

**Policy Regarding Allegations
of Serious Misconduct by Lay Persons**



Archdiocese
of Vancouver

July 31, 2013

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INTRODUCTION

The Archdiocese of Vancouver is committed to both justice and compassion in dealing with the serious misconduct of the lay faithful who work for or volunteer in the local Church.

This Policy aims to uphold the rights and dignity of the human person and provides for the safety and pastoral care of complainants, their families and the community at large. Complainants may include, but are not limited to, minors and vulnerable adults.

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

ARTICLE 1

GENERAL PROVISIONS

- 1.1 The Archdiocese undertakes to investigate carefully any allegation of serious misconduct by a lay person in accordance with the procedures outlined in this Policy.
- 1.2 The Archdiocese will comply fully with all laws which require the reporting to civil authorities of allegations of serious misconduct.
- 1.3 Nothing in this Policy will limit or restrict in any way the application of canon law or the rights and protections guaranteed to the complainant and the respondent, particularly the right to due process, the right to one's reputation, and the right to be presumed innocent unless proven guilty.

ARTICLE 2

DEFINITIONS

- 2.1. **Serious Misconduct** refers to different forms of misconduct including sexual abuse, physical abuse, financial abuse and other behaviours contrary to the norms of civil or criminal law. It is a form of exploitation which involves the taking advantage of another for one's own benefit, or for the benefit of anyone other than the one being exploited.

Examples of sexual misconduct may include touching or invitation to touch, fondling, exhibitionism, intercourse, involvement in prostitution or child pornography. It also includes grooming, that is the engaging in conduct designed to select and prepare potential victims to be taken advantage of.

Physical abuse refers to acts of violence or assault likely to result in physical harm. It may include bruising, burns, welts or fractures. Unreasonable force used to discipline a minor is physical abuse.

Financial abuse involves the misuse or theft of a complainant's money or property. It includes behaviours such as coercing, tricking or threatening the person out of money, property or possessions.

- 2.2. **Lay Person** refers to any Archdiocesan employee or volunteer, including employees and volunteers of parishes, and men and women belonging to Institutes of Consecrated life or Societies of Apostolic Life.
- 2.3. **Employee** refers to a lay person employed by the Archdiocese, its parishes, or by a man or woman belonging to Institutes of Consecrated life or Societies of Apostolic Life in its activities in the Archdiocese. Independent contractors or others are *not* employees.
- 2.4. **Volunteer** refers to a person who undertakes assignments of charity or service with the sanction and direction of the Archdiocese, clergy, staff or men and women belonging to Institutes of Consecrated life or Societies of Apostolic Life. A self-appointed person who operates without such a sanction or direction is not covered by this Policy.
- 2.5. **Minor** refers a person under the age of nineteen years.
- 2.6. **Vulnerable Adult** refers to an individual at least nineteen years of age who is susceptible to abuse or exploitation by virtue of his/her significant mental or physical impairment.

- 2.7. **Complainant** refers to a person who alleges having suffered as a result of serious misconduct by a lay person.
- 2.8. **Respondent** refers to a lay person alleged to have committed an act of serious misconduct.

ARTICLE 3

REPORTING SERIOUS MISCONDUCT

3.1 The Archdiocese's primary concern is for the care of the complainant and the prevention of any further serious misconduct. Recognizing that coming forward with an allegation of serious misconduct is difficult, the person who first hears the complaint will treat the complainant with respect and compassion.

3.2 ***Appointment of the Archbishop's Delegate***

The Archbishop will appoint an Archbishop's Delegate for Receiving Allegations of Serious Misconduct by Lay Persons (hereafter referred to as the "Archbishop's Delegate") to oversee this Policy and to conduct the assessment of an allegation.

A Deputy Delegate for Receiving Allegations of Serious Misconduct by Lay Persons (hereafter referred to as the "Deputy Delegate"), will be appointed to act in all matters covered in this Policy when the Archbishop's Delegate is unavailable or when the Archbishop so requests.

