

Diocese of Hearst-Moosonee

Protocol and Procedures for  
Cases of Alleged Abuse and Misconduct  
by Clergy

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## **Presentation**

This manual is greatly inspired by the document from the Archdiocese of Ottawa-Cornwall published in 2020.

It has been adapted to reflect the reality in the Diocese of Hearst-Moosonee.

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## Introduction

The Roman Catholic Diocese of Hearst-Moosonee 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 alleged abuser is a member of the clergy.

The protocol and procedures set out in this document provide for the just and timely resolution of complaints of abuse, sexual abuse, misconduct and sexual 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 Diocese is so strongly committed.

The Diocese will intervene effectively to stop acts of abuse and misconduct by clergy, employees or volunteers of the Diocese of Hearst-Moosonee and its parishes, 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, dignity and compassion. They will be welcomed, listened to and supported, including through the offer of therapeutic and psychological counseling and spiritual assistance.<sup>1</sup>

The Diocese will investigate all allegations of abuse or misconduct within its boundaries. The Bishop of Hearst-Moosonee exercises his canonical 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<sup>2</sup>.

The Diocese recognizes 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, Safe Environment (SE) will report the abuse immediately to the appropriate Children's Aid Society, who works with local law enforcement. Allegations involving minors are considered in article 2.2.

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<sup>1</sup> *Vos Estis*, a.5 §1

<sup>2</sup> *Canons 983-4 ; Vos estis a.3 §1*

Adult complainants of past or current 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<sup>3</sup> 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 Bishop's delegate will advise complainants of their right to approach the police or other civil authorities and will facilitate contact if needed.

This document reconciles the obligations of individuals and the Diocese under the laws of the Province of Ontario and of Canada with the requirements of the Code of Canon Law and the pastoral responsibilities. This protocol is an important part of the Safe Environment procedures of the Diocese of Hearst-Moosonee and applies specifically to cases of abuse and misconduct by members of the clergy.

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<sup>3</sup> Canon 220

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## Glossary

The following definitions have been revised from the CCCB document PROTECTION OF MINORS FROM SEXUAL ABUSE\*<sup>4</sup>. According to this document, they take into account the Criminal Code of Canada, Canon Law, information from the Holy See and the Department of Justice Canada, as well as the Guide to Terminology for the Protection of Children from Sexual Exploitation and Abuse, published by the Inter-Agency Working Group on the Sexual Exploitation of Children (2016) and the Glossary on Sexual Exploitation and Abuse published by the United Nations (2017).

The glossary has no legal effect and is intended only as a reference tool for this document. All terms and their definitions are to be interpreted only in the context of this document. If further clarification is required, the authoritative sources are the Criminal Code of Canada, provincial and territorial legislation and canon law

**Abuse:** Refers to sexual abuse of a minor by employees or volunteers who have received an official mandate from the bishop or parish priest.

Note: The word “abuse” has a broad meaning, which may also include physical, verbal, emotional or sexual behaviour (i) that causes a person to fear for his or her physical, psychological or emotional safety and well-being; (ii) which the alleged abuser knew or ought reasonably to have known would cause that person to fear for his or her physical, psychological and emotional safety and well-being. This behaviour may or may not be criminal in nature. A key factor in some forms of abuse is an imbalance of power, for example where the victim is exploited by a person in a position of authority, or where there is a significant age gap or economic asymmetry.

**Accused:** The one against whom an allegation is made.

**Acts (acta):** All the testimonies and documents provided for a decision to be rendered by the ecclesiastical court.

**Adult:** A person who has attained the age of eighteen (18) years or more.

**Advisory Committee:** Interdisciplinary volunteer board that advises the Bishop and ensures this protocol is followed throughout the life of a case (Annex 8).

**Age:** Canon 97, Code of Canon Law (1983), states: “§ 1. At the age of eighteen years a person is of full age; below this age he is a minor. § A minor, before the age of seven years, is called a child and is presumed not to be able to govern himself; at the age of seven years, he is presumed to have the use of reason.

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4 PROTECTION OF MINORS FROM SEXUAL ABUSE, A Call to the Catholic Faithful of Canada for Healing, Reconciliation and Transformation, CCCB, 2018, pp. 158-168

**Allegation:** The term ‘allegation’ means a complaint, not yet verified, which alleges or states that someone has committed an act of sexual assault against a minor or vulnerable adult. This term is used interchangeably and in conjunction with the term ‘complaint’.

**Bishop:** a member, established by divine institution, of the Church's hierarchy (superior to priests and deacons) in communion with the Pope and appointed by him for the government of the Church's faithful. In the context of this document, the "bishop" is the supreme authority in a diocese.

**Bishop's Delegate:** a person appointed by the Diocesan Bishop to receive allegations of sexual misconduct from volunteers and paid staff at both diocesan and parish level.

**Canon law:** Ecclesiastical law of the Roman Catholic Church and the Eastern Catholic Churches. The universal law applicable to Catholics is found in the Code of Canon Law (1983), the Code of Canons of the Eastern Churches (1990) and subsequent documents published by the Holy See. Particular law is that which applies to a particular territory, for example the legislation of the Canadian Conference of Catholic Bishops, applicable in Canada but elsewhere. A third type of canon law is called “proper law” and applies to individuals, regardless of where they may live. The most common example of proper law is the internal law governing institutes of consecrated life, societies of apostolic life and other groups that have similar internal legislation governing their life and ministry.

**Catholic Church in Canada:** A conventional term used to refer to the totality of the dioceses and eparchies (or “local churches”) of the Latin and Eastern Churches of Canada, which are autonomous and individually constituted as juridical persons under a bishop.

