

## **ARCHDIOCESE OF TORONTO**

### **Policy & Procedure for Cases of Alleged Misconduct**

#### **PREAMBLE**

The Roman Catholic Archdiocese of Toronto is committed to the protection of all who are within its spiritual and physical care, especially vulnerable people. Abuse of another person is contrary to the teachings of the Catholic Church and is always wrong. The Church considers such an act a sin. It is therefore particularly abhorrent if the abuser is a member of the clergy, staff or a volunteer of the Archdiocese.

The policy and procedure set out in this document provide for the just and timely resolution of complaints of abuse and misconduct. Our aim is to provide meaningful assistance to those who have suffered as a result of abuse and misconduct, and to uphold the sacred values to which the Archdiocese is so strongly committed.

We will intervene effectively to stop acts of abuse and misconduct by clergy, staff or volunteers, and will take steps to prevent the occurrence of such abuse and misconduct. We will assist those who come forward with allegations of abuse and misconduct, ensuring that they are treated with respect and compassion.

We will investigate all allegations of abuse or misconduct within the Archdiocese. The Archbishop of Toronto exercises his canonical governance authority in such investigations (canons 1717 ff), and these are subject to the Code of Canon Law in all respects, including the presumption of innocence and the inviolability of the sacramental seal (canons 983-4).

We recognize that some forms of abuse may be crimes according to the civil law. Any victim of a crime is encouraged to go to the police to report illegal activity. When the law requires it, for example when the abuse involves a person who is currently under the age of eighteen years, we will report the abuse immediately to the appropriate Children's Aid Society, who work with local law enforcement. Allegations involving minors are considered in articles 12-14.

Adult complainants of past abuse sometimes wish to preserve their privacy and would not report the abuse to us if we were required to disclose it to civil authorities. Since we must respect their privacy (canon 220) and want to encourage disclosure of abuse, we believe that the decision to approach police or civil authorities must be the choice of the adult complainant. The Archbishop's Delegate will advise complainants of their right to approach the police or other civil authorities and will facilitate contact.

When civil authorities investigate complaints, we will provide our full cooperation.

In certain cases of abuse and misconduct, listed in Appendix 3, the Archbishop is required to send the results of the investigation to the Congregation for the Doctrine of the Faith in Rome for direction on the next canonical and pastoral steps to be taken, and he will fulfil this obligation.

This document reconciles the obligations of individuals and the Archdiocese under the laws of the Province of Ontario and of Canada with the requirements of the Code of Canon Law and the pastoral responsibilities of the Archdiocese of Toronto.

This Procedure is an important part of the Safe Environment Policy of the Archdiocese of Toronto (see [www.archtoronto.org](http://www.archtoronto.org)).

This Procedure applies to clergy, religious sisters and brothers under vows in Religious Orders, staff, and volunteers in the Archdiocese of Toronto.

This Procedure does not apply to corporate bodies that have a Catholic identity such as schools and school boards, social welfare agencies and hospitals. These entities are subject to their own policies.

## DEFINITIONS

**Abuse** means any act or attempted act of emotional, physical, verbal or sexual contact or approaches, or threats of the same, which are known or ought reasonably to be known as unwelcome, whether or not apparent damage arises from that conduct, and includes grooming (that is, engaging in conduct that is designed to select and prepare potential victims for abuse). Possession of pornographic materials depicting minors is, legally, abuse.

**Archbishop** means the Roman Catholic Archbishop of Toronto, or, in his absence or incapacity, the lawful administrator of the Archdiocese according to Roman Catholic Canon Law.

**Archbishop's Delegate for Cases of Alleged Misconduct (referred to as Archbishop's Delegate)** means the priest appointed by the Archbishop to fulfil the role as outlined in the policy, and any duly appointed assistant.

