



**Protocol for Governance
in Cases of Allegations of Sexual Abuse
Against a Minor or a Vulnerable Adult
and Other Types of Sexual Misconduct**



June 13, 2021

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Objectives of the Present Protocol

The objectives of the present protocol are:

1. To assure the fullest possible protection of minor persons or vulnerable adults currently or potentially concerned in cases of sexual abuses.
2. To send out a clear message that this kind of behavior cannot be tolerated from anyone, least of all, from a bishop, a priest, a deacon, a pastoral associate.
3. To determine a plan of action which will allow to proceed quickly and efficaciously (in the case of an allegation of sexual abuse against a minor or vulnerable adults) while respecting all persons and organizations concerned.
4. To specify the task and responsibility incumbent on each person (victim, accused, delegate, Bishop or Diocese) in the search for the best practices to deal with allegations of sexual abuse and sexual misconduct towards a minor or a vulnerable adult.
5. To assure the alleged victim of the legal and psychological assistance needed for the situation.
6. To assure the alleged abuser of the legal and psychological assistance needed for the situation.
7. This protocol applies, in resumé, to any instance of sexual abuse of a minor or a vulnerable adult by a representative of a Church entity, that is to say all physical, verbal, emotional or sexual behavior: (i) that causes a person to fear for their physical, psychological or emotional safety and well-being; (ii) that the alleged perpetrator knew or should reasonably have known that he or she was thereby endangering the physical, psychological or emotional safety and well-being of that person. (Canadian Conference of Catholic Bishops (CCCB) *Protecting Minors from Sexual Abuse* (PMSA), 2018, 2.1).

Statement of Principles

- 1 - Sexual abuse (sexual aggression, sexual bullying or sexual misconduct), is not only a morally condemnable act but is also a criminal act.
- 2 - The perpetrator of sexual abuse is solely responsible for his acts; he or she must bear full responsibility and assume all of the consequences.
- 3 - The accused person is presumed innocent until proven to the contrary.
- 4 - The Diocese of Timmins does not intend to take the place of the civil law nor to become accomplice in a criminal situation. Consequently, the Church invites all people and particularly priests, deacons and pastoral associates who have been informed about or who have knowledge of a situation of sexual abuse or who have *reasonable grounds* to believe that a minor or vulnerable adult who needs protection, to assume their duty to report.
- 5 - The priest, the deacon or the pastoral associate must never drop a complaint concerning sexual abuse vis à vis a minor person, nor attempt to settle it amicably or cover up the situation. This complaint falls under the Children's Aid Society (C.A.S.) to whom it must be quickly referred for the protection of the minor.
- 6 - Both canonical and civil legislation will be respected in cases where the two systems are involved, by avoiding all undue interference.
- 7 - Faithful to her teaching and tradition of hate for the sin and love for the sinner, the Diocese of Timmins wants:
 - 7.1 To support the victim and their loved ones through attentive listening, adequate pastoral support and psychological support if necessary.
 - 7.2 To bring full collaboration to the personnel of C.A.S. if there were any suspicions of sexual abuse against a priest, deacon, pastoral worker.
 - 7.3 To ensure the rights of all are respected.
 - 7.4 To support in his (her) rehabilitation the person found to be guilty or repair as far as possible any damage to the reputation if the allegation turns out to be unfounded.

- 8 - With concern for working to establish a world of justice, genuine love and respect, the Diocese of Timmins wants:
- 8.1 To continue its efforts to put into place, within its organization, measures aimed at preventing sexual abuse against minor persons.
 - 8.2 To train its priests, deacons and pastoral workers to detect the first manifestations.
 - 8.3 To work in concert with local organizations to help people affected by the consequences of sexual abuse.

Definitions

***Advisory Committee:**

A group of people appointed by the Bishop to deal with matters relating to allegations of sexual abuse or misconduct, by priests, deacons, pastoral associates or other mandated persons in the Diocese of Timmins.

***Child:**

A male or female person who has not yet reached the age of eighteen (18) years, (Pope Francis, *Vos estis lux mundi*, 3, n.1, & 2 a) or considered as such by the law.