Note: There is no legal or theological entity called “Catholic Church in Canada” or “Canadian Catholic Church”.

**CCCB:** Canadian Conference of Catholic Bishops refers to the bishop's conference or episcopal conference of the Catholic Bishops in Canada.

**Child Pornography:** The definition of child pornography in the Criminal Code of Canada (R.S.C. 1985, c. C46, s. 163. 1) includes : (a) any photographic, film, video or other representation, whether or not made by mechanical or electronic means, of explicit sexual activity with a person under the age of eighteen years or represented as such; (b) any written material, representation or sound recording that advocates or counsels sexual activity with a person under the age of eighteen years (c) any written material the dominant characteristic of which is the description, for a sexual purpose, of sexual activity with a person under the age of 18 years; (d) any sound recording the dominant characteristic of which is the description, representation or simulation, for a sexual purpose, of sexual activity with a person under the age of 18 years.

**Child protection:** Measures taken to promote the well-being of children (i.e. the provision of safe and effective care) and to protect them from harm, abuse and maltreatment.

**Children:** In this document, a child is defined as a person under the age of seven. Note: The Ontario Child, Youth and Family Services Act (CYFSA), R.S.O. 1990, Chapter c. 11, s. 3, defines a “child” as a person under the age of eighteen, while the Canadian Youth Criminal Justice Act, 2002, c. 1, s. 2(1), defines a “child” as a person who is, or in the absence of evidence to the contrary, appears to be under the age of twelve.

**Church leaders:** This term is a shorthand for the phrase “bishops and major superiors and those who are equated with them in law”.

**Clergy<sup>5</sup>:** Clergy refers to bishops, priests, and deacons.

**Cleric:** a man who is an ordained minister. He may be a bishop, a priest, a clerical member of an Institute of Consecrated Life or Society of Apostolic Life, a transitional or permanent deacon. This person may or may not possess the faculties required to exercise a ministry within the Diocese of Hearst-Moosonee. For the purposes of this Code, this group includes seminarians and candidates for the permanent diaconate.

**Client:** a person who seeks spiritual guidance or any form of counselling from a priest or lay person appointed for this ministry.

**Complainant:** A person who raises an allegation.

**Conflict of interest:** A conflict of interest is a set of conditions in which judgement or decisions concerning a primary interest is unduly influenced by a secondary interest (personal or organizational benefit including financial gain, advancement, or other benefits to family, friends, or colleagues).

**Congregation for the Doctrine of the Faith (CDF):** The particular office within the Vatican which promotes and safeguards the doctrine on the faith and morals throughout the Catholic world. The resolution of certain grave delicts, such as sexual abuse of a minor by a cleric, are reserved to the CDF.

**Delegate/Bishop’s delegate<sup>6</sup>:** The person named by an Ordinary (the Bishop for the purpose of this protocol) to act on his behalf in relation to a specific issue. A person can be delegated for a particular case or for all cases relating to a specific issue.

**Deputy Delegate:** In the event that the delegate is unable, or unwilling, to serve in a particular case, the Bishop will appoint a deputy delegate for the management of a particular inquiry.

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<sup>5</sup> Cf. *Protecting Minors from Sexual Abuse*, “Clergy” p.147

<sup>6</sup> Cf. *Protecting Minors from Sexual Abuse*, “Delegate” p. 147



**Derogation:** A partial revocation of a law by a competent ecclesiastical legislator, usually in a particular case. For example, derogation from a canonical prescription (the equivalent of “statute of limitations”) so that a case can be heard by an ecclesiastical court even if the prescription period has expired. The law itself remains unchanged, but it is not applicable in the particular case under consideration.

**Dicastery:** the word “dicastery” refers to a service of the Roman Curia, including the Secretariat of State, Congregations, Tribunals, Councils and Offices.

**Diocesan Spokesperson:** A person appointed by the Bishop who is competent in media relations and who, on behalf of the Diocese, supplies information deemed to be accurate according to the information available to the public at appropriate times.

**Diocese:** the ecclesiastical entity established according to Canon 369 of the Code of Canon Law, and which for us is referred to as the Diocese of Hearst-Moosonee, which includes the civil territories of the Roman Catholic Episcopal CORPORATION OF THE DIOCESE OF HEARST as well as the Roman Catholic Episcopal CORPORATION OF THE DIOCESE OF MOOSONEE

**Domicile:** Domicile is acquired by residence in the territory of a parish or at least of a diocese, with the intention of remaining there definitively if nothing detracts from it, or prolonged for five full years (canon 102 §1).

**Employee:** Any person employed — under the labour law of the Province of Ontario — by a parish or the diocese, on a full-time or part-time basis, who receives a salary to perform a task or to support a parish or diocesan initiative.

**Faculties:** a canonical term for the permission granted by an ecclesiastical authority or by law itself to exercise a ministry or apostolate in the Diocese of Hearst-Moosonee.

**Formator:** A member of the teaching staff of a seminary or house of formation who prepares candidates for ordination or for the profession of the evangelical counsels by public vows approved by the Church.

**Guidelines:** the canonical norms established following an examination by the Congregation for the Doctrine of the Faith, which are intended to help and advise bishops and major superiors.

**Harassment:** any conduct through words, actions, gestures, videos, images or any other behaviour that creates or has the potential to create an intimidating and hostile work environment for an individual. The behaviour may be verbal, physical, psychological or sexual by a person who knows, or ought to know, that the action is offensive.

**Investigator:** One or more investigators may be appointed to assist the delegate or deputy delegate.

**Laity, lay:** the Christian faithful whose proper state is specifically secular and who, living in the world, participate in the mission of the Church, but have not been sacramentally ordained and do not belong to the religious state.