**Archdiocese** means the Roman Catholic Archdiocese of Toronto.

**Clergy** (singular form is Cleric) means ordained deacons, priests and bishops of the Roman Catholic Church.

**Code of Canon Law** means the 1983 compendium of laws for the Western (Latin) Catholic Church, published by Pope John Paul II, and as amended from time to time. Individual laws are referred to as **canons**.

**Complainant** means a person who alleges having suffered as a result of misconduct by a member of the clergy in the Archdiocese, Archdiocesan staff, or Archdiocesan volunteers.

**Faculties** mean the grants by a higher ecclesiastical authority enabling a priest or deacon to act in ways that the recipient would not otherwise be empowered or authorized to act. (e.g. hearing sacramental confessions by priests)

**Incardination** means the action by which a cleric, at ordination as a deacon, becomes affiliated with a particular diocese or religious order and subject to the bishop or superior respectively.

**Minor** means a person under the age of 18 years, as stipulated in the Ontario *Child, Youth and Family Services Act*.

**Misconduct** means serious behaviour contrary to the norms of civil law or Catholic Church teaching.

**Religious Order** means an independent and self-governing religious institute or secular institute that is recognized by the Catholic Church and governed by her laws.

**Respondent** means a member of the clergy, a religious sister or brother under vows in Religious Orders, staff or volunteer alleged to have committed an act of misconduct.

**Review Board** means a group of qualified persons (see Section 20) appointed by the Archbishop to assist the Archbishop's Delegate.

**Staff** means lay persons employed by the Archdiocese, its parishes, or by a Religious Order in respect of its activities in the Archdiocese, but does not include independent contractors or others who are not employees of the Archdiocese, its parishes, or Religious Orders. The Judicial Vicar may apply the Procedure to others, in all cases with the goal of ensuring that the responsible agency addresses complaints and complainants in the appropriate manner.

**Superior** means the local head of a Religious Order.

**Volunteers** means persons who undertake assignments of charity or service with the sanction and direction of the Archdiocese, Clergy, Staff or Religious Orders. Volunteers do not include self-appointed persons who operate without the sanction or direction of the Archdiocese, Clergy, Staff or Religious Orders.

**Vulnerable Person** means minors or persons of any age who by reason of their condition, suffer from physical, mental, emotional or spiritual disabilities.

## **THE PROCEDURE**

### **REPORTING ABUSE AND MISCONDUCT**

1. Persons can make a confidential allegation of abuse or misconduct directly to the Archdiocese by calling 416-934-3400 extension 108. Alternately, you may email your concern to [reportmisconduct@archtoronto.org](mailto:reportmisconduct@archtoronto.org). We will strive to respond efficiently to all messages. Clergy and staff of the archdiocese can also pass on a complaint to the Archbishop's Delegate. In the case of an alleged victim aged 18 years or younger, the recipient of the allegation will immediately contact the Children's Aid office of the area where the alleged incident took place.

Our prime concerns are for the care of the complainant who is hurting, and the prevention of abuse and misconduct. Recognizing that coming forward with an allegation of abuse or misconduct is difficult, the person who first hears the complaint will treat the complainant with great care and compassion, and will encourage the complainant to talk with the Archbishop's Delegate. We respect the complainant's right to privacy and confidentiality.

### **THE INVESTIGATION**

2. The Archbishop's Delegate may act personally or through a delegate.
3. If the allegation is made against a cleric or other member of a Religious Order the Archbishop's Delegate will refer it immediately to the competent Superior. (see Appendix 1)
4. The Archbishop's Delegate will immediately enquire into the allegation as a matter of urgent priority. He will inquire carefully about the facts and the circumstances. Care is to be taken that this does not violate the privacy of the complainant or unnecessarily call into question anyone's good name (canon 220). This article is subject to article 13 regarding the involvement of a Children's Aid Society.
5. If the respondent is deceased, the investigation will proceed as far as possible, with all reasonable efforts made to seek confirmation of the facts from sources who reasonably would be expected to have information about the matter.
6. The Archbishop's Delegate will have access to all files and archives of the Archdiocese pertaining to the respondent.
7. The Archbishop's Delegate will interview the person or persons making the allegation, and then meet individually with such other persons as may be witnesses or have knowledge of the facts.