3.3 Allegations of serious misconduct against lay persons can be reported by telephoning, writing, or by meeting in person with the Archbishop's Delegate or Deputy Delegate. (Refer to Appendix I).

3.4 The person making the report should provide the Archbishop's Delegate with:

- a) The name of the respondent;
- b) The name of the complainant;
- c) A description of the alleged serious misconduct, the relevant date, time and circumstances in which the misconduct occurred; and
- d) The names of other persons who may have knowledge of the alleged serious misconduct.

3.5 ***Reporting to Civil Authorities***

Any person who has reasonable grounds to believe a minor is in need of protection is legally required to report this to the civil authorities. (Refer to Appendix II)

If the alleged victim is an adult, the Archbishop's Delegate will advise the alleged victim of the right to report their allegation to the police. (Refer to Section 5.4)

3.6 ***Newly Appointed Archbishop, Archbishop's Delegate or Deputy Delegate***

The Archbishop's Delegate will inform any newly appointed Archbishop of all cases of allegations, investigations and outcomes once the new Archbishop has been installed.

The Archbishop or the outgoing Archbishop's Delegate will inform any newly appointed Archbishop's Delegate or Deputy Delegate of all cases of allegations, investigations and outcomes.

ARTICLE 4

DEALING WITH AN ALLEGATION

4.1 *Advisory Committee on Serious Misconduct*

The Archbishop's Delegate will refer issues and allegations of serious misconduct to an Advisory Committee on Serious Misconduct, (hereafter referred to as the "Advisory Committee") set up under the Archbishop's direction.

- a) **Membership:** The Committee will be composed of at least five persons, including the Archbishop's Delegate, the Deputy Delegate, a person knowledgeable in canon law, the Archdiocesan solicitor and a professional experienced in the treatment of those who have suffered any form of abuse.
- b) **Officers:** The Archbishop or the Archbishop's Delegate will convene the Committee.
- c) **Relation to Archbishop:** The 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 Committee will meet as needed. The members will take an oath of confidentiality before their first meeting and will not discuss the business of the Committee or information presented to the Committee 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.

4.2 *Legal Counsel*

- a) The Archdiocesan solicitor will attend meetings and sit as a member of the Advisory Committee in order to represent the interests of the Archdiocese, and to advise on legal questions and possible litigation.

- b) Nothing in this Policy will limit a respondent's right to outside legal or canonical counsel. A respondent's counsel has the right to attend all meetings between any representative of the Archdiocese and the respondent.
- c) No settlement, reached as a result of an allegation of sexual misconduct, shall contain a confidentiality provision, unless requested by the complainant.

4.3 ***Disclosure of Information***

Information gathered in connection with the processes set forth in this Policy will be kept confidential by the Archbishop's Delegate, with the exception of the following:

- a) Disclosing to the respondent available information concerning the allegation, according to the prudent judgment of the Archbishop;
- b) Updating the complainant with appropriate and timely information about the actions of the Archdiocese in response to the allegation;
- c) Making available all information to the Archbishop, the Committee, and other persons the Archbishop may designate; and
- d) Disclosing of any information as is legally required.

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

Upon receipt of an allegation, the Archbishop's Delegate will:

- a) Assess the allegation by considering:
 - i) The source;
 - ii) The substance;
 - iii) The circumstances; and
 - iv) Whether there is evidence supporting it.
- b) Report the allegation to the Archbishop or, in his absence, the Vicar-General. If the Archbishop's Delegate, in consultation with Archbishop, concludes that there are no grounds to support the allegation or that there is evidence to show that the complaint has been made maliciously or in bad faith, or is frivolous and vexatious, the Archbishop's Delegate may choose not to take further steps;

