



Archdiocese of Vancouver
ARCHBISHOP'S OFFICE

DECREE

By this Decree, I, J. Michael Miller, CSB, Archbishop of Vancouver, do hereby promulgate as Particular Law in the Archdiocese of Vancouver the document entitled *Policies and Procedures Regarding Allegations of Sexual Misconduct by Clerics* on the Solemnity of Saints Peter and Paul, June 29, 2013. The said Decree will take effect on July 30, 2013.

The contents of the said Policies and Procedures have been formulated in consultation with the Archdiocesan College of Consultors, the Archdiocesan Pastoral Council and the Archbishop's Advisory Committee on Sexual Abuse.

All clergy will be familiar with and bound by the said Policies and Procedures.

The said Policies and Procedures replace the Policy dated January 1994 and any subsequent revisions.

Given at the Chancery of the Archdiocese of Vancouver, in the City of Vancouver, British Columbia, Canada, on the Solemnity of Saints Peter and Paul, the Twenty-Ninth Day of June, in the Year of our Lord, Two Thousand and Thirteen.




Most Reverend J. Michael Miller, CSB
Archbishop of Vancouver


Reverend Bruce McAllister, JCL
Chancellor



ARCHDIOCESE OF VANCOUVER

Policies and Procedures Regarding Allegations of Sexual Misconduct by Clerics

June 29, 2013

INTRODUCTION

The Archdiocese of Vancouver is committed to both justice and compassion in dealing with the grave evil of sexual misconduct in the Church.

These revised Policies and Procedures address three elements of any incident involving clerical sexual misconduct. First, it provides for the safety and pastoral care of complainants, their families and the community at large. Second, it protects the rights of all the faithful as guaranteed by the Code of Canon Law,¹ the universal law of the Church. Third, it explains how the Archdiocese will deal with allegations without prejudice to the more formal processes defined in that Code.

The term ‘cleric’ in these Policies and Procedures refers to sacred ministers of the Catholic Church – bishops, priests and deacons² – whether incardinated in the Archdiocese of Vancouver³ or domiciled within it or temporarily exercising ministry within it.⁴

The process outlined in these Policies and Procedures has been designed to assist the Archbishop in dealing with these difficult situations.

¹ Cf. *Code of Canon Law*, cc. 96, 208ff.; CCEO for the Code of Eastern Catholic Churches.

² Cf. *Code of Canon Law*, c. 207 §1.

³ Cf. *Code of Canon Law*, c. 265ff.

⁴ Cf. *Code of Canon Law*, c. 271 §2-3.

ARTICLE 1

GENERAL PROVISIONS

- 1.1 Sexual misconduct is behaviour that interferes with the sexual integrity of a vulnerable group in society. Examples of sexual misconduct include fondling, inviting to touch or be touched in a sexually intimate way, intercourse, exhibitionism, grooming or involvement in prostitution or child pornography.
- 1.2 Sexual misconduct by a cleric with a minor⁵ or vulnerable adult occurs when the cleric manifests behaviour of a sexualized nature that betrays sacred trust, violates the ministerial role, and exploits those who are vulnerable in that relationship. This could include conduct of a criminal nature, conduct that is sexual harassment or viewing pornographic images of children. The procurement or distribution of pornography in any form whatsoever, involving children “under the age of fourteen for the purposes of sexual gratification,” is included in the more serious crime of the sexual misconduct of minors by clerics.⁶ Sexual misconduct also includes sexual exploitation which involves the taking of sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage a third party. It violates human dignity, clerical commitment, and the mission of the Church.
- 1.3 The Archdiocese will comply fully with all laws which require the reporting of allegations of sexual misconduct to civil authorities. The current applicable civil law is included as an appendix in these Policies and Procedures. However, it should be noted that canon law recognizes someone as a minor from the age of seven until eighteen years of age,⁷ although one under the age of seven, an ‘infant,’⁸ would also be classified as a minor for the purposes of the more serious crime of the sexual misconduct of a minor by a cleric.⁹

⁵ Under the Age of Majority Act in British Columbia, section 1(1), a person attains the age of majority on attaining the age of 19 years.

⁶ Benedict XVI, *Normae de gravioribus delictis* (21 May 2010), part I, art. 6, §1 2°, up-dating the norms of John Paul II, *Sacramentorum sanctitatis tutela* (30 April 2001).

⁷ Cf. *Code of Canon Law*, c. 97 §1.

⁸ Cf. *Code of Canon Law*, c. 97 §2.

⁹ Cf. *Normae de gravioribus delictis* (21 May 2010), part I, art 6 §1 1°. It does mean, however, that canonical prosecution of a cleric suspected or accused of such an action under Canadian civil law where the alleged victim was over 18 but under 19 years of age would be impossible, unless the sexual misconduct involved abuse of office in the sense of c. 1366 or of 1389 §1, solicitation in the confessional (cf. c. 1387), scandal after being warned to desist (cf. c. 1395 §1), even more so if there were violence or threats of violence (cf. c. 1395 §2). As far as other victims are concerned, someone who “habitually lacks the use of reason is to be considered equivalent to a minor” for the purposes of this more serious canonical crime (*Normae de gravioribus delictis*, part I, art 6 §1 1°).