8. The Archbishop's Delegate will meet with the respondent to outline the allegations and listen to his/her response. Any witnesses named by the respondent will also be contacted.
9. The Archbishop's Delegate may then meet with the Review Board in order to formulate a recommendation to the Archbishop. If the allegation is determined to be founded, both the complainant and the respondent will be informed of the next steps. If the allegation is determined to be unfounded, then the inquiry will be closed and the complainant and respondent so advised.
10. In order to protect the interests of all concerned, the Archbishop's Delegate may do one or more of the following at any time:
  - a) After being advised of the allegation, the respondent may be placed on an immediate administrative leave (canon 1722). Volunteers may be suspended from ministry.
  - b) In the case of a cleric, an appropriate residence may be assigned pending the outcome of the investigation;
  - c) In the case of a cleric, his faculties to preach may be removed (canon 764), and if he is a priest, the right to hear confessions may also be removed (canon 974). He may be forbidden the exercise of any public ministry, including the public celebration of the Eucharist, and he may be instructed to cease wearing clerical garb.
  - d) The respondent may be instructed to have no further contact, direct or indirect, with certain individuals, identified by name or in some other way including parish residency.

Depending on the outcome of the procedure, the respondent, whether a member of the clergy or a lay person, may or may not be returned to ministry or employment.

### **CARE FOR COMPLAINANTS**

11. Any interview with the complainant will be done compassionately and prudently by the Archbishop's Delegate, recognizing that telling the story of what happened will, to some extent, renew the hurt experienced at the time of the abuse or misconduct. The complainant may request to have someone else present during the interview as support, and the Archbishop's Delegate may have a lay person present, especially when it is a member of the clergy who is the respondent. The interview will take place at a mutually convenient time and place as soon as possible after the Archbishop's Delegate has received the initial contact.

The Archbishop's Delegate will explain the next steps in the process and how confidentiality and the complainant's privacy will be preserved. If the complainant has not chosen to approach the civil authorities, the Archbishop's Delegate will remind the person of the right to do so and will assist in making the contact should the complainant so desire.

Where the Archbishop's Delegate determines that there may be substance to the allegation of abuse, he will immediately offer the complainant assistance in obtaining

qualified professional counseling services. This assistance will be outlined in a separate document indicating the length, frequency, costs, and plan of treatment (without violating patient privacy). The Review Board will provide advice to the Archbishop's Delegate in this regard.

Such counseling will be provided until the earlier determination by the Archbishop's Delegate in consultation with the Review Board that it is no longer reasonably necessary, or that the allegation is not substantiated.

The Archbishop's Delegate will assure the complainant that he will provide updates on the progress of the investigation on a regular basis.

The Archbishop's Delegate will offer an apology on behalf of the Archdiocese for any wrongdoing to the complainant.

### **ALLEGATIONS INVOLVING MINORS (CHILDREN UNDER 18 YEARS OF AGE)**

12. The *Child, Youth and Family Services Act* places urgent reporting obligations on individuals who, in the course of their professional or official duties, have "reasonable grounds to suspect" that a child is or may be suffering, or may have suffered, abuse. The obligation to report relates to children who have not reached their eighteenth birthday at the time the allegation is made. Under the Act, abuse may be physical, emotional, mental or sexual in nature and includes sexual exploitation through child pornography. The obligation arises whether or not the abuse is said to have been committed by clergy, staff or volunteers.
13. Where a member of the clergy, Archdiocesan staff or a volunteer has reasonable grounds to suspect that a person **currently** under the age of eighteen is or may be suffering or may have suffered abuse, that person shall:
  - a) report the suspicion and the information on which it is based to the appropriate Children's Aid Society in the jurisdiction where the abuse is alleged to have occurred, **immediately**, that is, within one hour or as soon thereafter as circumstances will reasonably permit. Contact information is in Appendix 2. The obligation to report arises again if a person has additional reasonable grounds for the suspicion, even if the person has made a previous report with respect to the child;
  - b) then advise the Archbishop's Delegate that such a report has been made. He in turn will notify the Superior, if the respondent is a member of a Religious Order, and the Archbishop. In order not to interfere with the Children's Aid Society investigation he will not inform anyone else, but he will take action under article 10 above if the respondent is a member of the clergy, the Archdiocesan staff or a volunteer. This may also require notification to the Clergy Personnel Office and the preparation of a statement to the parish concerned.