**Lay Employee:** A person who is not a member of the clergy or a religious and who is employed by the Diocese or a parish to perform specific duties on behalf of the Diocese or parish.

**Major Superior:** taken in a broad sense, this term refers to those who head an entire religious institute, or a province or part equivalent to a province, as well as those who exercise similar functions in ecclesial societies, associations and movements. Some major superiors are also ordinaries: for example, those who direct a priestly religious institute or a priestly society of apostolic life of pontifical right.

**Minor:** For the purposes of this protocol, individual under 18 years of age at the time of the offence. In the Canon Law of the Catholic Church, and in the Province of Ontario, a minor is one who has not completed the 18<sup>th</sup> year of age. According to the *Child, Youth and Family Services Act* of Ontario, 2017 all suspicions of the sexual abuse of a minor – under 16 years of age – must be reported forthwith to CAS along with the grounds for the suspicion. For the purpose of this protocol, suspicions of abuse of individuals under the age of 18 must be reported to the CAS.

**Misconduct:** Unacceptable or improper behaviour. Misconduct and sexual misconduct are herein referred to as “misconduct”.

**Notary:** According to canon law, an ecclesiastical notary can be defined as a person legitimately constituted by ecclesiastical authority to authenticate by his or her signature ecclesiastical documents.

**Obligation to Report:** In the context of this Protocol, all reasonable suspicions of abuse or misconduct must be reported to SE along with the grounds for suspicion (see 1.1). In Ontario, there is a legal obligation to report to a Children’s Aid Society a suspicion of abuse of a minor who is less than 16 years of age. For the purpose of this protocol, suspicions of abuse of individuals under the age of 18 must be reported to the CAS.

**Offence:** A crime which, according to canon law, is punishable by malice or negligence.

**Ordinary:** Roman Pontiff, diocesan bishops, those placed over some particular church or community equivalent to it, those who possess general ordinary executive power (vicar general, episcopal vicars), major superiors of clerical religious institutes of pontifical right, major superiors of clerical societies of apostolic life (canon 134 §1).

**Policy:** A course of action or principle of action, in the context of the protection of pastoral environments, adopted or proposed by a diocese or institute.

**Pornography:** any form of literature, photographs, audio, film, digital film or video, which depicts acts or poses of a sexual nature and which is intended to cause sexual arousal or gratification. The target audience may be children, minors, vulnerable adults or adults.

**Preliminary Investigation:** An investigation conducted directly by an ordinary or through his or her delegate, in response to information received regarding a possible crime (canonical crime) committed by a member of the Church staff.

**Protocol<sup>7</sup>:** The official procedure or system of rules governing the manner in which alleged and proven cases of sexual abuse of minors are addressed by Church leadership.

**Quasi-domicile:** Quasi-domicile is acquired by residence in the territory of a parish or at least of a diocese, with the intention of remaining there for at least three months if nothing detracts from this or extended in fact for three months (canon 102 §2).

**Recourse:** The act of submitting to a higher authority a request for review of an administrative decision of a lower authority. Recourse differs from an ‘appeal’, which follows a decision of a judicial or administrative tribunal.

**Religious:** Persons who, by professing the evangelical counsels (poverty, chastity, obedience) in public vows approved by the Church or other sacred commitments approved by the Church, are consecrated to God. This term is used interchangeably with the term “members of institutes” and in conjunction with it. By extension and depending on the context, this term also applies to members of other institutes, societies, associations and ecclesial movements.

**Religious institutes:** term used to designate institutes of consecrated life and societies of apostolic life (cf. canons 573-746), which profess the evangelical counsels and offer service within the Church. The term “congregation” is often used to describe these groups of people.

**Respondent:** a person who is alleged to have had committed, or to have committed, one or more acts of misconduct and who is called to respond to one or more allegations.

**Safe environment:** a safe environment that promotes human growth and full development. The goals of a safe and healthy environment are to respect and secure all individuals in any environment, especially where children, minors, vulnerable adults or ministerial staff are involved.

**Secular law:** refers to the federal, provincial and territorial laws of Canada; it differs from canon law.

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<sup>7</sup> Cf. *Protecting Minors from Sexual Abuse*, “Protocol” p. 150

**Sexual abuse (of a minor):** sexual abuse of a minor means any physical intrusion of a sexual nature committed against a minor by force, coercion or unequal relationship, or the threat of such intrusion.

Note: The term 'sexual abuse' has a broad meaning that includes several acts, including rape, sexual assault, sexual intercourse with a minor and sexual activity with a minor. Sexual penetration of a minor and sexual activity with a minor (relationship with a minor for sexual purposes) is prohibited. Ignorance of the age of the child is not a defence.

Although most forms of sexual abuse of a minor involve contact, sexual abuse of a minor can be committed without any physical contact (known as 'non-contact abuse'). Common examples of 'non-contact abuse' are sexual exploitation through pornography and sexual harassment, including verbal harassment such as unwanted sexual comments.

Regarding the use of the terms "abuse of a minor" or "sexual abuse of a child", the terms "minor" and "child" are often used interchangeably when referring to a person under the age of majority.

Sexual abuse of minors is the primary focus of this paper and includes any misconduct or act that is considered a sexual offence under the Criminal Code of Canada, the laws of the province or territory where the offence was committed, and canon law.

**Sexual assault:** Sexual activity with a non-consenting person. The term "sexual assault" is broader than "rape" because a) it can be committed by means other than force or violence, and b) it does not necessarily involve penetration. Common examples are acts of lust, indecent contact and indecent exposure.