***Delegate:**

A priest or a person appointed by the Bishop to represent him in matters relating to allegations of sexual abuse.

***Pastoral Associate:**

For purposes of the present document, this is a non-ordained person, mandated by the Bishop for a pastoral ministry in the Diocese.

***Spokesperson:**

A person responsible for media relations on matters relating to allegation of sexual abuse.

***Resource Person:**

A person, not a member of the advisory committee, who is charged with acting on behalf of and in the name of the advisory committee, by virtue of a specific expertise.

***Sexual abuse:**

This term covers any contact or interaction between an adult and a minor or a vulnerable adult who serves as the object of sexual gratification for the adult. A minor is a victim of sexual abuse regardless of whether or not he or she was apparently coerced into participating, whether or not there was physical or genital contact, whether the activity was initiated or not by her, whether or not the activity had apparently harmful effects.

Sexual abuse is any physical, verbal, emotional, sexually motivated behavior that causes a person to fear for their safety and physical, psychological or emotional well-being from an alleged abuser who knew or should reasonably have known that “it thus undermined the safety and physical, psychological or emotional well-being of that person” (CCCB, *Protecting Minors from Sexual Abuse (PMSA)*, 2018, 21).

Here is a list of some acts that can be qualified as sexual abuse (Congregation for the Doctrine of the Faith, *Vademecum on some procedural points in the treatment of cases of sexual abuse of minors committed by clerics 2020: VM, 22*):

- 1) Sexual relationships with a minor with or without consent (rape);
- 2) Physical contact with a sexual ulterior motive;
- 3) Exhibitionism by masturbation or otherwise;
- 4) Incitement to prostitution;
- 5) Conversations or advances of a sexual nature, even on social networks;
- 6) Production, exhibition, possession or distribution of child pornography, even by computer;
- 7) Incitement of a minor or vulnerable person recruited to participate in pornographic acts (Pope Francis, *Vos estis lux mundi*, 2019, 1a.3)

Can. 1398

§ 1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he:

1° commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection;

2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated;

3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

§ 2. A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits an offence mentioned in § 1 or in can. 1395 § 3 is to be punished according to the provision of can. 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.

***Sexual Harassment**

Shocking and humiliating behaviors based on the sex of the victim as well as behaviors of a sexual nature that contribute to making the workplace intimidating, hostile or “unliveable” or which could reasonably give the impression that the person has to comply with sexual activity to keep a job or get a job. These may include asking questions and having discussions about a person’s sex life, insisting on dating after a refusal, or writing sexually-oriented messages or notes. Sexual harassment often occurs in workplaces where there is an imbalance of power between the protagonists.

***Substitute/Assistant**

A priest, deacon or a lay person appointed by the Bishop to replace his delegate in matters of sexual abuse, when the latter is absent or unable to act.

***Victim:**

A minor or vulnerable adult who alleges to have been sexually abused by a priest, deacon, pastoral worker or an adult who was abused while he or she was a child or in a situation of economic or psychological weakness.

***Vulnerable person:**

A person susceptible to being injured, assaulted. A person in a weakened physical or mental state whose ability to defend himself or herself is limited. A person in fear for their physical, psychological or emotional safety and well-being. A person under the responsibility of another person.

Sources

1. *Code of Canon Law* (CIC) of 1983. Book VI *Reform on the Penal Sanctions in the Church* on 2021.
2. Canadian Conference of Catholic Bishops (CCCCB), *Protecting Minors from Sexual Abuse* (PMSA), CCCC Publications, Ottawa. 2018.
3. Congregation for the Doctrine of the Faith, *Vademecum on some procedural points in the treatment of cases of sexual abuse of minors committed by clerics*. (VM), July 16, 2020.
4. The Standards on Crimes Reserved for the Congregation for the Doctrine of the Faith of 2010, published by the motu proprio of John Paul II, *Sacramentorum Sanctitatis Tutela* (SST) and amended by the *Rescripta ex Audientia* of 3 and 6 December 2019;
5. Pope Francis, the motu proprio *Vos Estis lux mundi* (VELM) of 2019.