- 1.4 Both in canon law¹⁰ and civil law, a person is presumed innocent until proven otherwise. Care must be taken to ensure that this principle is always observed, while carrying out thorough and careful inquiries.
- 1.5 The Archdiocese undertakes careful investigation of any allegation of clerical sexual misconduct in accordance with the procedures outlined in these Policies and Procedures.
- 1.6 The Archdiocese will listen attentively and sensitively to anyone alleging sexual misconduct committed by a cleric.
- 1.7 The Archdiocese will respond to the complainant's family, the community, and the cleric with appropriate pastoral care and in accordance with the procedures outlined in these Policies and Procedures.
- 1.8 The Archdiocese will endeavour to offer pastoral and psychological help to those who may be affected by the alleged sexual misconduct by a cleric of a minor or vulnerable adult. Its capacity to proceed canonically against a cleric in a case where the complainant was over eighteen but under nineteen is limited, as explained in 1.3 above.
- 1.9 The Archdiocese will ensure that its clerics have adequate information from competent professionals about the nature of sexual misconduct and the harm it causes. The Archdiocese will require careful screening of all Archdiocesan candidates for the priesthood and permanent diaconate and anyone seeking incardination into the Archdiocese. The Archdiocese will arrange for its clerics annual training about sexual misconduct and abuse.
- 1.10 The Code of Canon Law and the specific laws issued by Pope John Paul II¹¹ and by Pope Benedict XVI,¹² and any subsequent amendments or documents from the Holy See and the Canadian Conference of Catholic Bishops on clerical sexual misconduct, will guide Archdiocesan policy.

¹⁰ Cf. *Code of Canon Law*, cc. 220, 1717 §2, 1726.

¹¹ Cf. *Sacramentorum sanctitatis tutela*.

¹² Cf. *Normae de gravioribus delictis*.

ARTICLE 2

APPLICATION OF POLICIES AND PROCEDURES

2.1. All clerics in the Archdiocese will become familiar with these Policies and Procedures and be bound by it. A copy of these Policies and Procedures will be sent to every cleric incardinated, domiciled or temporarily working the Archdiocese and must be kept along with other Diocesan guidelines. All clerics are responsible for reviewing these Policies and Procedures on a yearly basis.

2.2. ***Relationship with Institutes of Consecrated Life, Societies of Apostolic Life, Personal Prelatures and other Dioceses***

The Archdiocese will require clerics of Institutes of Consecrated Life, Societies of Apostolic Life, Personal Prelatures and other Dioceses who work or who wish to work in the Archdiocese to agree in writing to the following:

- a) All clerics working in the Archdiocese and their superiors agree to abide by its policies and procedures relating to clerical sexual misconduct.
- b) When a cleric is presented for appointment in the Archdiocese, the Major Superior will certify that he is unaware of any sexual and moral misconduct in the cleric's background, especially anything which would render him unsuitable to work with minors or vulnerable adults.
- c) All clerics who are working pastorally in the Archdiocese, even without a formal appointment from the Archbishop, will likewise be subject to the procedures contained in these Policies and Procedures. The Archdiocese expects that all superiors of such Institutes, Societies, Personal Prelatures and other Dioceses who have clerics living in the Archdiocese of Vancouver, but who are not involved in the pastoral work of the Archdiocese and so are not normally subject to the jurisdiction of the Archbishop as such,¹³ will nevertheless ensure and require that those clerics accept and abide by the norms contained in these Policies and Procedures. In terms of these Policies and Procedures, the Archbishop's right to visit even an individual house of an Institute or Society in the Archdiocese "even in respect of religious discipline"¹⁴ should be recalled.

¹³ Cf. *Code of Canon Law*, cc. 609-613, 733-734, 738 §1-3.

¹⁴ Cf. *Code of Canon Law*, c. 628 §2.

- d) At the request of the Major Superior, the Archbishop may consent to the application of the community's own procedures for dealing with a specific allegation. In such cases, a report of the outcome will be made to the Archbishop, and the superior will answer any legitimate inquiries of the Archbishop or his Delegate.
- e) In the case of clerics of Institutes of Consecrated Life and of Societies of Apostolic Life subjected to allegations of sexual misconduct, the Archdiocese will normally expect the costs and expenses of caring for the complainants to be met by the respective Institute or Society.

2.3. *Clerics from Other Dioceses*

The Archdiocese will require any cleric from another Diocese seeking a pastoral appointment here to provide a letter from his proper Ordinary to certify that he is unaware of anything in the cleric's background which would render him unsuitable to work with minors or vulnerable adults. The same assurances will be sought from the cleric himself. The cleric must also obtain a criminal record check.