**Sexual misconduct:** any inappropriate conduct, or sexual activity, by which a member of the ministerial staff takes advantage of a person under his or her direction to obtain sexual gratification, against the other person's will or even with his or her consent. Priests 'are bound to observe perfect and perpetual continence for the sake of the kingdom of heaven and are therefore bound to celibacy, which is a special gift of God, by which sacred ministers can more easily adhere to Christ with an undivided heart and can more freely dedicate themselves to the service of God and man' (canon 277 §1).

**Spiritual director/advisor:** a cleric or lay person appointed to support and help a person understand their relationship with God, the Church or the wider community.

**Statute of limitations:** under secular law, a prescribed period or time limit for reporting to civil authorities the sexual abuse of a minor or any other type of sexual assault.

Note: Under secular law in Canada, there is no statute of limitations for sexual abuse of a minor or any other type of sexual assault.

**Survivor:** in this document, this term refers to a person who has been sexually abused. This term is used interchangeably with the term "victim" and in conjunction with it.

Note: It should be noted that the term 'survivor' can mean many things given its complex nature. It should also be noted that just as some may reject the term 'victim', others may not recognise themselves in the term 'survivor'.

**Victim:** In the context of this document, ‘victim’ refers to a person who has been sexually abused. It is used interchangeably with and in conjunction with the term ‘survivor’.

**Volunteer:** a person who provides a service, ministry or apostolate at parish or diocesan level and is not paid for that service.

**Vulnerable adult:** A person defined as an adult by secular law, but who lacks the mental capacity of an adult or who, because of advanced age, physical illness, mental disorder or disability at the time of the alleged abuse, was or may have been unable to protect himself or herself from serious harm or exploitation. Accordingly, an adult who is habitually deprived of the use of reason is considered incapable of self-government and equivalent to a minor under canon law and for the purposes of this document.

**Vulnerable person:** a person of any age who could more easily be exploited by another person. Children, young people and some adults fall into this group of individuals. Some are physically or mentally disabled or emotionally vulnerable. Others may be socially isolated, materially or socially needy, unable to communicate adequately or even unable to speak the languages of our region. Others may live with fear, real or imagined, or be unduly impressed by people in authority. Others, such as immigrants and refugees, may be disadvantaged in many ways.

**Young people:** in this document, a young person is a person aged eight years and under eighteen years.

**Zero tolerance:** this term is used to make it clear that anyone who has sexually abused a minor will not remain in ministry.

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## Procedures

### 1 • Obligation to Report

1.1 It is important that all suspicion of abuse and misconduct be reported. All cases, however old, should be reported in order that healing may commence, and future incidents may be prevented. All clergy, employees and volunteers of the Diocese of Hearst-Moosonee who have reasonable grounds to suspect or who are informed of an allegation of abuse or misconduct by clergy, employees or volunteers of the Diocese have an obligation to report it to Safe Environment<sup>8</sup>.

Reports of abuse or misconduct by a member of the clergy, a person employed or a person volunteering with the Diocese or by any clergy or religious within the territory of the Diocese must be made to Safe Environment at Box 1330 Hearst, ON PoL 1No, 705-0362-4903 or [cceshm@gmail.com](mailto:cceshm@gmail.com) [Vos Estis, a.2§1] This is the public, stable and easily accessible place for submitting such allegations.

1.2 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 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 Bishop's delegate. We respect the complainant's right to privacy and confidentiality. Prejudice, retaliation and discrimination as a consequence of having submitted a report is prohibited<sup>9</sup>.

1.3 All members of the clergy (incardinated, ministering, or who ministered at a time relevant to an allegation), employees or volunteers, in the Diocese of Hearst-Moosonee who become aware of an actual or potential allegation of abuse or misconduct against themselves, must notify SE of the same together with any contact information the person may have for the complainant, investigating body or any other known intermediary. Such bare notice shall not constitute an admission of misconduct. The right to dispute or defend against the allegation is preserved unless expressly waived by the accused.

### 2 • Receiving an Allegation

2.1 SE will receive all initial reports of allegations using the medium the individual is comfortable with: phone, email or in person. The two parties will then determine together the best process to move forward.

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<sup>8</sup> The following are exempted from the obligation to report: priests regarding what is learned in the sacrament of Confession and those who have been consulted professionally to which there belongs the solicitor-client privilege of confidentiality.

<sup>9</sup> Those who knowingly make a false allegation may be subject to ecclesial penalties [c. 1390] and civil procedure.

- 2.2 Upon receiving an allegation of abuse of a minor, SE has a legal obligation to report it to the appropriate Children's Aid Society (CAS) (Appendix 1).
- 2.3 When a civil investigation has commenced the procedure outlined below shall be followed to the degree that the criminal or civil investigation permits. The Diocese will cooperate with CAS and police (Appendix 2) and not interfere with their investigation.
- 2.4 SE shall, as a matter of urgent priority, collect as many particulars as possible. All those involved in this process will guard confidentiality regarding the identity of the complainant, the alleged direct victim and the accused; though this might be difficult when the accused is removed from his function. Discretion is required to safeguard the privacy of the alleged victim and to protect the presumed innocence of the person accused.
- 2.5 If the complainant or the alleged direct victim is a minor then a parent or a legal guardian must be notified and kept informed unless, and upon the Diocesan solicitor's advice, there is an overriding reason not to do so.
- 2.6 SE shall confirm immediately, where possible in writing, to the complainant and the alleged direct victim the receipt of the allegation and notify them of the intention to implement this Protocol. They will receive a copy of this Protocol and be notified of their right to be instructed by legal counsel.
- 2.7 Third-party complainant: SE will contact the complainant immediately to verify the allegation. If the allegation concerns sexual abuse of a minor, SE will advise the complainant of their obligation to report the allegation to the appropriate Children's Aid Society (CAS) and will offer to assist in making contact with CAS. SE will also advise the complainant about their right to contact police and will offer support in helping to exercise that right.
- 2.8 Alleged Direct Victim: SE will attempt to contact the alleged victim in order to verify the allegation, including cases of anonymous allegations. If meeting personally with the alleged direct victim, the investigator should always be accompanied by another designated person. SE will advise the alleged direct victim of his/her right to contact police and will encourage the person to exercise that right, offering support if needed. At no time will the alleged direct victim be discouraged or impeded from reporting the allegation to the police.
- 2.9 If the Bishop receives information concerning abuse or misconduct from any source arising from actions within or outside the Diocese, he will advise SE as soon as possible.

