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## DIOCESAN SEXUAL MISCONDUCT POLICY AND RELATED PROCEDURES

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## **(1) OPENING STATEMENT AND PURPOSE OF POLICY:**

The Church universal is the body of Christ. All members of the Church are called to live lives rooted in Christ, and to seek to grow together in love, thanksgiving, and service to God and neighbour, family, friend, stranger, and enemy. To be a Christian is to be part of a new creation, a new humanity guided and empowered by the Holy Spirit. This Anglican Diocese of Nova Scotia and Prince Edward Island (henceforward, “the Diocese”) and the people who comprise it, are members of the body of Christ, seeking to be part of this new creation, this new humanity, guided and empowered by the Holy Spirit and witnessing to this faith.

The Church acknowledges and rejoices that human sexual characteristics and sexuality are created by God and that human sexuality, as part of God’s creation, is good. This policy rests on

- (i) a belief in the fundamental dignity and beauty of humans as sexual beings, and affirms the sanctity of healthy sexual relationships that demonstrate love and respect for others and one’s self, and
- (ii) a belief that sexual misconduct harms, disrupts, and can destroy positive, healthy, loving sexual behaviours and relationships and that sexual misconduct is an affront to our understanding of personal dignity, freedom, respect and spiritual well-being.

The Diocese acknowledges that there are times when we as individuals and as a corporate body fall short of the calling to incarnate Jesus’s witness of love. The Diocese further recognizes and affirms that sexual misconduct has, does, and can harm individual members of the body of Christ and the Church as a whole.

The Church should be a place of trust, respect, and safety for all people. Sexual misconduct destroys these qualities and damages the witness of the Church. Such behaviour is unacceptable in this Diocese: it will not be tolerated. This Diocese is committed to being a holy institution that seeks to create and sustain an environment in which all people are treated with respect and dignity, and in which people are encouraged to voice their concerns about sexual misconduct. This Diocese recognizes and accepts its responsibility to take active measures designed, first and foremost, to protect the physical, emotional, and spiritual welfare of people who are involved in and with it or its parishes. Addressing sexual misconduct directly and unequivocally expresses this Diocese’s commitment to supporting, protecting and encouraging the flourishing of healthy, loving sexual behaviours and relationships.

The purpose of this policy and its related procedures is to give effect to this commitment specifically in relation to the risk of sexual misconduct that might be committed by persons, lay or clergy, who are involved with this Diocese in some way.

This policy, and related procedures, will seek to fulfill this commitment by

- (i) defining a range of forms of Sexual Misconduct that may be proscribed by morality, ethics, and law, or by a combination of these;

- (ii) identifying clearly the individuals and groups and the ministries to whom or which the Policy applies;
- (iii) articulating the principles and policies (i.e., statements of direction) that will underlie, guide, and shape any and all of the Diocese's specific measures to prevent and respond to the risk of sexual misconduct;
- (iv) outlining the specific procedures that will be followed in the implementation of these measures,
- (v) providing samples of forms, outlines of specific processes, and other relevant information so that the policy and its attendant procedures may be implemented.

## **(2) DEFINITIONS:**

**For the purposes of this policy, the terms below are defined as follows:**

**Allegation:** An Allegation is an assertion or claim that an individual or individuals under ecclesiastical jurisdiction has committed an act of sexual misconduct.

**Child/Youth:** The legal age of majority on Prince Edward Island is 18; the legal age of majority in Nova Scotia is 19. Therefore, for purposes of this policy, the definition of a child/youth will differ:

- In relation to individuals who reside on Prince Edward Island, a child/youth is someone who is under the age of 18.
- In relation to individuals who reside in Nova Scotia, a child/youth is someone who is under the age of 19.

**Civil Authorities:** The Civil Authorities include agencies of government, including, in particular, local, regional, or national police agencies/services, the Nova Scotia Department of Community Services, and the PRINCE EDWARD ISLAND Departments of Family and Human Services.

**Clergy/Cleric:** An individual who is an ordained member of the one of the orders of clergy (deacon, priest, bishop).

**Complaint:** A Complaint is an assertion, brought to the attention of parish or Diocesan authorities, that an individual or individuals under ecclesiastical jurisdiction has committed an act of sexual misconduct.