- c) Determine whether the safety of minors or vulnerable adults requires the immediate removal of the respondent from his/her position and promptly communicate a recommendation to the Archbishop. A respondent will be given leave of absence immediately upon any allegation of sexual abuse until the matter is fully investigated. In such situations, it must be recognized that no admission of liability or responsibility or of an individual's guilt is conveyed by this action of the Archdiocese;
- d) Together with the Archdiocesan solicitor, meet with the respondent and inform him/her of the allegation, explaining to him/her in advance of his/her right to outside legal counsel, and hear any explanation if offered, although any information disclosed is not privileged;
- e) Schedule and give effective notice of a meeting of the Advisory Committee to take place as promptly as possible;
- f) Review the respondent's file, make appropriate inquiries about the allegation, and prepare a report of all available information for presentation to the Committee either orally or in writing at its meeting; and
- g) Write a report for the Archbishop as soon as practical after the first meeting.

4.5 ***Initial Assessment***

The initial assessment may be waived in cases where an accusation has come to the Archbishop's attention as a result of the filing of criminal charges.

4.6 ***Role of the Advisory Committee***

- a) The Committee will assess whether an allegation has at least the appearance of truth. On this basis, the Committee will make recommendations to the Archbishop about the following:
 - i) If the respondent has already withdrawn from his/her employment or volunteer position pending the initial assessment, whether such withdrawal should continue;
 - ii) If the respondent has not withdrawn from his/her employment or volunteer position, whether he/she should be required to withdraw or whether he/she should continue in his/her duties;
 - iii) Whether the file may be closed at this stage of the proceedings or held open pending action by public bodies, further inquiries by the Archbishop's Delegate, or further deliberation by the Committee;
 - iv) What further action is required if the respondent is deemed to have committed serious misconduct; and

- v) What further action is required if the respondent is not deemed to have committed serious misconduct but has acted inappropriately.
 - b) If the Committee determines the allegation to be unsubstantiated, it will recommend that inquiries be terminated, and close the file with a declaration that the respondent was not involved in any wrongdoing.
 - c) The Committee will provide advice as requested concerning the possibility of a return to employment or volunteer service upon the closure of a case.
 - d) The Committee will recommend to the Archbishop, from time to time, any changes in this Policy seen as necessary.
- 4.7 If civil or criminal proceedings are taking place, canonical inquiry may be delayed until the matter has been resolved before the courts in order to protect the legal rights of the respondent.
- 4.8 Regardless of the outcome of an allegation of serious misconduct, a record of every allegation and its findings will be kept.

ARTICLE 5

ASSISTANCE TO THOSE AFFECTED

5.1 *Archdiocesan Commitment*

The Archdiocese is committed to the pastoral support of complainants, their families and other persons affected by an alleged incident. The Archdiocese will also identify professional and other resources to support complainants and others. It will consider each request for payment of counseling or treatment fees.

5.2 *Complainant Assistance Committee*

The Complainant Assistance Committee will ensure that individualized support is available to complainants and advise the Archbishop regarding the responsibilities of the Archdiocese in each case.

- a) ***Membership:*** The Committee will consist of the Archbishop's Delegate or Deputy Delegate (Appendix I), a priest and a person professionally qualified and experienced in the field of behavioural sciences and any other official as required. The Archdiocesan solicitor may, as required, attend and assist at any meetings of this Committee.
- b) ***Responsibilities:***
 - i) The role of this Committee is consultative to the Archbishop.
 - ii) The Committee will recommend to the Archbishop, from time to time, any changes in this Policy seen as necessary.
 - iii) The Archbishop's Delegate will convene the Committee.

5.3 *Right of Confidentiality*

Respect for the complainant's right to privacy and confidentiality is to be scrupulously observed. However, this is necessarily limited when:

- a) A possible danger of self-harm by the complainant or any other person, not limited to suicide risk, is identified;
- b) A possible danger to others, not limited to on-going serious misconduct by the alleged perpetrator is identified;

- c) Any record of the allegation, including verbal conversations as recalled by the person receiving the allegation, are subpoenaed by a court of law; and/or
- d) The person receiving the allegation is required by civil or canon law to report the allegation to the appropriate authorities.

