness. The Ordinary, after consulting an expert, permits the exercise of the order.
 2. It falls to the priest to petition for a return to ministry once he can demonstrate through therapy that the psychological or mental illness has been dealt with.

C. If the Ordinary concludes that the priest has committed a crime that must be punished:

1. If the crime is reserved to the Congregation for the Doctrine of the Faith, the acts of the preliminary investigation must be transmitted to the Congregation.

- a) A determination will be made whether to call the case to itself or have it adjudicated at the diocesan level
- b) The case must be examined in the judicial forum.

2. If the crime is not reserved, an administrative or judicial penal process can be undertaken at the diocesan level.

III. Recent reports in the news media give rise to significant concerns relative to the rights of priests.

A. Priests are being removed from ministry, being placed in special residences or denied residence, and having their remuneration discontinued by administrative decision of the Ordinary simply on the basis of proven or unproven allegations of sexual misconduct.

1. If no penal process has been undertaken providing for the use of canon 1722, this constitutes a violation of canon 221, §3.

2. The law itself prohibits criminal process in the case of allegations in which the period of prescription has lapsed.

B. Priests are being removed from ministry, being placed in special residences or denied residence, and having their remuneration discontinued by administrative determination for cases allegedly resolved to everyone's satisfaction years and even decades ago.

1. If all parties were satisfied with the previous resolution of the matter, the present action fails to respect the determinations made on the basis of the principles of canon 1341.

2. If the period of prescription has lapsed in such cases, a penal process cannot be undertaken.

C. Priests are being coerced to petition for laicization.

1. The placement of a petition for dispensation from the obligations arising from ordination to the priesthood is invalid if it is obtained through coercion or the unjust force or fear.

2. Any juridic act placed by a priest under coercion or fear can be rescinded by a competent tribunal.

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