ABBREVIATIONS USED

c.:	Canon
cc.:	Canons
CCCCB:	Canadian Conference of Catholic Bishops
ACBO:	Assembly of Catholic Bishops of Ontario
R.S.O.	Revised Statutes of Ontario
C.A.S.	Children's Aid Society

Preliminary considerations

1. Responsibility of the Bishop, appointment of a Delegate and establishment of an Advisory Committee

- 1.1 To preserve his freedom of judgment, decision and action, the Bishop authorizes one of his priests (apart from the Vicar General) or a competent lay person to intervene in situations of allegations of sexual abuse of minors or vulnerable adults. This person will then act as his Delegate¹.
- 1.2 The Bishop designates a substitute person, the Deputy Delegate to replace the Delegate when the latter is unable to intervene.
- 1.3 The Bishop forms an Advisory Committee of at least three people to advise the Delegate on these matters. This committee will be under the responsibility of the Delegate. Each member of this committee contributes to the fulfillment of the Committee's mandate, which is to help the Delegate respond as quickly as possible to allegations of sexual abuse and misconduct (see Appendix A). Members will receive an official mandate from the Bishop to serve on this Committee. The terms of office will be for three (3) years and renewable.
- 1.4 The Bishop designates a person to deal with the media: the Spokesperson.
- 1.5 The Bishop informs all the priests, deacons and pastoral associates about the existence of this committee.
- 1.6 He makes public his contact details as well as the contact details of the Delegate, Deputy Delegate and Advisory Committee to allow any alleged victim to more easily report any incident of sexual abuse and sexual misconduct towards a minor or vulnerable adult.
- 1.7 The Bishop establishes collaborative relationships with people, organizations and resources who deal with sexual abusers of minors and vulnerable adults.
- 1.8 He pays particular pastoral attention to the environment affected by allegations of sexual abuse or sexual misconduct.
- 1.9 He studies the means to improve, if necessary, the selection and accompaniment of pastoral workers and candidates for ordained or instituted ministries (acolyte and lector).

2. The Delegate, the Depute Delegate and the Advisory Committee

Assisted by his Deputy and his Committee, the Delegate must ensure in the event of allegations of sexual abuse committed by a priest, a deacon or a person appointed in pastoral ministry:

- 2.1 that all parties are treated with respect, care, compassion, without prejudice, that is, with transparency and respect for the presumption of innocence and for the fundamental rights of everyone to a good reputation.
 - 2.2 That a fraternal welcome in the Church and attentive listening be accessible to each victim of sexual abuse. The Delegate reminds the victim of his or her right to report sexual abuse or sexual misconduct to the police and of his own obligation to do so if the complainant is still a minor.
 - 2.3 That individualized support be provided to any minor or vulnerable adult who is allegedly the victim of sexual abuse by a priest, deacon or a person appointed in pastoral care, as soon as the investigation carried out by the competent civil authorities has concluded that it is a well-founded allegation. The support does not imply, at this stage, any admission as to be guilt of the accused.
 - 2.4 That the accused person will be received and helped fraternally in the Church. If necessary, he or she will have access to an independent canonical counselor and to psychological support.
 - 2.5 That the diocese has valid insurance coverage regarding its civil liability in this matter.
 - 2.6 That permanent registers be maintained at the Diocesan Centre, never to be destroyed, of all allegations of sexual abuse and misconduct filed against any member of the staff of the Diocese, including the clergy, those in charge of pastoral ministry, paid employees.
3. **Confidentiality:** As far as possible and according to the requirements of the laws in force, maximum confidentiality must be observed; confidential files, members of the advisory committee under professional secrecy, meeting reports preserving identity, etc. ...
 4. **Conflicts of interest and right of recourse:**
 - 4.1 When a situation of sexual abuse is declared, the Delegate must ensure to have sufficient physical and emotional distance from the people involved to properly deal with the situation. If not, the Delegate will provide to hand it over to someone else who is empowered to do so. This person can come from another Diocese. In

the absence of the Delegate, the Depute Delegate replaces him. Both may also intervene together depending on the circumstances.