14. Priests are reminded that the confessional seal is inviolable (canons 983,984) in any and all circumstances. What is revealed in confession is subject to the seal and cannot be revealed. What is revealed outside the confessional is subject to the Ontario *Child, Youth and Family Services Act*.

### **ADDITIONAL PROVISIONS**

15. After meeting with the respondent the Archbishop's Delegate will determine whether further action is warranted in respect of an allegation and report to the Archbishop, who retains final decision-making authority.
16. Where the respondent **admits** part or all of the allegation or indicates that the allegation will not be contested, in addition to steps possible under #10 above:
- a) The Archbishop's Delegate will, in the company of a witness, confirm such admission or non-contestation, preferably in writing.
  - b) The respondent may be referred immediately to a selected treatment facility for appropriate evaluation. The respondent will sign a release in the appropriate form so that a report given by the treatment centre will be delivered to the Archbishop, the Archbishop's Delegate, and the contents made known by the Archbishop's Delegate to the Review Board.
  - c) Where the evaluation recommends a program of treatment for the respondent, the Archbishop's Delegate will:
    - i) Refer the respondent to a treatment centre as recommended by the Review Board in order to begin the program of treatment when the respondent is a cleric over whom the Archbishop has jurisdiction;
    - ii) Refer the evaluation to the competent Superior for action, where the respondent is a member of a Religious Order
    - iii) Advise the respondent of the Review Board recommendation where the respondent is a lay person.
  - d) Successful completion of the program or programs of treatment will not automatically restore the respondent to the ministry or the employment where he or she was assigned.
  - e) Under the 2001 Apostolic Letter of Pope John Paul II, *Sacramentorum Sanctitatis Tutela*, modified May 21, 2010, by Pope Benedict XVI, certain cases of misconduct as outlined in Appendix 3, including sexual abuse of minors, must be referred to the Congregation for the Doctrine of the Faith in Rome for their examination and decision about the next canonical and pastoral steps.
17. Where the respondent **denies** the allegation and the Archbishop's Delegate in consultation with the Review Board has determined that further action is warranted in order to clarify the facts, in addition to the steps possible under #10 above it may be their recommendation to the Archbishop that he appoint an Investigator (canon 1717), perhaps

with one or two assessors to assist the Investigation (canon 1718). The Investigatory Hearing outlined in Appendix 4 may be used.