ARTICLE 3

SCREENING OF APPLICANTS FROM OUTSIDE THE ARCHDIOCESE

- 3.1 The Archdiocese will require written up-to-date confirmation from an Ordinary or Major Superior that the cleric does not have a history of allegations or admissions of any sexual misconduct, and specifically no history of any allegations or admissions of improper boundary violations with a minor or vulnerable adult.
- 3.2 The cleric is obligated to confirm in writing that he does not have any history of allegations or admissions of any misconduct with a minor or vulnerable adult.
- 3.3 The Archdiocese will conduct a search of its registry of allegations to confirm that the cleric has no history of any allegations or admissions of any improper boundary violations with a minor or vulnerable adult.
- 3.4 In the event that the cleric was the subject of an allegation of sexual misconduct, but a finding was made that the allegation had no air of truth and/or was frivolous and/or vexatious, the cleric may be accepted by the Archdiocese.
- 3.5 In the event that the cleric was the subject of an allegation, but all civil and criminal proceedings have finished with no finding of wrongdoing, and all investigations completed by the Archdiocese found insufficient evidence that the cleric committed the alleged sexual misconduct, the Archdiocese may consider the cleric for ministry, but shall consider whether any of the following may be necessary:
 - a) A limitation on the cleric's roles with children or other vulnerable persons;
 - b) An effective system of monitoring of the cleric's active ministry.

Any limitation on ministry would need to be issued by the Archbishop in the form of a decree, possibly imposing a penal precept on the cleric, which would require prior consultation of the Promoter of Justice.
- 3.6 Without complete documentation, judged by the Archdiocese to be satisfactory, no appointment will be made nor will any permission, even for temporary work in the Archdiocese, be granted.

- 3.7 Clergy should be aware that where the cleric functions as a counsellor or spiritual director with another, the relationship typically creates a dynamic characterized by an imbalance of power. The person so counselled or directed may have a particular vulnerability in such a relationship and so special care must be taken. The cleric is ultimately and especially responsible for managing and being vigilant to boundary issues in such situations.

ARTICLE 4

ASSISTANCE TO THOSE AFFECTED

4.1 *Commitment*

The Archdiocese is committed to the spiritual and pastoral support of victims, alleged victims, their families or other persons affected by an incident or allegation of the sexual misconduct of a minor by a cleric. The Archdiocese will also identify professional and other resources and make them available to those affected.

4.2 *Counselling Services*

The Archdiocese will ensure that a qualified counsellor is available to provide pastoral support to victims, alleged victims, their families or other persons affected by an incident or allegation of the sexual misconduct of a minor by a cleric.

4.3 *Victim Assistance Committee*

This Committee will ensure that individualized support is available to victims and alleged victims of sexual misconduct by a cleric and advise the Archbishop regarding the responsibilities of the Archdiocese in each case. Specifically canonical advice will be provided to the Archbishop by the Promoter of Justice or by another cleric with a licentiate or doctorate in canon law.

- a) ***Membership:*** The Victim Assistance Committee will consist of at least three persons: the Archbishop's Delegate, a cleric, and a person professionally qualified and experienced in the field of behavioural sciences (herein referred to as the "lay professional") and any other Church official as required. The lay professional at all times will be charged with an independent role of advocating and promoting through the Victim Assistance Committee the best interests of the victim or alleged victim or other person affected. The solicitor for the Archdiocese may, as required, attend and assist at any meetings of the Victim Assistance Committee.
- b) ***Officers:*** The Archbishop's Delegate will convene and chair the Committee.

- c) ***Relation to the Archbishop:*** The role of this Committee is consultative to the Archbishop. The Committee will assist the Archbishop, through his Delegate, by sharing their insights on whether a complaint has the semblance of truth. The Committee may make recommendations on how the Archbishop should respond to a specific complaint. The role of the Committee is to offer pastoral advice. It will be the duty of the Archbishop's Delegate and the Promoter of Justice to advise the Archbishop on the canonical aspects of the case.
- d) ***Payment of Counselling Fees:*** The Committee will consider each request for payment of counselling or treatment fees according to such Archdiocesan guidelines as may be established from time to time. The Archdiocese will pay for professional, certified counselling when appropriate.

4.2 ***Assistance to Minors or Vulnerable Adults***

A suitable representative of the Archdiocese will meet with the parents or guardians of the minor or vulnerable adult to offer appropriate spiritual and pastoral support and show care and concern for those involved. If such support is not desired, advice should be available to them as to where to obtain appropriate professional help for themselves and the minor or vulnerable adult.

Communication to the affected parishes will be prompt. Where possible, attempts will be made to keep parishes informed of steps taken by the Archdiocese to respond to allegations.

4.3 ***Providing Prompt Assistance***

Any and all assistance rendered to a complainant reflects the Church's pastoral compassion and concern. Those seeking such assistance must recognize that no admission of liability or responsibility or of an individual's guilt is conveyed by the readiness of the Archdiocese to provide professional or other compassionate help before the facts are adjudicated by a Church or civil process. Any actions taken by the Archdiocese in the course of its inquiries should not be construed as a "conviction" of the accused cleric.

- 4.4 During a canonical preliminary investigation of the sexual misconduct of a minor by a cleric,¹⁵ complainants and any witnesses to the alleged events are to have access to the cleric appointed by the Archbishop to conduct this investigation, in order to be able to provide evidence.

¹⁵ Cf. *Code of Canon Law*, c. 1717.