- 4.2 The Bishop or his Delegate offers the possibility of an accompanying person (priest or lay person) to the individual subject to the complaint, to assist the latter throughout the steps involved in the legal procedure undertaken and other procedures (financial power of attorney, CAS, psychological assessment, detention center, contracts with the family, etc.).
- 4.3 The Bishop and the Vicar General must preserve their decision-making role and their right to resort to canonical sanctions. To this end, they cannot hear the confession of a person who is the subject of a complaint. They cannot intervene with victims without the approval of their legal advisor.
- 4.4 To avoid any ambiguity, as soon as a problematic situation is declared, it is ensured that the lawyer of the Diocese is distinct from the lawyer of the person who is the subject of the complaint.

5 Reimbursement of costs:

- 5.1 The Delegate ensures that the costs are forwarded to whom it may concern and centralizes the invoices if necessary.
- 5.2 Depending on the situation, the Delegate ensures that the person who is the subject of the complaint is made responsible by assuming the costs paid, in whole or in part.
- 5.3 If the pecuniary resources of the person complained of are insufficient, the Episcopal Corporation may grant him a loan with specific repayment terms which will be established in each case.

6 The withdrawal of the person who is the subject of the complaint and his return to the ministry:

- 6.1 This question is delicate and requires great discernment. The advisory committee will discuss this matter and make its recommendations.
- 6.2 The Bishop may ask for professional evaluations and opinions that may answer certain questions.

2. – Procedure for allegations of sexual abuse first reported to the Diocese

1. Step 1 – Reporting by the victim

- 1.1 This situation may have been reported directly to the Bishop’s Delegate or to the Bishop himself by the victim, his family, friends, his parish priest, his parish, or by the person complained of. The Delegate and the Bishop must never drop a complaint that falls under the Child, Youth and Family Services (C.Y.F.S.), nor attempt to come to an amicable agreement; and this even if the C.Y.F.S., the police or the media are not yet made aware of the complaint.
- 1.2 Any report that has reached the Bishop or any other diocesan authority directly will be forwarded to the Delegate as soon as possible for ad hoc follow-up of the report (Cf. PMSA,).

2. Step 2 – Reception of the complaint

- 2.1 The Bishop’s Delegate meets the complainant as soon as possible, if necessary with another person from the Advisory Committee, preferably a woman in certain cases; he ensures the seriousness of the complaint and the credibility of the complainant – a brief investigation may be necessary -; he neither accepts nor withholds any material evidence (letters, photos, etc.).
- 2.2 The Delegate must ensure that there are reasonable grounds within the meaning of section 72 (LRO 1990. Chapter C11, updated in 2017, section 125) of the *Child and Family Services Act*. (See Annex C).
- 2.3 The Delegate informs the complainant of the following actions:
 - 2.3.1 The person who is the subject of the complaint will be met (3) and listened to with attention and respect:
 - 2.3.2 The complaint will be studied by the advisory committee (4);
 - 2.3.3 If we find reasonable cause, we will be obliged to report it to the C.A.S. (5).
- 2.4 Where applicable, the complainant is informed by the delegated person of his personal obligation to report the complaint and he is invited to sign a document to this effect.

2.5 The Delegate opens a file, notes the chronology of events and draws up the minutes of the meeting.

3. Step 3 – Information to the Diocesan Bishop and /or the competent religious superior:

The Delegate informs the Diocesan Bishop, and if necessary, the competent superior. This is an information stage only, not a decision.

4. Step 4 – Meeting with the person subject to the complaint:

4.1 As soon as possible, the Bishop’s Delegate meets with the person who is the subject of the complaint, unless circumstances make such a meeting inappropriate.