**Complainant:** A Complainant is the person who initiates a complaint of sexual misconduct.

**Consent:** Voluntary agreement to engage in sexual activity or conduct. Meaningful consent for sexual activity is not possible in a pastoral relationship. Consent is understood as non-coercive; therefore consent has not been given if an individual agrees to any sexual activity under threat, or if consent is obtained by fraud or through the undue influence of a person in a position of

power, trust or authority over that person. Children under the age of sixteen years cannot give consent except in limited circumstances between peers as set out in section 150.1 of the *Criminal Code of Canada*, 2019, as amended. There are further provisions regarding consent for mentally or physically disabled adults, and vulnerable children, adolescents and adults in the *Criminal Code*, 2019, as amended.

**Diocese/Diocesan:** Unless explicitly stated otherwise, all occurrences of the words “Diocese/diocese” or “Diocesan/diocesan” refer to the Diocese of Nova Scotia and Prince Edward Island of the Anglican Church of Canada.

**Disclosure:** A Disclosure is a statement made by an individual, providing information previously not revealed about an act or acts of sexual misconduct committed against that individual by someone under ecclesiastical jurisdiction.

**Duty of Care:** A requirement, based on the nature and character of the relationship between individuals or between an organization and an individual or individuals, that an individual and/or organization exercise watchfulness, attention, caution, and prudence and take reasonable, appropriate, and effective measures to protect and safeguard the well-being of the individuals owed the duty.

The specific **Standard of Care** that must be met in a particular situation will vary, depending on such factors as the nature and character of the relationship, the vulnerability of the individual owed the duty of care, and the nature and character of the situation and activities being undertaken.

**Ecclesiastical Jurisdiction/ Individual/Person/People under Ecclesiastical Jurisdiction:**

Ecclesiastical jurisdiction denotes the scope of authority of the diocesan Bishop(s). An individual under Ecclesiastical Jurisdiction is a person who may be directed by the diocesan Bishop(s) with respect to matters that fall within the scope of that authority and who is obligated under Canon Law to abide by the direction of the Bishop(s).

Individuals under the Ecclesiastical Jurisdiction of the Bishop(s) of Nova Scotia and PRINCE EDWARD ISLAND include the following:

- (i) Clerics/clergy ordained and/or licensed by the Bishop(s) of Nova Scotia and PRINCE EDWARD ISLAND to act on behalf of the Diocese, and
- (ii) all laypersons who are
  - i. Licensed by the Bishop(s) of Nova Scotia and PRINCE EDWARD ISLAND
  - ii. Wardens and other members of Parish Councils of the parishes of the Diocese of NSPRINCE EDWARD ISLAND
  - iii. Appointed, elected, or commissioned to an office, appointment, or responsibility in a parish of the Diocese or the Diocesan, Provincial, or the General Synod.

**Ministry/Ministries:** Any and all programs, services, and activities offered by a Parish or the Diocese.

**Pastoral Relationship:** A pastoral relationship is a relationship—carried out in the name of or on behalf of the Diocese, parish, or place of ministry, as the case may be—between a cleric or a lay employee or volunteer, and any person to whom that cleric or lay employee or volunteer provides pastoral counseling, pastoral care, spiritual direction, spiritual guidance, or from whom the cleric or lay employee or volunteer has received confession or confidential or privileged information.

**Report:** A Report is a statement made by an individual (or more than one), providing information about a particular situation in which an individual (or more than one) under ecclesiastical jurisdiction may have committed an act of sexual misconduct.

**Respondent:** For the purposes of this policy, the Respondent is the individual who is accused of sexual misconduct.

**Suspicion:** Suspicion is a state of mental uneasiness and uncertainty; a feeling, idea, or belief that someone under ecclesiastical jurisdiction has committed an act of sexual misconduct.

**Sexual Misconduct:** For the purposes of this policy, Sexual Misconduct includes actions or behaviour that may constitute Sexual Abuse, Sexual Assault, Sexual Offences, Sexual Harassment, Sexual Exploitation, and Sexual Immorality (which would fall under the Ecclesiastical Offence of Immorality, included in Diocesan Canon 30), as defined below.