## **MISCELLANEOUS**

18. A written record will be kept in the curial archive of all steps taken from the moment the allegation is first received. The record is not to be destroyed at any time, even after the death of the respondent. The record is used to show that the Procedure was followed, that the complainant was treated fairly, and that the respondent's canonical rights were respected. Care is to be taken to protect the confidentiality of such documentation.
19. At no time should the Archbishop, his auxiliary bishops, the Archbishop's Delegate or any priest involved in this procedure hear the sacramental confession of a respondent or complainant.
20. A Review Board will be appointed by the Archbishop consisting of between six and eight persons for a renewable term of three years, and will include the following:
  - a) A psychiatrist or psychologist with appropriate clinical experience;
  - b) A person experienced in counseling victims;
  - c) Two or more parents;
  - d) A person with experience as a Child Protection Professional;
  - e) A priest with extensive parish experience;
21. The Archbishop's Delegate and the Review Board may at any time make use of such consultants as may be considered necessary, including medical doctors, psychologists, mental health professionals, canonists, Children's Aid workers, lawyers, or other professionals.
22. Where appropriate, the Archbishop's Delegate and the Review Board may recommend the re-employment of lay personnel or the return of a cleric or volunteer to the ministry. Such reinstatement will not be considered until any other recommended treatment or program has been sufficiently completed and evaluated. The Review Board will be convened by the Archbishop's Delegate, who will summarize the findings and recommendations in order to assist the Review Board.
23. All persons carrying out responsibilities under this Procedure, including the Archbishop's Delegate, will cooperate with civil authorities carrying out statutory responsibilities, including peace officers, subject to the inviolability of the sacramental seal (canons 983-984).

24. The Archdiocese will decide how best to assist the Catholic community affected by an allegation of misconduct against a cleric, staff or volunteer, up to and including a public statement, taking care, however, not to interfere with any civil investigation that is in progress.
25. When it has been determined that a priest or deacon who is not incardinated in the Archdiocese has been guilty of misconduct, the Archbishop's Delegate will immediately inform the cleric's Bishop or Superior. Similarly, if an accusation of misconduct is made against a priest or deacon of this Archdiocese who is on loan for ministry outside the Archdiocese of Toronto, then the Archbishop's Delegate will immediately inform the Bishop where the cleric is doing ministry.
26. No diocesan or religious priest will be accepted for ministry or residence in a parish in the Archdiocese of Toronto without full disclosure by his Bishop or Superior of any allegation of misconduct in the cleric's past.
27. The Archbishop's Delegate will inform any newly-appointed Archbishop of Toronto of all cases in the curial archive once the new Archbishop has been installed.
28. In the absence of the Archbishop's Delegate, or at his request, the Associate Delegate will act in his place.

## **APPENDIX 1 Allegations of abuse or misconduct made against Religious**

Upon receipt of a complaint from the Archbishop's Delegate regarding the conduct of a member of his or her Religious Institute, within 24 hours the Superior will:

- 1) Invoke the Religious Institute's own procedures for dealing with such matters;
- 2) Taking the place of the Archbishop's Delegate, utilize this Procedure; or
- 3) Consent to the application of this Procedure to the respondent by the Archbishop's Delegate in respect to the allegation;

and will advise the Archbishop's Delegate accordingly.

Where the Superior consents to the application of the Procedure under 3), the Archbishop's Delegate will be given immediate access to the files and archives of the Institute pertaining to the respondent and will report the outcome of the investigation to the Superior. The Archbishop's Delegate will answer such inquiries about the progress of the matter as the Superior may make from time to time.

Where the Superior proceeds under 1) or 2), the Superior or the Superior's delegate

- a) will answer such inquiries about the progress of the matter as the Archbishop's Delegate may make, and will report to the Archbishop's Delegate from time to time;
- b) will comply with the time-lines set by the Archbishop's Delegate and approved by the Archbishop.

If the Superior or his delegate fails to deal with the matter in a manner satisfactory to the Archbishop's Delegate, the Archbishop's Delegate may resume jurisdiction over the allegation if the Archbishop consents.

## **APPENDIX 2 – Contacting The Children's Aid Society**

There are nine Children's Aid Societies in the area served by the Archdiocese of Toronto and care should be taken to contact the appropriate agency, given the specific situation.