4.2 Objectives of the meeting with the ‘alleged’ person:

4.2.1 Transmit the complaint to the person complained of;

4.2.2 Ensure that his rights are respected (good reputation, defense, etc.);

4.2.3 Offer the needed help (psychological, legal, material, pastoral, etc...):

4.2.4 Inform him or her of the Bishop’s obligations regarding reporting to C.A.S. and the nature of this report;

4.2.5 Inform him or her of the process to be followed;

4.2.6 Prohibit him or her from all contact with the complainant, the alleged victim and his or her family;

4.2.7 Invite him, **if necessary**, to withdraw from the ministry if he is an ordained minister or let him know that such a decision can be made.

4.3 The delegated person draws up the minutes of the meeting.

4.4 The Diocesan Bishop is informed.

4.5 If necessary, the Diocesan Bishop will recall by Decree the proposals of the Delegate made to the person subject to the complaint.

5. Step 5 – Meeting of the advisory committee:

5.1 The Bishop’s Delegate who made the meeting summons the Advisory Committee as soon as possible.

5.2 The Advisory Committee gives its opinion on the existence of reasonable grounds.

5.3 A report is drawn up.

5.4 The Diocesan Bishop is informed.

6. Step 6 – Report to C.A.S. and civil authorities

6.1 If there is *reasonable motive*, the Delegate recommends that the complainant report the case to Children’s Aid Society. If the complainant accepts, he ensures that the report has been made as soon as possible. If the complainant refuses, the Delegate takes care of it and notifies the complainant as well as the person complained of. It thus fulfills the reporting obligations imposed by secular law (Cf., PMSA, 4.2).

6.2 If the circumstances so require, the Diocesan Bishop obliges the person of the complaint to temporarily relinquish his or her post and to hire a lawyer⁵.

6.3 If it has been determined that there are no reasonable grounds:

6.3.1 the Delegate informs the complainant of the reason for this decision;

6.3.2 the complainant is advised of his or her right, and even his duty, to report to civil and police authorities if he considers he has reasonable grounds;

6.3.3 the person who is the subject of the complaint is also notified.

7. Step 7 – Investigation and decision of the C.A.S.

7.1 This step is the responsibility of C.A.S.

7.2 Depending on the circumstances, the next step can be started.

8. Step 8 – Help offered by the Bishop.

The Delegate meets with the Advisory Committee to propose concrete means of help to the Bishop:

8.1 To the victim and his or her relatives: Ensure that the victim receives help and support, taking into account the directives of the Children’s Aid Society (C.A.S.) or the police, if applicable.

8.2 To the person who is the subject of the complaint and his or her relatives:
Regardless of whether:

- The complaint was deemed admissible or not;
- The person confesses or denies;
- The situation is known or not to the public;
- The report was accepted or not.

The Delegate informs that he or she can get help from a lawyer and a therapist.

- 8.3 To the community:
ensure a listening and support service for people who are affected by this situation.

9. Step 9 – Monitoring of developments in the situation by the Delegate

- 9.1 With the victim and his or her relatives:
In collaboration with the C.A.S., see what type of pastoral support is possible.
- 9.2 To the person who is the subject of the complaint:
9.2.1 ensures his or her support network and financial resources;
9.2.2 assess the possibility of reinstatement in his or her functions if necessary.
- 9.3 With the community:
Be sure to listen, to welcome reactions.

10. Step 10 – Conclusion and evaluation:

The Delegate ensures that all the procedures have been completed, to the satisfaction of all those involved, in particular: victim, person subject to the complaint, media, legal advisor, committee members, etc.

3. Procedure in the situation of allegations of sexual abuse reported to the Diocese by the civil authorities

The complaint falls under C.A.S. and it is first known to her.

The Diocesan Bishop is informed by the C.A.S., by the police, by the media or otherwise.

Legal proceedings have already been launched against the person who is the subject of the complaint.

1. Step 1 - Receipt of the complaint

- 1.1 If necessary, the complaint is referred to the Delegate of the Diocesan Bishop. If it is brought before the Bishop, the latter will give it to the Delegate.
- 1.2 In order not to interfere with the investigation, any request for confidentiality made by the civil authorities are respected.