ARTICLE 5

INITIAL ASSESSMENT OF AN ALLEGATION

5.1 *Initial Assessment*

- a) The initial assessment of an allegation of sexual misconduct may be waived in cases where an accusation has come to the Archbishop's attention as a result of the filing of criminal charges.
- b) While such charges are pending, care will be exercised in any inquiries lest they create even the appearance of interference with civil law.
- c) In all cases of allegations which have "a semblance of truth" about them, provided these concern alleged victims not over eighteen years of age at the time of the alleged incident(s), a preliminary canonical investigation will be opened through a decree of the Archbishop.¹⁶ In given instances, this investigation may be suspended, by means of a further such decree, in accordance with the canonical procedures outlined below in Article 8.

5.2 *Appointment of Delegate and Deputy Delegate*

- a) The Archbishop will appoint a priest, hereafter described as the Archbishop's Delegate, to oversee these Policies and Procedures and to conduct the pastoral assessment of an allegation.
- b) The Archbishop will appoint another priest, called the Deputy Delegate, to act in all matters covered in these Policies and Procedures when the Delegate is unavailable or when the Archbishop so requests.
- c) The Delegate and/or the Deputy Delegate can be neither the Investigator nor the Promoter of Justice, whose specific roles under canon law cannot be impeded.

5.3 *Advisory Committee on Sexual Misconduct*

An Advisory Committee on Sexual Misconduct will be established to which, under the authority of the Archbishop's Delegate, is referred any issue of sexual misconduct or any allegation regarding sexual misconduct.

¹⁶ Cf. *Code of Canon Law*, c. 1717 §1.

- a) **Membership:** The Advisory Committee will consist of at least five persons: the Archbishop's Delegate, the Deputy Delegate, the Archdiocesan solicitor and a professional experienced in the treatment of those who have suffered from sexual misconduct.
- b) **Officers:** The Archbishop's Delegate will convene and chair the Committee. A qualified person, who need not be a member of the Committee, will act as secretary and maintain minutes.
- c) **Relation to Archbishop:** The role of this Committee is consultative to the Archbishop. In this capacity, the Committee will assist the Archbishop by carrying out its mandate, keeping the Archbishop informed and making recommendations to him.
- d) **Meetings:**
 - i) The Advisory Committee will meet as often as necessary to perform its duties. The members will take an oath of confidentiality and will not discuss the business of the Committee or information presented to it other than in the course of the exercise of their duties as members of the Committee.
 - ii) The Archbishop or other persons designated by him may attend meetings. Any other person may attend meetings only upon the invitation of or with the consent of the Committee, and subject to the requirement of confidentiality.
- e) **Director of Communications:** The Director of Communications will consult with the Archbishop and/or his Delegate and the Archdiocesan solicitor prior to making comments on behalf of the Archdiocese. He/she is responsible for communicating with parishes, the media and individuals, as required, to keep them apprised as to the Archdiocesan response to an allegation.

5.4 **Legal Counsel**

- a) The Archdiocesan solicitor will attend all meetings and sit as a member of the Advisory Committee in order to represent the interests of the Archdiocese of Vancouver, and to advise on civil law and possible litigation.
- b) Nothing in these Policies and Procedures will limit an individual's right to outside legal or canonical counsel.

- c) The Archdiocese will pay reasonable costs of the legal assistance for a cleric who is an incardinated cleric of the Archdiocese of Vancouver. If the accused cleric is incardinated in an Institute of Consecrated Life, a Society of Apostolic Life, a Personal Prelature or another diocese, but is working in, or domiciled in, the Archdiocese, it is expected that such costs and expenses will be paid by the Institute, Society, Personal Prelature or other Diocese concerned.
- d) The accused retains every right to choose other counsel, but in such cases the Archdiocese does not guarantee that it will be responsible for the resulting fees.
- e) The cleric's civil law counsel has the right to attend all meetings between any representative of the Archdiocese and the accused.
- f) If the cleric chooses a canonical advocate during the preliminary investigation, that advocate may attend any meetings between any representative of the Archdiocese and the accused cleric.
- g) No settlement reached as a result of an allegation of sexual misconduct shall contain a confidentiality provision, unless requested by the complainant.
- h) Under canon law, a person charged with a canonical crime must either choose an advocate of his own or, unless and until he does so, must be provided by the Archdiocese with an advocate. Such an advocate must have a licentiate or a doctorate in canon law and must be mandated by the cleric to act on his behalf.
- i) No accused cleric must ever be asked about anything that may have been said in the Sacrament of Confession.

5.5 ***Confidentiality and Disclosure of Information***

Information gathered in connection with the processes set forth in these Policies and Procedures will be kept confidential by the Delegate, with the exception of the following. He will:

- a) Disclose to the accused cleric all available information concerning the allegation, according to the prudent judgement of the Archbishop;
- b) Provide the person making the allegation with appropriate and timely information about the actions of the Archdiocese in response to the complaint;

- c) Provide all available information to the Archbishop, the Committee, the Investigator, the Promoter of Justice and other persons the Archbishop may designate;
- d) Provide all available information to the competent superior in connection with allegations about a cleric incardinated in an Institute of Consecrated Life, a Society of Apostolic Life, a Personal Prelature or another Diocese; and
- e) Disclose such information as is legally required.