The person receiving the allegation should explain explicitly to a complainant his/her serious moral obligation to allow the offense to be reported to civil and ecclesial authorities, who can then take appropriate action to prevent further offences, maintain Church discipline, and work toward healing of all those affected.

5.4 ***Assistance to Minors or Vulnerable Adults***

If the complainant is a minor or vulnerable adult, a suitable representative of the Archdiocese will meet with the parents/guardians to offer appropriate professional and pastoral support. If such support is not desired, advice should be available to them about where to obtain appropriate professional help for the minor or vulnerable adult.

5.5 ***Assistance to Parishes***

The Archdiocese will make available a team or individual to assist a parish adversely affected by an allegation of serious misconduct with the aim of promoting healing and reconciliation within the community.

5.6 ***Basis for Providing Prompt Assistance***

Any and all assistance rendered to a complainant will be understood as reflecting the Church's pastoral compassion and concern. Those seeking such assistance must recognize that no admission of liability, responsibility or of an individual's guilt is conveyed by the readiness of the Archdiocese to provide professional or other assistance before the facts are adjudicated by the Church or a civil process.

ARTICLE 6

RETURN TO EMPLOYMENT OR VOLUNTEERING

The Archdiocese recognizes its grave responsibility to protect minors and vulnerable adults.

- 6.1 It will not permit any employee or volunteer to return to employment or volunteering if that individual has been convicted of, or has admitted to, sexual abuse of a child or vulnerable adult.
- 6.2 If the Committee determines any allegation to be unsubstantiated, it may recommend that that the respondent return to his/her position. If the allegation is public, reasonable and appropriate steps must be taken by the Archdiocese to attempt to repair any damage done to the respondent's reputation.
- 6.3 Any return to employment and/or volunteer service will be considered on a case by case basis for:
 - a) Serious misconduct, other than allegations of sexual abuse of a minor or vulnerable adult, where there was a conviction or admission to culpability; and
 - b) Cases where the result of an investigation into an allegation was inconclusive.
- 6.4 If there is doubt whether serious misconduct has occurred, the Archbishop, in consultation with the Advisory Committee, will determine if a return to employment or volunteer service is appropriate.

ARTICLE 7
COMMUNICATIONS

The Director of Communications will consult with the Archbishop and/or the Archbishop's Delegate prior to making any comment on behalf of the Archdiocese. The Director is responsible for communicating with parishes, the media and individuals, as required, to keep them apprised regarding the Archdiocesan response to any allegation of serious misconduct.

APPENDIX I

To report an abuse by a lay employee or volunteer, please contact:

Mr. James Borkowski

Archbishop's Delegate for Receiving Allegations of Serious Misconduct by Lay Persons

Telephone: 604 683 0281

Cell: 604 318 0876

E-mail: jcborkowski@rcav.org

If Mr. Borkowski is not available, please contact:

Ms. Sharon Goh

Deputy Delegate for Receiving Allegations of Serious Misconduct by Lay Persons

Telephone: 604 683 0281

Cell: 604 723 5998

Email: sgoh@rcav.org

To report child abuse to the Ministry of Children and Family Development, contact¹:

Helpline for Children

310-1234 (no area code needed)

Open Monday to Friday from 4:30 p.m. to 8:30 a.m., and all day Saturday, Sunday and on statutory holidays.

After Hours Line

For emergencies outside office hours:

- Vancouver, North Shore Richmond, call 604-660-4927;
- Lower Mainland, Burnaby, Delta, Maple Ridge, Langley, call 604-660-8180; and
- For the rest of the province, call toll-free 1-800-663-9122.

¹ http://www.mcf.gov.bc.ca/child_protection/reportabuse.htm

APPENDIX II

Definition of "Child"

The *Child, Family and Community Service Act*, Part 1.1

A "child" means a person under 19 years of age and includes a youth.

Obligation to Report to Ministry of Children and Family Development

The *Child, Family and Community Service Act*, Part 3, Division 1, states:

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.
- (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,

- (b) encouraged or helped to engage in prostitution, or
 - (c) 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.
- 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.”
 - (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.