2. Step 2 - Meeting with the person who is the subject of the complaint:

- 2.1 As soon as possible, in accordance with the law subject to Children's Aid Services, the Bishop's Delegate contacts the person who is the subject of the complaint.
- 2.2 Objectives:
 - 2.2.1 To transmit the complaint to the alleged accused person;
 - 2.2.2 To ensure that his rights are respected (good reputation, defense, etc.);
 - 2.2.3 To offer him or her the help he or she needs (psychological, legal, material, pastoral, etc...)
 - 2.2.4 To inform him or her of the process that will be followed;
 - 2.2.5 To inform him or her that any contact with the alleged victim and his or her family is prohibited
 - 2.2.6 Invite him or her, if the circumstances indicate it, to leave his or her environment and cease the exercise of his or her ministry. He or she will receive a notice from the Bishop compelling him or her to leave, if he or she refuses to do so voluntarily.

- 2.3 The Delegate should orient the meeting considering the following four prescriptions established by case law:
 - 2.3.1 The voluntary nature of the meeting
 - 2.3.2 Respect for the freedom of the complainant and of the person complained according to their respective truths;
 - 2.3.3 Frank discussion of the content of their version without promise or threats or allusion to either;
 - 2.3.4 An intention to act devoid of interest than that of achieving justice, and that one stick to this way of proceedings and the goal pursued.
3. **Step 3 - Information to the Diocesan Bishop and the competent superior, if applicable:**
 - 3.1 By the Delegate
 - 3.2 The Diocesan bishop obliges the person who is subject of the complaint to leave the workplace and not to exercise a ministry.
4. **Step 4 - Meeting of the advisory committee:**

The purpose of this meeting is to ensure that nothing is left out in the entire intervention process.
5. **Step 5 - Assistance offered to the victims and to the person complained of:**
 - 5.1 To the victim:
 - 5.1.1 To ensure that the victim receives help and support, taking into account the directives of the C.A.S. or the police, if applicable
 - 5.2 To the person who is the subject of the complaint and his or her relatives:
 - 5.2.1 To offer support, depending on the circumstances;
 - 5.2.2 To inform him or her that he or she can have the help of a lawyer and a therapist.
 - 5.3 To the community:

ensure a listening and support service for people who are affected by the situation.
6. **Step 6 -Monitoring of developments in the situation by the Delegate.**
 - 6.1 With the victim and his or her relatives:

in collaboration with the C.A.S. see what type of pastoral accompaniment is possible.

6.2 With the person who is the subject of the complaint and his or her relatives:

6.2.1 ensure his or her support network and financial resources

6.2.2 assess the possibility of reinstatement in his or her functions.

6.3 With the community:

Be sure to listen, to welcome reactions.

7. Step 7 - Conclusion and evaluation:

The Delegate makes sure that all the procedures have been completed to the satisfaction of all those involved, in particular: victim, person subject to the complaint, media, legal advisor, committee members, etc.

4. Other situations

1. There are other situations that may arise, such as the disclosure of acts which, even if they are not contrary to the Criminal Code, are contrary to clerical obligations (Canon Law). Let us note among other situations: offenses against the sixth commandment of the Decalogue, the fact of producing, exhibiting, possessing or distributing, even by computer means, pornographic material, as well as recruiting or inciting a person to participate in pornographic exhibitions, etc. (CF. The Apostolic Letter *Vos estis lux mundi* from Pope Francis, N. 1).
2. These situations can be brought to the attention of the Bishop by a complainant, by the police or by the media.
3. Depending on the concrete circumstances of the case, the Delegate refers to the procedure outlined in the preceding two sections, removing all reference to the C.A.S.
4. The Delegate evaluates, with the advisory committee, what the outcome will be.
5. When the offenses involved pertain to the obligations of the Church and the civil authorities have no competence in the matter, the Delegate with the advisory committee evaluates the procedure to follow, keeping in mind the dictates of Canon Law, particularly canons 1717 – 1718 and 1720 and following.
6. In all of these situations, assistance to the victims and the accused must be the object of constant consideration.
7. It can happen that it is a priest, a deacon, an authorized person working in the diocese who is the victim or the object of sexual harassment. In this case, it is necessary to implement a policy defining the course of action to be taken in order to protect the person.