5.6 ***Immediate Action by the Archbishop's Delegate***

- a) Upon receipt of the allegation, the Archbishop's Delegate will consult immediately the Archdiocesan solicitor for general advice with respect to any civil law reporting requirements related to sexual misconduct.
- b) The Archbishop's Delegate will also promptly do the following:
 - i) Report the allegation to the Archbishop or, in his absence, the Vicar General;
 - ii) Determine whether the safety of children requires the immediate withdrawal of the cleric from his ministerial assignment and promptly communicate a recommendation to the Archbishop or his Vicar General;
 - iii) Once the safety of a minor or vulnerable adult is judged to be at risk, it is mandatory to require a withdrawal from ministerial assignment for both individuals' protection; any such action will require, as a matter of validity,¹⁷ that the Archbishop consult the Promoter of Justice¹⁸ about the imposition of any or all of the restrictions provided for under c. 1722,¹⁹ although restrictions could be imposed initially under c. 223, which allows for the exercise of the rights of the faithful to be regulated by the Ordinary in view of the common good²⁰ in relation to alleged violations of the obligations of the cleric under c. 277 (unless he is a married permanent deacon); in either case, it would have to be imposed by decree of the Archbishop;²¹

¹⁷ Cf. *Code of Canon Law*, c. 127 §2 2°.

¹⁸ Cf. *Code of Canon Law*, c. 1722.

¹⁹ Cf. *Normae de gravioribus delictis*, art 19.

²⁰ Cf. *Code of Canon Law*, c. 223 §1-2.

²¹ Cf. *Code of Canon Law*, cc. 49-51.

- iv) Together with the Archdiocesan solicitor, meet with the accused cleric and inform him of the allegation, explaining to him in advance his right to outside legal and canonical counsel, and hear his explanation if one is offered; the accused cleric must not be put under oath, nor is he required to admit guilt;²² and
- v) Schedule and give effective notice of a meeting of the Committee to take place as promptly as possible.

5.7 *Role of the Advisory Committee on Sexual Misconduct*

- a) The Committee will assess whether an allegation that a cleric engaged in sexual misconduct has at least the appearance of truth. On the basis of its determination, the Committee will make recommendations to the Archbishop about the following:
 - i) If the cleric has already withdrawn from ministry pending the initial assessment, whether such withdrawal should continue; if the withdrawal should not continue, whether any restrictions should be agreed to by the cleric or imposed on him by the Archbishop as provided by canon law;
 - ii) If the cleric has not withdrawn from ministry, whether he should withdraw, whether he should continue in his assignment and, if so, whether any restrictions should be agreed to by the cleric or imposed on him by the Archbishop as provided by canon law;
 - iii) Whether the cleric, with his consent, should be referred to a competent professional or selected treatment centre for appropriate assessment. Such professionals should be instructed not to question a cleric about anything he or a penitent may have said in the Sacrament of Confession;
- b) It is essential that this Committee not confuse its role with that of the investigator of the canonical preliminary investigation. However, since it must be concerned with protecting minors and vulnerable adults from clerical sexual misconduct, its recommendations to the Archbishop are essential. In order to make such recommendations, it will use the criteria stated earlier in these Policies and Procedures; namely that, unless an allegation appears to be frivolous or vexatious, it would normally recommend to the Archbishop initially that restrictions be placed upon the ministry of the accused cleric.

²² Cf. *Code of Canon Law*, c. 1728 §2.

- c) Since *Normae de gravioribus delictis* (21 May 2010) make clear the possibility of imposing restrictions upon the accused cleric even during the preliminary canonical investigation,²³ this Committee should advise the Archbishop:
- i) As to the semblance of truth of the allegation: whether it appears very obviously well-founded *or* whether it appears frivolous or vexatious *or* whether, even if not so evident, there appears to have been an offence.
 - ii) As to the advisability of the cleric's ministry being restricted, in the interests of safeguarding others and/or of avoiding scandal. The Committee's opinion as to what should be done here will need to be submitted by the Archbishop to the Promoter of Justice, whose advice the Archbishop must seek before imposing restrictions by decree.²⁴
- d) If, in the light of their initial assessment, the Committee concludes that an offence of sexual misconduct appears to have occurred, they will provide a brief report to the Archbishop, stating their reasons for this conclusion. The Archbishop will then instruct his Delegate to inform the police of the allegation, if they have not yet been informed, and he will order a preliminary canonical investigation into the allegation, in accordance with Article 8 below.
- e) If the Committee concludes that the action does not constitute sexual, but is otherwise inappropriate, its report to the Archbishop will state the reasons for both conclusions. The Archbishop may consult the Promoter of Justice, to see whether he concurs with this conclusion from a canonical point of view. If it is concluded that nothing constituting sexual misconduct appears to have occurred, that there is thus no semblance of a crime under civil or canon law, but if it is further concluded that the cleric's behaviour is problematic, the Committee will act on the Archbishop's instructions regarding any professional help which may be deemed appropriate. Any measures which may involve restrictions being imposed upon the cleric's ministry, however, can only be undertaken after consultation with the Promoter of Justice.

²³ Cf. *Normae de gravioribus delictis*, art. 19.

²⁴ Cf. *Code of Canon Law*, c. 1722.