2.10 SE will inform the delegate of the allegation, unless the allegation concerns the delegate or would be a conflict of interest for the delegate in which case SE will inform the deputy delegate who will then act as the delegate for this case.

### **3 • Reporting an Allegation to Others**

3.1 The Bishop's delegate verifies that SE has contacted the CAS if needed as per 2.2 above.

3.2 If the allegation is against a bishop or a cardinal, the Bishop's delegate will refer it to the appropriate authorities (see Appendix 3).

3.3 The Bishop's delegate will inform the Bishop of the allegation and SE will advise the diocesan insurers.

3.4 If the allegation is made against a religious, the Bishop's delegate will refer it immediately to the competent superior (Appendix 4). If the place where the events of the allegation occurred are outside the Diocese, the Bishop's delegate will refer it immediately to the Ordinary of the place (Appendix 5). If the allegation concerns a Catholic organization or institution that is distinct from the Diocese, the Bishop's delegate will refer it immediately to the authority of the organization or institution (Appendix 6). If a cleric is incardinated in another diocese, his ordinary must be made aware of the allegation and will be kept updated throughout the process.

3.5 To protect objectivity, any person involved in examining an allegation according to this protocol should not discuss matters beyond what is required with the complainant, the alleged direct victim or the accused during the investigation.

3.6 Any bishop or any priest involved in this protocol should not hear the sacramental confession of the complainant, the alleged direct victim or the accused.

### **4 • Caring for the victim**

4.1 The Diocese will welcome, listen attentively to and support alleged direct victims and their families and always treat them with dignity and respect<sup>10</sup>. This includes acknowledgement of an originating complaint given as soon as possible, no later than by the end of the following business day, and timely substantive communication thereafter.

4.2 The advisory committee may recommend that individualized support (including psychological counselling) be made available to a complainant, the alleged direct victim and also to the immediate family as required by each specific case<sup>11</sup>. Such

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<sup>10</sup> *Vos Estis, a.5 §1*

<sup>11</sup> *Vos Estis, a.5 §1*



support does not entail meetings with a minor who is a victim unless proper authorization is obtained from the parents or guardians and, if necessary or advisable, from the police or civil authorities.

- 4.3 The good name and privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected<sup>12</sup>.
- 4.4 As soon as an accused is placed on leave, the Bishop, or his representative, will make a pastoral visit to the parish community involved, or to the faith community or church institution where the accused has served. The advisory committee or delegate may make further proposals for the care of the affected community.

## 5 • The Investigation - Cleric

- 5.1 If the accused is not a cleric, then the Bishop's delegate will follow the procedure for non-clerics detailed in another document. In the case of a cleric the delegate will call a meeting of the Advisory Committee as quickly as possible, within seven business days.
- 5.2 The Advisory Committee may, when there is lack of matter to the complaint, advise the Bishop to stop the investigation until further matter is provided.
- 5.3 The Bishop, after being advised by the Advisory Committee, is to issue a decree opening a preliminary investigation according to canon 1717. One or more investigators will be duly appointed to investigate the allegation along with a notary.
- 5.4 The delegate shall notify immediately, where possible in writing, the accused of the receipt of an allegation and the intention to implement this protocol. The investigator shall ensure the accused is aware of their right to be instructed by legal counsel.
- 5.5 The Advisory Committee will advise the Bishop on limitations to be imposed on the accused and on any further action to be taken in order to protect the interests of all concerned. The Bishop will receive the advice and decide a course of action within the norms of canon law.
  - a) The accused may be placed on an immediate administrative leave.<sup>13</sup> If the cleric is employed by an outside organization, that organization will be informed of the suggested administrative leave.
  - b) An appropriate residence may be assigned pending the outcome of the investigation.

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<sup>12</sup> *Vos Estis*, a.5 §2

<sup>13</sup> *canon 1722, SST a. 19.*

- c) His faculties to preach may be removed (canon 764), and if he is a priest, the right to hear confession may also be removed (canon 974). He may be forbidden to 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 accused 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.

5.6 If the matter is being pursued by the CAS and/or the police and/or the courts, the Bishop suspends the investigation. The delegate maintains appropriate ongoing communication with the civil authorities until the latter have completed their work. The complainant, the alleged direct victim and the accused will be informed of the suspension. The delegate will ensure that a representative of the Diocese monitors and observes any criminal trial or civil action arising from the complaint. SE will provide full cooperation to civil authorities. Once civil matters are completed, the suspension of the investigation is lifted. The investigation will then proceed to 4.9 after seeking the records gathered by the civil authorities.

5.7 The Bishop, with the delegate, will brief the diocesan spokesperson who will appropriately advise the groups with whom the accused interacts: clergy, parish community, or others.