5. Media relations

1. General principles:

- 1.1 Respect for the role of the media
- 1.2 Respect for the right of the public to information
- 1.3 Respect for the right of a good name
- 1.4 Respect for the judicial process
- 1.5 Respect for the right to confidentiality
- 1.6 Ensure transparency

2. Do's and Dont's:

- 2.1 A person (the Spokesperson), other than the Delegate of the Bishop, is responsible for providing the appropriate information as soon as possible.
- 2.2 The information thus given should be as brief as possible, avoiding all sensationalism and all debate of a judicial nature.
- 2.3 The details of meetings with the complainant and the person complained of must be considered confidential and not usable.
- 2.4 When a situation becomes public, the Spokesperson may inform about:
 - 2.4.1 The process followed or to be followed
 - 2.4.2 Whether or not there has been a report or a complaint to the police.
- 2.5 No further comment is made so as not to interfere in the investigation of the C.A.S. or the police and/or in the judicial process.
- 2.6 If the person accused has been invited to leave his or her workplace and not to exercise a ministry, this fact can be confirmed and the persons concerned (for example that parish) informed.

3. Attitudes to be developed by the person who responds to the media:

- 3.1 Accessibility
- 3.2 Knowledge of the file

3.3 Transparency

3.4 Prudence

3.5 Firmness

Advisory Committee Members

Delegate

Substitute Delegate

A priest of the Diocese or a competent person appointed by the Bishop.

Professional Advisors

Lawyer

Medical (psychologist, therapist, etc.)

Spokesperson

Chancellor or vice-chancellor

DECREE OF APPROVAL

By my ordinary authority, I approve and declare approved the Protocol on Governance of Allegations of Sexual Abuse set out above and I declare null and void any previous version.

Given in Timmins, under our signature, the seal of the Diocese and the countersignature of the Chancellor, this **13th** day of the month of **June** of the year two thousand and twenty-one, on the feast of Saint Anthony of Padua, Patron saint of the Diocese.



His Exc. Bishop Serge Poitras
Bishop of Timmins

Henri Touaboy, Priest, Cssp
Chancellor

APPENDIX A

Mandate of the Committee

1. The Advisory Committee is instituted by the Diocesan Bishop, for the purpose of dealing with all questions related to sexual abuse and sexual misconduct. This is understood to mean sexual abuse of minors or of vulnerable adults including past abuses, even if the alleged victims are now adults, by priests, deacons, men and women religious, pastoral workers appointed by the Bishop.
2. Diligently and carefully follow up on cases of sexual abuse brought forward.
3. Propose an intervention plan and strategies while ensuring, if necessary, support of those involved.
4. Ensure application of the protocol approved by the Bishop and see to it that the said protocol is updated.
5. Request the services of resource people as required.
6. Propose means of prevention and educating the faithful and everyone involved in ministry of the problem of sexual abuse. Suggest ways to intervene when a regrettable situation of this nature occurs.
7. To accurately inform the person responsible for media relations about the course of action which is unfolding.