- f) If, in the light of their initial assessment, the Committee considers the allegation to be unsubstantiated, frivolous or vexatious, it will write a report to the Archbishop, stating the reasons which have led them to this conclusion, together with a recommendation that no further action be taken for this reason and that the file be closed with a declaration that the cleric was not involved in any wrongdoing. The Archbishop may decide to refer the allegation to the Promoter of Justice, to see whether he is of the same opinion, but it is expected that, in such a case, no more needs to be done.
- g) If the allegation has already become public, appropriate steps must be taken to repair damage done to the cleric's reputation.
- h) The Committee will provide advice to the Archbishop, if requested, concerning the possibility of a return to ministry for a cleric guilty of sexual misconduct.
- i) The Committee will recommend to the Archbishop, from time to time, any changes in these Policies and Procedures seen as necessary or desirable.

- 5.8 Nothing in these Policies and Procedures will limit or restrict in any way the application of canon law or the rights and protections guaranteed therein to both accuser and accused, particularly the right to due process, the right to one's reputation, and the right to be presumed innocent unless proven guilty.
- 5.9 If civil or criminal proceedings are taking place, canonical inquiry may be delayed until the matter has been resolved before the courts. See Article 8 below.
- 5.10 Regardless of the outcome of an allegation of sexual misconduct, a record of the allegation will be kept in the database/registry.

ARTICLE 6

REPORTING AN ALLEGATION

- 6.1 Allegations of sexual misconduct with a minor or a vulnerable adult against a cleric working in the Archdiocese of Vancouver are to be reported to the Archdiocese by telephoning, writing or by meeting in person with the Archbishop, his Delegate or the Promoter of Justice.
- 6.2 The Archdiocese will respond to all such complaints, no matter how they are received, by making reasonable inquiries. The Archbishop's Delegate will investigate the allegation carefully, and, if appropriate, with the assistance of the Advisory Committee.
- 6.3 To the extent possible, the person making the report should provide the Archbishop or Delegate with the name of the cleric who is the subject of the allegation, the name(s) of the complainant(s), an accurate description of the alleged misconduct, the relevant dates, times and circumstances in which the misconduct allegedly occurred, and the names, addresses and telephone numbers of other persons who may have knowledge of the alleged misconduct.
- 6.4 If the Archbishop or Delegate learns of an allegation through the media or in some other fashion, appropriate inquiries will proceed in substantially the same manner as for any other allegation subject to the provisions of 5.9 of these Policies and Procedures, including the opening by the Archbishop of a preliminary canonical investigation.
- 6.5 If the Advisory Committee, after making reasonable inquiries, considers that the complaint is frivolous or vexatious, meaning that there are no proofs to support the allegation, or if the evidence shows that the complaint has been made maliciously or in bad faith, the Archbishop, upon the recommendation of his Delegate, may decide not to take any further steps but will keep a record of the allegation. In deciding whether a complaint is frivolous or vexatious, the Delegate may consider:
 - a) The source of the allegation;
 - b) Its substance;
 - c) The circumstances; and
 - d) Whether there is any evidence to support the complaint.

If the Delegate is not conducting the inquiry personally, he will forward this information to the Investigator.

6.6 The Delegate, after receiving the recommendations of the Advisory Committee and of others who may be involved, will prepare a report of the inquiry and submit it to the Archbishop. Such a report will be included in the registry/database of complaints.

6.7 Having received the final report of his Delegate, the Archbishop then determines whether the case is one that is of the exclusive competence of the Congregation for the Doctrine of the Faith. If so, he will send the material to the Holy See, together with his *Votum* and his recommendation for further action. The recommendation could suggest an administrative penal process, a formal judicial process, the imposition of a life of prayer and penance, dismissal from the clerical state or some other appropriate canonical action.

6.8 ***Anonymous Complaints***

Anonymous complaints will be investigated by the Delegate and recorded on the registry/database of complaints. The investigation must be undertaken in a manner that respects the good name of the accused cleric. In such cases, the Delegate will report details of the allegations to the Advisory Committee at its next meeting, omitting the name of the accused cleric. Appropriate investigative analysis will be undertaken promptly. The Delegate will document all pertinent facts of the investigation. If reasonable inquiries find no grounds for the allegation, the record of the allegation will be closed with a note indicating there were no grounds.

6.9 If appropriate, and where circumstances so warrant, the Delegate may consult with the Archdiocesan solicitor, taking care not to mix canonical and civil procedures.

6.10 ***Reporting to Civil Authorities***

In British Columbia, any person who has reasonable grounds to believe anyone under the age of nineteen is in need of protection is legally required to report this to the civil authorities.