5.8 The investigator and a notary shall interview the concerned parties recording their response. They will also inquire into any other sources of information, including any information from civil investigations or court action.

5.9 The investigator will prepare a written report for the Bishop within 90 days. When circumstances warrant, the Bishop may extend the time for the investigation.

5.10 The report will be presented to the Advisory Committee including recommendations of the investigator for one or more of the following courses of action:

- a) no further action be taken in respect to the allegation;
- b) non-penal pastoral options be adopted (cc. 1718 and 1341);
- c) where the accused is a pastor, the process for removal be initiated (cc. 1740 - 1746);
- d) a canonical warning or rebuke be given (c. 1339);
- e) a canonical trial be initiated, which may or may not lead to dismissal from the clerical state (c. 1718);
- f) an administrative process be initiated (c. 1718);

- g) a temporary or permanent sanction referred to in the protocol be applied;
- and,
- h) any other action as the investigator may recommend.

5.11 The investigator may use canonical and civil terminology in order to provide maximum clarity in the report. This will include describing whether the allegation is true or untrue using concepts such as: a serious suspicion (c. 1339), moral certainty (c. 1608), beyond reasonable doubt, and the balance of probabilities. The investigator is also to report on whether or not the presence or absence of remorse on the accused's part has been discerned, where appropriate.

## **6 • Concluding Phase**

6.1 Certain cases of misconduct outlined in Appendix 7, including sexual abuse of minors must be referred to the Congregation for the Doctrine of the Faith for their examination and decision about the next canonical and pastoral steps.

6.2 If, as a result of an investigation, the advisory committee has grounds to believe that an offence has been committed, the advisory committee will make recommendations to the Bishop regarding commencing a judicial or administrative procedure. Based on the evidence from the investigation and the outcome of the procedure (judicial or administrative), the advisory committee may make further recommendations to the Bishop concerning treatment and future placement of the accused and ongoing care for the victim. In particular, no diocesan priest or deacon found guilty of sexual abuse or sexual assault will be transferred to another diocese for ministerial responsibility.

6.3 If, as a result of an investigation, the advisory committee concludes that no offence has been committed, the advisory committee will recommend to the Bishop that the case be closed. The delegate will inform, according to necessity, the complainant, the accused, and the diocesan spokesperson. In that result, every step possible will be taken to restore the good name of the accused and re-integrate him into ministry. If the accused has been put on a leave of absence, the accused is permitted to resume his duties.

6.4 In situations where the advisory committee can reach no conclusion, the delegate will advise the Bishop who will determine future action guided by the principles of risk reduction.

6.5 In all cases, the Diocese will inform all parties of the steps of the investigation underway and will not share information which might jeopardize the course of justice.

## **7 • Caring for the accused**

- 7.1 The accused is to benefit from the general presumption of innocence and the right to be heard. The fact that either formal or informal procedures have been initiated does not create an inference of guilt. The application of this Protocol will be such as to ensure that the good name of the accused is protected, noting that an allegation may be unfounded.
- 7.2 If the accused has died or is incapacitated at the time the allegation is received, or at any time thereafter, the delegate shall apprise his executor or personal representative, if there be one, of the complaint and continue the process. If there is no one willing or available to protect the rightful interest of the accused or his estate, the Bishop, in consultation with the diocesan solicitor, may appoint a suitable person for the limited purpose of ensuring a full and fair exposition of the facts and issues of the allegation and its resolution within the scope of this protocol.
- 7.3 As part of the right of defense the accused has the right to be notified of the allegation, the evidence, and to be given the opportunity for defense and to respond to the allegation.
- 7.4 The Bishop or the delegate will suggest a person who will offer fraternal support to the accused. This person should not, however, discuss the case with the accused, mindful that their conversations are not privileged. While on leave, an accused cleric is provided with material support in accordance with Canon Law and may be offered other types of therapeutic and pastoral assistance as reasonably requested.
- 7.5 The Bishop may take measures that he deems appropriate in order to protect the freedom of witnesses and safeguard the course of justice pending the outcome of the inquiry.
- 7.6 Should the accused choose to remove himself or herself from incardination or employment with the Diocese at any time during the process, the process will not be stopped; it will be pursued with the necessary modifications.

## **8 • Communicating with the Public**

- 8.1 The Diocese has a diocesan spokesperson, competent in media relations, who at appropriate times on behalf of the Diocese, supplies accurate information to the public regarding an allegation. This individual will be the only one designated to address the media.
- 8.2 Openness and trust with the media are based on the following principles:
- Acknowledging the right of the public to know what information of a general nature is available;

- Protecting the rights of the accused to a fair inquiry, and acknowledging presumed innocence and the right to one's reputation;
- Safeguarding the right to privacy of all parties, including the complainant and the accused;
- Safeguarding the right of the civil authorities to initiate legal proceedings;
- Showing special diligence in providing information to whatever parish community or church institution that may be involved.