**(1) Sexual Abuse:** A form or forms of Sexual Misconduct that, in this policy, is subsumed under the definition of Sexual Assault or Sexual Offences, as defined below.

**(2) Sexual Assault:** An intentional use of force or threat of use of force involving some form of sexual activity against another person without that other person's consent. For the purposes of this policy, Sexual Assault encompasses the meaning of sexual assault as defined in Section 265 and Sections 271-273.2 of the *Criminal Code of Canada, 2019*, as amended.

**(3) Sexual Exploitation:** Any form of sexual contact or invitation to sexual contact with another person by a person who is in a pastoral relationship with that other person, whether or not there is consent from the other person. This would include situations in which any person in a position of power, trust or authority over another takes advantage of that position for the purpose of securing one's own sexual gratification or gain.

Note: "Sexual Exploitation of a child" and "Sexual Exploitation of a person with a disability" are Sexual Offences under Part V of the *Criminal Code of Canada, 2019*, as amended and, for the purposes of this policy, are defined and fall under the "Sexual Offences" definition.

**(4) Sexual Harassment:** Sexual Harassment is a specific form of harassment. For the purposes of this policy Sexual Harassment means

- (i) vexatious conduct or a course of comment that is related to sex, sexual orientation, gender identity or gender expression [and] that is known or ought reasonably to be known as unwelcome;
- (ii) a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer, grant or deny a benefit or advancement to the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (iii) a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

Sexual Harassment includes behaviour that has the effect of undermining, coercing, intimidating, humiliating or demeaning an individual on the basis of sex, sexual orientation, gender identity or gender expression. Such behaviour may consist of a single incident or several incidents over a period of time. Sexual Harassment can occur in or outside the office or church building in person or by any other means but is not limited to a work-related activity. For greater clarity, examples of sexual harassment *may* include:

- threats or verbal abuse;
- unwelcome sexual remarks, jokes, innuendo or taunting about a person's body or sexual orientation;
- displaying sexist, pornographic or derogatory pictures;
- leering or other sexually offensive gestures;
- unnecessary physical contact, such as patting or pinching or brushing the body.

**(5) Sexual Offences:** For the purposes of this policy, Sexual Offences are those offences which are covered in Part V of the *Criminal Code of Canada, 2019*, as amended. These prohibited activities include, but are not limited to, such activities as incest, bestiality, voyeurism, publication of an intimate image without consent, corrupting morals and indecent acts. Sexual Offences also include, but are not limited to, sexual offences against children such as sexual interference, invitation to sexual touching, sexual exploitation, making sexually explicit material available to a child, corrupting children, luring a child, and the making, distribution and possession of child pornography.

**(6) Sexual Immorality:** For the purposes of this policy, Sexual Immorality is defined as sexualized behaviour that, without meaningful consent of a person with capacity to give consent, reduces another person to an object, makes them instrumental to one's own pleasure or purposes, denies or rejects their sexual or gender identity and expression, or that alienates them from or damages their relationship with another person, people, or with God; or that causes or facilitates another person to be reduced, objectified, made instrumental, denied or rejected, or alienated from relationships.

### **(3) APPLICATION**

(1) THIS POLICY APPLIES TO

- (i) all individuals, lay and clergy, who are under the ecclesiastical jurisdiction of the Bishop(s) of the Diocese, as outlined in the Definitions, Section 2, above, and to
- (ii) all Diocesan ministries, i.e., those programs, activities, and services (including management and administration of them) for, or over which, the Diocese has complete responsibility, authority, and control, and
- (iii) all Parish Ministries for, or over which, the Diocese has some responsibility, authority, and control, in particular ministries led or conducted by individuals licensed, appointed, or otherwise commissioned by the Bishop(s) of the Diocese of Nova Scotia and Prince Edward Island.

## **(4) PRINCIPLES and POLICY STATEMENTS**

**(1) Principle and Policy:** (Identity and purpose of the church community; belief in healthy sexuality, in trust, respect, and safety in ministries)

The Anglican Church in Nova Scotia and Prince Edward Island is a community of faith in Jesus Christ, whose members seek to root their individual and collective lives in Christ, and to live in conformity with his example and teachings, and to grow together in love, thanksgiving, and service to God, to one another, and to all humanity.