ARTICLE 7

SPECIFICALLY CANONICAL OBLIGATIONS

A statement on specifically canonical responsibilities follows:

- 7.1. When a complaint is received, which seems to have the “semblance of truth” about it,²⁵ the Archbishop will:
- a) Open a preliminary investigation under c. 1717 to investigate the complaint, the purpose of which is not to establish the guilt or innocence of the accused cleric, but to verify whether it appears that a canonical crime²⁶ has occurred²⁷ and, if so, whether this cleric, rather than anyone else or along with others, has a case to answer in its regard (an enquiry about “imputability of the offence”²⁸). This will involve the Archbishop in:
 - i) Issuing a decree, declaring that the Archdiocese is competent to handle this investigation on the basis of either the *forum delicti*,²⁹ when the alleged events occurred within the Archdiocese, or the *forum domicilii*,³⁰ where the cleric against whom the allegations are made is in fact domiciled within the Archdiocese. Should the complaint concern a cleric incardinated in the Archdiocese of Vancouver, but domiciled in another Diocese, and should it concern allegations about events none of which allegedly took place within the Archdiocese, then the Archdiocese would not be competent to conduct the preliminary investigation, under pain of nullity. In such a case, the Archbishop would either issue a decree, declaring the incompetence of Vancouver in the matter and recognizing another Diocese as competent to conduct the investigation either as the *forum delicti* or as the *forum domicilii* or both (where they coincided in fact) or, if it appeared that most potential evidence might be obtainable from the Archdiocese of Vancouver, write to the Diocesan bishop(s) of the Diocese(s) of delict and of domicile to ask those bishops to grant competence to Vancouver on that basis by themselves issuing valid decrees granting such competence. Otherwise, the Archdiocese could seek competence from the Apostolic Signatura.

²⁵ Cf. *Code of Canon Law*, c. 1717 §1.

²⁶ Here of the sexual abuse of a minor: cf. *Code of Canon Law*, c. 1395 §2.

²⁷ An enquiry about the “facts and circumstances”: cf. *Code of Canon Law*, c. 1717 §1.

²⁸ Cf. *Code of Canon Law*, c. 1717 §1.

²⁹ Cf. *Code of Canon Law*, c. 1412.

³⁰ Cf. *Code of Canon Law*, c. 1408.

- ii) Appointing by decree the Investigator, if Vancouver is competent by law or acquires competence, who must be a priest who is discrete and ideally should be a priest with a licentiate or a doctorate in canon law;
 - iii) Appointing by decree a priest notary, if Vancouver is competent by law or acquires competence, for the preliminary investigation.
 - iv) Notifying by letter the Promoter of Justice of the Archdiocese of the allegation and of the opening of the preliminary investigation, as well as of the decisions taken and of the appointments made.
 - v) Notifying by letter each member of the Archdiocesan body responsible for advising the Archbishop on cases and on allegations of clerical sexual misconduct of minors: the Advisory Committee.
 - vi) Writing to the cleric who is accused of having perpetrated (an) act(s) of sexual misconduct of a minor, to inform him that the preliminary investigation has been opened; a copy of the decrees mentioned above should be provided to this cleric.
- b) Consult the Promoter of Justice, by means of a formal letter, about the possible imposition of any or all of the restrictions upon the ministry of the cleric accused of possibly having perpetrated the sexual misconduct of a minor. This is necessary for the validity of the imposition of any restrictions under c. 1722 (and on each occasion for any subsequent amendment, whether of extension, reduction or removal of the restrictions).
- c) Impose, in the light of the animadversions of the Promoter of Justice, those restrictions which the Archbishop considers are warranted, by means of a formal decree, which should refer to the consultation of the Promoter of Justice, provide an outline of why the restrictions are needed and/or of why they (or some of them) are not being imposed, even more so where the advice of the Promoter of Justice is not followed.
- 7.2. Since the Church recognizes that the civil law has responsibilities in this area, the Archbishop will inform the police of any allegation made against the cleric, either directly or through the Delegate responsible for this. He will require the Delegate to confirm to him in writing the fact of the notification of the police and to provide him with a copy of the letter or other document from the police, confirming that they have been so informed.

- 7.3. Since the Church recognizes its serious pastoral responsibilities to the complainants of any alleged sexual misconduct by clerics, the Advisory Committee, the body responsible for advising the Archbishop on these matters, will be informed by him in writing of the allegations and they will proceed as specified above in these Policies and Procedures. This body, although it may include a canon lawyer, is not to include either the Investigator of the preliminary investigation under c. 1717 or the Promoter of Justice.
- 7.4. If the police authorities decide to pursue the allegations through their own inquiries and, in particular, if they decide to prosecute the accused cleric, the Archdiocese, in the case of the former, possibly, and in the case of the latter, more probably, may decide to suspend the preliminary investigation under c. 1717 “unless and until the outcome of those inquiries and/or prosecution is known.”
- a) If it is decided to suspend this canonical investigation, the Archbishop will issue a decree:
 - i) Ordering its suspension, but this decree should state that this is without prejudice to the possible resumption of the investigation at a future date;
 - ii) Stating the reasons for this decision (e.g., to avoid unnecessary duplication of interrogations of those involved and of work, to avoid impeding the police enquiries, where it is judged that this could be a reality in a given case); and
 - iii) Communicating a copy of this decree to the accused cleric.
 - b) If the civil criminal investigation concludes that there is no case to answer:
 - i) This should be communicated to the canonical Investigator and to the Promoter of Justice, together with any reasons which may be known or disclosed as to why this decision was taken;