## 9 • Other Matters

- 9.1 This Protocol is a public document and is compulsory reading for all those engaged in ministry, all employees and all volunteers within the Diocese of Hearst-Moosonee.
- 9.2 Should the victim choose to refuse to proceed any further with the investigation or allegation, it should be recorded accordingly, signed and dated with reason attached. A copy of the said document will be handed to him/her.
- 9.3 Should a victim seek a confidentiality agreement, it is to be absolutely clear that this would be entered into only at their request, with their being represented by independent legal counsel, and with the understanding that such an agreement in no way attempts to limit any rights of the victim flowing from criminal law.
- 9.4 SE will keep a written record of all allegations received, of meetings of the advisory committee and of the outcome of all proceedings. This record will be entered into the regular archdiocesan archives and kept indefinitely.
- 9.5 At least once a year, the Bishop will receive a report from the advisory committee which will, among other things, present a retrospective and prospective treatment of cases handled during the year. This treatment will include historical cases of sexual abuse that have been handled during the year by the delegate and by the advisory committee.
- 9.6 The delegate will meet as soon as possible with any diocesan administrator or newly appointed Bishop to inform him thoroughly of ongoing cases and to brief him on past cases.
- 9.7 Amendments to this Protocol may be proposed at any time by the advisory committee. They take effect only after approval by the Bishop. The Bishop will commission an independent audit of these guidelines and their implementation at least every five years. This audit will be entrusted to an accredited agency with the purpose of studying the effectiveness of the Diocesan Guidelines and recommending improvements as necessary. The delegate's records are to be made available to the auditing agency. The Bishop will make the results of the review available to the public if requested.

## Appendix 1 • Contacting Children’s Aid Society

Local agencies are designated as children’s aid societies for a specified territorial jurisdiction. The functions of a children’s aid society are to:

1. investigate allegations or evidence that children may be in need of protection;
2. protect children where necessary;
3. provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
4. provide care for children assigned or committed to its care;
5. supervise children assigned to its supervision;
6. place children for adoption; and
7. perform any other duties given to it.

List of CAS ([www.oacas.org](http://www.oacas.org) as per 02 March 2021)

Communities	First Nations Agencies	Non-Native Agencies
Aroland	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	Tikinagan Child and Family Services Sioux Lookout <b>807-737-3466</b>
Attawapiskat	Payukotayno James and Hudson Bay Family Services / Payukotayno familiaux de la baie James et de la baie d’Hudson Moosonee <b>1-888-298-2916</b>	
Chapleau	Kunuwanimano Child & Family Services Timmins <b>705-268-9033</b>	The Children’s Aid Society of the Districts of Sudbury and Manitoulin / La Société d’aide à l’enfance des districts de Sudbury et du Manitoulin  Sudbury <b>705-566-3113</b>
Cochrane	North Eastern Ontario Family and Children’s Services / Services à la famille et à l’enfance du Nord-Est de l’Ontario Timmins <b>705-360-7100</b>	North Eastern Ontario Family and Children’s Services / Services à la famille et à l’enfance du Nord-Est de l’Ontario Timmins <b>705-360-7100</b>
Eabametoong Fort Hope	Tikinagan Child and Family Services Sioux Lookout <b>807-737-3466</b>	
Fauquier		North Eastern Ontario Family and Children’s Services / Services à la famille et à l’enfance du Nord-Est de l’Ontario Timmins <b>705-360-7100</b>

<b>Communities</b>	<b>First Nations Agencies</b>	<b>Non-Native Agencies</b>
Foleyet		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>
Fort Albany	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	
Fort Severn	Tikinagan Child and Family Services Sioux Lookout <b>807-737-3466</b>	
Geraldton	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	The Children's Aid Society of the District of Thunder Bay Thunder Bay <b>1-800-465-3905</b>
Ginoongaming	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	
Gogama	Kunuwanimano Child & Family Services Timmins <b>705-268-9033</b>	The Children's Aid Society of the Districts of Sudbury and Manitoulin / La Société d'aide à l'enfance des districts de Sudbury et du Manitoulin Sudbury <b>705-566-3113</b>
Hearst	Kunuwanimano Child & Family Services Timmins 705-268-9033	North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>
Hornepayne	Kunuwanimano Child & Family Services Timmins <b>705-268-9033</b>	Children's Aid Society of Algoma / Société de l'aide à l'enfance d'Algoma Sault Ste. Marie <b>1-888-414-3571</b>
Kapuskasing		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>
Longlac	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	The Children's Aid Society of the District of Thunder Bay Thunder Bay <b>1-800-465-3905</b>
Long Lake #58	Dilico Anishinabeck Family Centre Thunder Bay <b>855- 623-8511</b>	
Mattice		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>
Moonbeam		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>

<b>Communities</b>	<b>First Nations Agencies</b>	<b>Non-Native Agencies</b>
Moosonee	Payukotayno James and Hudson Bay Family Services / Payukotayno familiaux de la baie James et de la baie d'Hudson Moosonee <b>1-888-298-2916</b>	
Nakina	Dilico Anishinabek Family Centre Thunder Bay <b>855- 623-8511</b>	The Children's Aid Society of the District of Thunder Bay Thunder Bay <b>1-800-465-3905</b>
Neskantaga Lansdowne House		Tikinagan Child and Family Services Sioux Lookout <b>807-737-3466</b>
Opasatika		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>
Pickle Lake	Tikinagan Child and Family Services Sioux Lookout <b>807-737-3466</b>	
Peawanuck	Payukotayno James and Hudson Bay Family Services / Payukotayno familiaux de la baie James et de la baie d'Hudson Moosonee <b>1-888-298-2916</b>	
Smooth Rock Falls		North Eastern Ontario Family and Children's Services / Services à la famille et à l'enfance du Nord-Est de l'Ontario Timmins <b>705-360-7100</b>



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## **Appendix 2 • Contacting the Police**

In case of emergency, call 9-1-1

To report abuse, contact local police at the coordinates below:

### **Ontario Provincial Police**

1-888-310-1122 | 1-888-310-1133 (TTY)

### **Nishnawbe Aski Police Service (NAPS)**

NORTHWEST REGION, SIOUX LOOKOUT

1-807-737-4045

NORTHEAST REGION, COCHRANE

1-705-272-5600

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### **Appendix 3 • Allegations made against a Bishop or a Cardinal**