The Catholic Children's Aid Society of Toronto	416-395-1500
The Children's Aid Society of Toronto	416-924-4646
The Native Child and Family Services of Toronto	416-969-8510
The Jewish Child and Family Service of Toronto	416-638-7800
The Durham Children's Aid Society - 905-433-1551	(or from within the GTA 905-619-3930)
The York Region Children's Aid Society	905-895-2318 or 1-800-718-3850
Simcoe Muskoka Family Connections	705-726-6587 or 1-800-461-4236
The Children's Aid Society of the Region of Peel	905-363-6131 or 1-888-700-0996
Dufferin Child and Family Services	519-941-1530

### **APPENDIX 3 Allegations of abuse or misconduct requiring a report to the Holy See**

According to the norms issued by the Holy Father on April 30, 2001, and modified May 21, 2010, once sufficient evidence that an offence has been committed appears to have been collected in the preliminary investigation (canon 1717), in some cases the Bishop of a Diocese must report the offense to the Congregation for the Doctrine of the Faith for a decision regarding the next pastoral and canonical steps to be taken. This requirement applies to certain cases of offenses against the Sacraments, and to certain cases of immoral behaviour that are dealt with in this document of policy and procedures in cases of alleged abuse and misconduct. Those cases are:

- 1) The sacramental absolution of an accomplice in a sin against the sixth commandment. (canon 1378.1) [The sixth commandment encompasses sexual behaviour which the Catholic Church considers sinful.]
- 2) Solicitation to a sin against the sixth commandment during, on the occasion, or under the pretext of confession (can. 1387), if it is directed to sinning with the confessor himself.
- 3) Any sin against the sixth commandment committed by a cleric with a minor below the age of eighteen. A person who is developmentally disabled is equated to a minor in this case. [While in Ontario civil law a child is a minor until 16, the Church considers young people to be in need of special protection until 18.]
- 4) The acquisition, possession or distribution by whatever means or technology by a cleric of pornographic images of minors under the age of fourteen.

### **APPENDIX 4 – Procedure for Investigation of a Contested Allegation (canons 1717 ff)**

1. As noted in article 17, further investigation beyond the policy may be required. Upon appointment the Investigator will make arrangements for an investigatory hearing. The hearing will be conducted according to the regulation.
2. Following the investigatory hearing, the Investigator will prepare a written report for the Archbishop including reasons recommending that one or more of the following courses of action be implemented:
  - a. no further action be taken in respect of the allegation;
  - b. a strictly pastoral approach be adopted (canons 1718 and 1341);
  - c. where the Respondent is a pastor, the process for removal be initiated (canons 1740 ff.);
  - d. a canonical warning be given (canon 1339);
  - e. a canonical penal trial be initiated, which may or may not lead to dismissal from the clerical state (canon 1718);

- f. an administrative process be initiated (c. 1718);
  - g. a temporary or permanent sanction referred to in the Procedure (cf. #10, #16) be applied; and,
  - h. such further and other action as the Investigator may recommend.
3. In preparing the report of the Investigation to the Archbishop, the Investigator may use canonical and civil terminology in order to provide maximum clarity to his report. This will include describing whether the allegation is true or untrue using concepts such as: a serious suspicion (canon 1339), moral certainty (canon 1608), beyond a reasonable doubt, and the balance of probabilities.

The Investigator may recommend further actions to establish the facts.

The Investigator is also to report on whether or not the presence or absence of remorse on the respondent's part has been discerned, where appropriate.

4. The Investigator will deliver his report to the Archbishop and to the Archbishop's Delegate within 60 days of the date of his appointment. When circumstances warrant, the Archbishop may extend the time for the Investigation.
5. The Archbishop will consider the report of the Investigator in deciding the matters entrusted to him (canon 1718).
6. The acts of the investigation, and all those matters which preceded the investigation, are to be kept confidential, unless they are necessary for the penal process (canon 1719).
7. If the complainant or respondent incurs legal expenses during a contested investigation, the Archdiocese will pay such expenses, provided that:
- a. such legal and other expenses are reasonable in the opinion of the Archbishop's Delegate;
  - b. the Archbishop's Delegate was advised of the appointment of counsel prior to retainer and did not object; and
  - c. the Archbishop's Delegate was advised of the appointment of other experts prior to retainer and did not object.