This community of faith proclaims that healthy, loving sexual relationships are a gift of God's grace, and seeks to promote, protect, encourage, and support such relationships. This community of faith believes that all its ministries\* should be places of trust, respect, and safety for all people and commits to continuously and continually working to make them safer.

Jesus Christ spoke about the dangers of compromising our witness and thereby harming others or causing them—especially vulnerable people—to struggle in their spiritual lives. In this Diocese, we recognize that people may be vulnerable for one or more of a variety of reasons, whether as a result of age, gender, differences of ability, power imbalances, or other factors, and we undertake in this policy and related procedures, to make the protection of vulnerable people from sexual misconduct our first priority.

**(2) Principle and Policy:** (Ethical, moral obligations, legal duty of care; recognition of sexual misconduct as harmful and injurious)

The Diocese, in the persons of the individuals and organizations who lead and direct it, recognizes and accepts

- i. that the Diocese has ongoing moral and ethical obligations, and a legal duty of care to take active measures to protect the people who participate in, or are served by, one or more of its ministries, from harm or injury that may come to them in the course of, or in relation to, that participation, and
- ii. that sexual misconduct\* is always a violation of the example and teaching of Christ, that it can cause serious harm and injury to people, and damage or destroy the witness of the church.

**(3) Principle and Policy:** (Expectation re high standards of conduct; meeting standard of care)

All persons, lay or clergy, who are under ecclesiastical jurisdiction and who act on behalf of or represent the Diocese in any of its ministries are expected to seek to live by and demonstrate the highest standards of conduct, that is, seeking to conform their behaviour with the example and teachings of Christ, and to meet the requisite standard of care in their relationships with all people—and in particular children, youth, and vulnerable adults—who participate in, or are served by Diocesan ministries. Sexual misconduct by any person in these circumstances will not be tolerated.

The Diocese commits to undertaking serious efforts to sensitize, inform, and educate all individuals under ecclesiastical jurisdiction about these standards of conduct and standards of care and, in relation to this policy in particular, about sexual misconduct, which breaches these standards.

**(4) Principle and Policy:** (Seeking to fulfill obligations through measures (including specific processes and procedures) taken to prevent and respond to sexual misconduct)

Given these ethical, moral, and legal obligations, the Diocese commits itself to taking active, appropriate, and effective measures (short-term, medium-term, and long-term) aimed at

- i. preventing sexual misconduct, as and where it can, and
- ii. responding quickly, fairly, and transparently – i.e., following clearly articulated and communicated processes – to allegations, reports, disclosures, or suspicions of sexual misconduct, and not hiding or covering up sexual misconduct).
  - a. committed by persons under ecclesiastical jurisdiction,
  - b. against a person or persons participating in or being served by a Diocesan ministry,
  - c. in the course of, or in relation to, a Diocesan ministry.

**(5) Principle and Policy:** (Recognition of higher standard of care in relation to children, youth, vulnerable adults, positions of trust)

The Diocese recognizes that the standard of care in the following situations is enhanced and more intense than in situations involving only adults:

- i. situations where vulnerable people\* participate in or are served by Diocesan ministries; and
- ii. situations in which individuals under the Diocese's jurisdiction are placed in positions of trust over anyone, whether they are identified as vulnerable or not.

The Diocese commits to making and keeping as its priority the identification, implementation, and ongoing evaluation of active, appropriate, and effective measures that seek to prevent and/or to respond quickly, fairly, transparently, and thoroughly to allegations, disclosures, reports, or suspicions of sexual misconduct in these situations.

**(6) Principle and Policy:** (Pastoral obligations re all parties; establishing priority for care)

The Diocese recognizes that it has pastoral obligations to care for all parties involved in an allegation of sexual misconduct, and it will seek to discharge them quickly, fairly, and transparently. The Diocese's actions must be directed

- i. first, to care for individuals who may have been harmed by sexual misconduct and for their families; and
  - ii. second, to act to protect any other people who may be at risk of being harmed by sexual misconduct in this situation or in relation to the individual(s) alleged to have committed the misconduct;
- and
- iii. third, to seek to assist individuals accused of sexual misconduct and their families.