Upon receipt of an allegation against the Bishop of Hearst-Moosonee, the delegate will inform the Holy See (papal representative or Secretariat of State) and the most senior suffragan bishop by promotion of the allegation and entrust the case to them to follow their process.<sup>14</sup>

Upon receipt of an allegation against another bishop, cardinal or papal representative, the delegate will inform the Holy See and the metropolitan where the person reported resides and entrust the case to them to follow their process.<sup>15</sup>

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*14. Vos estis aa.3 §3, 8 §2.*

*15. Vos estis aa.3 §3, 8 §1.*

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## Appendix 4 • Allegations made against a religious cleric

Upon receipt of an allegation the Bishop's delegate will inform the religious superior regarding the conduct of the member of his or her religious Institute.<sup>16</sup> The superior will, within 24 hours:

1. Apply the religious institute's own procedures for dealing with such matters; or
2. Take on the function of the Bishop's delegate and utilize this Protocol; or
3. Consent to the application of this Protocol to the accused by the Bishop's delegate.

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

- a) will keep the Bishop's delegate updated on the matter;
- b) will comply with the timelines set by the Bishop's delegate and approved by the Bishop.

Where the superior consents to the application of the Protocol under 3), the Bishop's delegate will be given immediate access to the files and archives of the institute pertaining to the accused and will report the outcome of the investigation to the superior. The Bishop's delegate will ensure the superior is kept informed on the progress of the investigation.

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

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<sup>16</sup>. *Vos Estis a.2 §3.*

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## Appendix 5 • Allegations which occurred outside the Diocese

Upon receipt of an allegation the Bishop's delegate will inform the Ordinary of the place of the alleged incident.<sup>17</sup> The bishop will, within 24 hours:

1. Apply the diocese's own procedures for dealing with such matters; or
2. Take on the function of the Bishop's delegate and utilize this Protocol; or
3. Consent to the application of this Protocol to the accused by the Bishop's delegate.

Where the bishop proceeds under 1) or 2), the bishop or his delegate:

- A) will keep the Bishop's delegate updated on the matter;
- b) will comply with the timelines set by the Bishop's delegate and approved by the Bishop.

Where the bishop consents to the application of the Protocol under 3), the Bishop's delegate will be given immediate access to the files and archives of the diocese pertaining to the accused and will report the outcome of the investigation to the bishop. The Bishop's delegate will ensure the bishop is kept informed on the progress of the investigation.

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

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<sup>17</sup>. *Vos Estis a.2 §3.*

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## **Appendix 6 • Allegations Concerning a Catholic Entity Distinct from the Diocese**

Upon receipt of an allegation that concerns a catholic organization or institution other than a parish or the Diocese, the Bishop's delegate will inform the chief authority of the catholic organization or institution of the place of the allegation.

The authority will, within 24 hours:

1. Apply the organization's or institution's own procedures for dealing with such matters; or
2. Take on the function of the Bishop's delegate and utilize this Protocol; or
3. Consent to the application of this Protocol to the accused by the Bishop's delegate.

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

- a) will keep the Bishop's delegate updated on the matter;
- b) will comply with the timelines set by the Bishop's delegate and approved by the Bishop.

Where the authority consents to the application of the Protocol under 3), the Bishop's delegate will be given immediate access to the files and archives of the organization or institute pertaining to the accused and will report the outcome of the investigation to the authority. The Bishop's delegate will ensure the authority is kept informed on the progress of the investigation.

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

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## Appendix 7 • Allegations Requiring a Report to the Holy See

Once the preliminary investigation is concluded, in some cases a diocesan bishop must report the complaint and associated file to a congregation in Rome for a decision regarding the next pastoral and canonical steps to be taken. This requirement applies to cases of offenses against the sacraments, and to certain cases of immoral behaviour that are dealt with in this protocol. Some of those cases are:

- a) 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. [The sixth commandment encompasses sexual behaviour which the Catholic Church considers sinful.] (SST a. 1 §1)
- b) The sacramental absolution of an accomplice in a sin against the sixth commandment (c. 1378 §1).
- c) Solicitation of a penitent to sin against the sixth commandment during, on the occasion, or under the pretext of confession (c. 1387).
- d) The acquisition, possession or distribution by whatever means or technology by a cleric of pornographic images of minors.

Canon law provides time limitations after which a cleric can no longer be subject to ecclesial penalty.

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## Appendix 8 • Advisory Committee

The advisory committee consists of an interdisciplinary body of at least 5 volunteers named by the Bishop. The principal duty of this committee is to ensure that this protocol is followed throughout the life of a case and that the procedure is prompt, reasonable and fair; to advise the delegate of his/her responsibilities in dealing with a case; to advise the Bishop on actions to take regarding the victim, the accused and the broader community affected by a case. Throughout the process the committee will cooperate with civil authorities, always respecting the rights of the victim and the accused.

Before sitting on this committee prospective members will have some experience related to their responsibilities. They are also sworn to confidentiality regarding the identity of complainants and accused.

All communication with the media during the process of investigation of an incident will be through the diocesan spokesperson or his/her delegate. No member of the committee will be allowed to speak to the media regarding a specific incident or regarding the committee's work.

Once a decision has been made as to guilt or innocence, the media spokesperson will be the Bishop of the Diocese of Hearst-Moosonee as the committee will no longer be acting in an advisory capacity.

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## Appendix 9 • Other documents

*NB: To be completed*

Notification of reception to the presumed victim

Names, events, victim, ages, circumstances, contacts (telephone, email, etc)

Notification of reception to the accused

Information gathering

Names of victim, offender, dates, contact person, steps completed and to completed, offer of services a.i. counselling,