- ii) The Archbishop or his Delegate will ask the Investigator and the Promoter of Justice, independently and in writing, for an opinion about the implications of this decision for the canonical inquiry. It should be noted that, while a civil inquiry will often be able to pursue inquiries more effectively than a canonical inquiry, which lacks powers of coercion and also means of investigation available to state authorities, at times a canonical offence may have been committed where no offence is foreseen in civil law or where it is decided for other reasons, such as the difficulties of obtaining a conviction, not to pursue a case against the accused cleric.
- iii) Where, in the light of the findings and of the decision of the civil authorities, the Investigator and Promoter of Justice consider that there is no basis for the allegation, the Investigator will issue a decree, closing the preliminary investigation. The Archbishop or his Delegate will issue a decree declaring either that no basis has been found for considering that a canonical crime has been committed or that no basis has been found for considering that the cleric accused was the perpetrator of a crime which seems to have been committed and that, therefore, the allegation levelled against the cleric is unfounded and that no further action is to be taken in its regard.
- iv) Where it is judged by the Investigator and by the Promoter of Justice that, despite the conclusions and decisions of the civil authorities, there may still be a canonical case to answer, at least in regard to some element(s) of the allegation, the Archbishop or his Delegate will issue a decree, ordering the resumption of the preliminary investigation into the allegations (or only into some of the allegations) declaring the accused cleric innocent of the others in this or in another decree.
- v) Where the civil authorities pursue the allegation and where they prosecute the accused cleric and where he is found guilty, the Archbishop will proceed as in iii) – iv) above in regard to those allegations which were not pursued or in relation to which the accused cleric was found innocent in the civil proceedings.
- vi) Once the Archbishop has decreed the resumption of the preliminary investigation, the Archbishop or his Delegate will issue a decree by which some or all of the documentation pertaining to the civil proceedings is formally declared to be part of the canonical preliminary investigation.

- vii) Where documentation from the civil proceedings is not made available, once the Archbishop has decreed the resumption of the preliminary investigation, the Investigator will proceed to obtain depositions from those concerned to provide canonical evidence of what has transpired.
- 7.5. Once the preliminary investigation is concluded, if there is no basis for believing either that no canonical crime was committed or, where the latter appears to have occurred, that the accused cleric was not the one responsible, the Archbishop will issue a decree declaring him innocent.
- 7.6. Where the preliminary investigation demonstrates that a canonical crime appears to have been committed and suggests that the accused cleric is the one (or one of those) with a case to answer, the Archbishop or his Delegate will transmit all of the *Acta* of the Preliminary Investigation to the Congregation for the Doctrine of the Faith,³¹ as the tribunal exclusively competent to handle more serious crimes, including the clerical sexual misconduct of minors,³² together with the *Votum* of the Investigator, any *Votum* of the Promoter of Justice and the Archbishop's or his Delegate's *Votum* on the case.
- 7.7. If a superior of an Institute of Consecrated Life, a Society of Apostolic Life, a Personal Prelature or another Diocese refuses or fails to open a preliminary investigation into an allegation of sexual misconduct of a minor by one of his incardinated clerics, domiciled or working in the Archdiocese of Vancouver at the time of the alleged events or at the time of the allegation, the Archbishop or his Delegate will refer the case to the Congregation for the Doctrine of the Faith, to ask them to order or themselves to conduct the preliminary investigation.³³
- 7.8. Where the Congregation for the Doctrine of the Faith opens a penal process, in the form of a judicial trial³⁴ or of an administrative penal process,³⁵ it may order that the first instance of a judicial trial or the first stages of an administrative penal process be conducted by the Archdiocese, in which case the Archdiocese will follow carefully all of the specific instructions it provides for this. At the end of this first instance or first stage, the Archdiocese will transmit all of the *Acta* to the Congregation for the Doctrine of the Faith for the second (and third) instances of the trial or for the remainder of the administrative penal process.³⁶

³¹ Cf. *Normae de gravioribus delictis*, art 16; cf. c. 1719; a copy of the *Acta* is to be kept in the secret archive of the Archdiocese.

³² Cf. *Normae de gravioribus delictis*, art 6, 8.

³³ Cf. *Normae de gravioribus delictis*, art 17.

³⁴ Cf. *Code of Canon Law*, c. 1721.

³⁵ Cf. *Code of Canon Law*, c. 1720.

³⁶ Cf. *Normae de gravioribus delictis*, art 26 §1.

THE CIVIL OBLIGATION TO REPORT SEXUAL MISCONDUCT

The duty to report is contained in Part 3, Division 1, Item 14, subsections 1 to 5 thereof, of the *Child, Family and Community Service Act*³⁷ which is quoted as follows:

- “14. (1) A person who has reason to believe that a child needs protection under section 13 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.”

A director means a person designated by the Minister under section 91.

In section 13 of the statute, “needs protection” is defined as follows:

- “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;

³⁷ Cf. *Child, Family and Community Service Act*, RSBC 1996, c. 46, 3.1.13: “When protection is needed” and 3.1.14: “Duty to report need for protection”.

- (1) 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.
- (1.1) For the purpose of subsection (1) (b) and (c) and section 14 (1) (a) but without limiting the meaning of 'sexually abused' or 'sexually exploited', a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,
 - (a) encouraged or helped to engage in prostitution, or
 - (b) coerced or inveigled into engaging in prostitution.
- (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 behaviour.”