**(7) Principle and Policy:** (Creation of avenues for reporting; all allegations, etc., to be followed up; quick, fair, transparent, and thorough response )

This Sexual Misconduct Policy is intended to be expansive, encompassing, aspirational and inclusive (rather than exclusive). As such, the Policy will create avenues through which individuals or parishes may report allegations, claims, complaints, disclosures, reports, or suspicions of sexual misconduct. Furthermore, the Diocese commits and undertakes to follow up quickly, fairly, transparently, and thoroughly in response to any and all such allegations brought to its attention. The specific procedures to be followed in particular kinds of situations will be both summarized and elaborated below, and the requisite information (e.g., terms of reference, forms, and other tools, etc.) will be included in Part II (Procedures) and Part III (Appendices) to this Policy. See below.

**(8) Principle and Policy:** (All people to be treated alike in relation to prevention and response measures)

The Diocese recognizes that any individual may be the victim or the perpetrator of sexual misconduct. No distinctions therefore will be made between people or groups (e.g., on the basis of gender, lay or clergy status, sexual orientation, etc.) in relation to any and all prevention and response measures established by the Diocese.

**(9) Principle and Policy:** (Characteristics of measures – sensitivity to trauma, presumption of innocence need to act quickly; confidentiality; natural justice)

In all measures—including investigative and disciplinary measures—it implements in relation to the response to allegations, disclosures, reports, or suspicions of sexual misconduct, the Diocese will seek to

- i. shape carefully its prevention and response measures, including pastoral care, investigative, and disciplinary measures, recognizing the trauma that may be suffered by a victim of sexual misconduct and seeking to be especially careful of, and responsive to, such trauma;
- ii. make explicit the recognition and seek to enshrine in procedures, the fact that an individual accused of sexual misconduct has the right to the presumption of innocence, pending the outcome of investigation of the matter;
- iii. act quickly to respond to allegations, disclosures, reports, and suspicions so as to alleviate the suffering of people who may have been harmed, but at the same time to act carefully in relation to people alleged to have committed acts of sexual misconduct, especially as their reputation and livelihood, at least, may be dramatically affected by such allegations;
- iv. maintain confidentiality of information in relation to both the individual alleging misconduct and the person alleged to have committed misconduct, as far as possible under the particular circumstances of the situation. The Diocese recognizes that it may have an ethical, moral, and/or legal obligation to disclose information to some individuals in the Diocese, to representatives of civil authorities,\* and possibly, to the public;
- v. shape, as far as it reasonably can, the measures that it will take in matters over which it has exclusive jurisdiction in accordance with the principles of natural justice, which require that
  - a. An individual must be fully apprised of the allegations or accusations made against him or her;
  - b. An individual must be given the opportunity to respond adequately to the allegations or accusations;
  - c. The person or persons making a decision about a complaint or allegation must act impartially and, preferably, will have no connection with either complainant or respondent.

**(10) Principle and Policy:** (Diocese may not have authority to act; may have to notify civil authority and leave investigation to them)

The Diocese recognizes and accepts that, in certain situations, in particular if the complainant is a child,\* youth,\* or vulnerable adult\* it may not have exclusive jurisdiction to act or, indeed, the jurisdiction to act at all—at least in the first instance. In such cases, the Diocese will (i) honour its obligations—under any and all applicable law, statutes, or regulations—to report complaints of sexual misconduct to the appropriate civil authorities,\* and (ii) to defer any internal investigation until the authorities have concluded theirs. Such situations include, but may not be limited to

- i. situations involving children or youth (where either or both the Complainant and Respondent are children or youth), and
- ii. situations involving adults who are vulnerable because of illness, impairment or disability or some other circumstance.

The Diocese commits itself—and requires that all individuals, lay or clergy, who represent and/or act on its behalf, in particular its leaders—to report any and all allegations, complaints, reports, disclosures, or suspicions of sexual misconduct to civil authorities, without investigation and without delay, when such reporting is required by law. In circumstances where reporting is not required by law, the Diocese will make decisions on a case-by-case basis, seeking to respect the desires of adult complainants, but recognizing that there may be circumstances in which reporting is morally, ethically, and/or legally required.