APPENDIX B

Canonical considerations

1. When the Ecclesiastical Authority must intervene in situations of sexual abuse, it must be remembered that the Church very often acts on two levels: that of Canonical Law and that of the law of the State (criminal or civil). The Canonical inquiry is to be conducted independently of the corresponding inquiry by Civil authorities. (*Vademecum*, 26)
2. Naturally, the law is not the only nor the most important preoccupation that must be undertaken in a matter of sexual abuse but it provides the framework for other interventions and guides the search for the truths involved.
3. The Ecclesiastical Authority must render justice to the Church herself, to the alleged victims, to the accused and to the suspects. At the same time, she is committed to collaborating, as it should, with the civil law. This presupposes from the beginning a collaboration between canonists and lawyers, as well as a *reasonable reservation* vis à vis civil proceedings. It is also to be remembered that the Ecclesiastical Authority has no duty or legal competence to conduct an investigation which belongs to civil attorneys.
4. While wishing to collaborate with the civil law, there will be vigilance in protecting, as much as possible according to the prescriptions of the laws in effect, the greatest confidentiality for all written documents linked to an accusation of sexual abuses brought against a priest, a deacon or a person mandated in ministry. For this reason, a diocesan policy will be established regarding the maintenance of archives to prevent grave errors (*Vademecum*, 73; cc. 1475 et 1719).
5. In a case which is public, immediate dispositions must be taken, setting limits as to what is necessary and doing nothing that is definitive. Care must be taken to see that these dispositions do not compromise anyone's good name. (c. 1717§2) Depending on the situation, the Ecclesiastical Authority can and even should act in various ways out of consideration for the accused:
 - 5.1 or through a purely personal intervention, by avoiding creation of conflicting implications with regard to the civil and canonical law; we are reminded that the civil law does not systematically exempt from testimony those who have knowledge of the pertinent facts, writings or confidences by virtue of their office. According to Canon 1341, this personal intervention may call for fraternal correction, reprimand or other means to re-establish justice.
 - 5.2 or through the imposition of a canonical precept to do or to omit something (c. 49)
 - 5.3 or through an administrative procedure (decree without a trial: Canon 1720): when admissible, this administrative procedure is far preferable to the judicial process.

- 5.4 Or even, according to the prescriptions of the law (c.1721), through a canonical judicial process.
6. In certain cases, the accused may be appointed to an office where he will not exercise public ministry and where there will be less risk of recidivism. That will permit the regulation of urgent situations without compromising anything before there are definitive decisions and will permit the justification, for a time, of remuneration of the person concerned, which might encourage a greater will to collaborate. If the person concerned refused such an appointment, without a valid reason, there would be justification for suspending him from the exercise of his faculties (Cf. c. 1333; 1336).
7. The right of the accused to a defense should be integrally respected (cf. cc.221§1, 1720§1). For that reason, if the Ecclesiastical Authority has recourse to a canonical judicial process against the accused, it would be good to consult a canonist experienced in this type of process to ensure that the rights of all persons involved are truly respected.
8. When the Ecclesiastical Authority wants to take measures that are called for, it is necessary to look at what constitutes a canonical proof (cf. c. 1527), for without such a proof, the presumption of innocence is imperative. A decision by a civil tribunal does not necessarily constitute a proof for a canonical procedure. For various reasons an innocent person could be condemned by the civil tribunal or a guilty person acquitted.
9. If later on an accused wanted recourse to a civil tribunal against a canonical decision by the Bishop or his delegate, jurisprudence is currently such that the canonical procedure thus attacked would be considered by the civil judge, in as much as the procedure has been carried out according to the pertinent canonical laws. Otherwise, there would be a strong risk of the recourse being received by the tribunal.
10. Before there is a definitive canonical decision, a definitive statement regarding the fate of a cleric or a pastoral associate is avoided. This is when the fate of the guilty will be determined or everything will be done to restore the good name and the status of the innocent.
11. The allocation of costs and damages, as with the sharing of expenses between the diocese and the accused will depend on his or her guilt or innocence, as well as decisions of the tribunals.

Canons for Reference

Can. 49

An individual precept is a decree directly and legitimately enjoining a determined person or persons to do or to omit something, especially concerning the urging of the observance of a law.

Can 221

§1. The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law.

§2. The Christian faithful also have the right, if they are summoned to judgment by competent authority, that they be judged in accord with the prescriptions of the law to be applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except in accord with the norm of law.

Can. 1311

§ 1. The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences.

§ 2. The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.

Can. 1312

§ 1. The penal sanctions in the Church are:

1° medicinal penalties or censures, which are listed in cann. 1331-1333;

2° expiatory penalties, mentioned in can. 1336.

§ 2. The law may determine other expiatory penalties which deprive a member of Christ's faithful of some spiritual or temporal good, and are consistent with the Church's supernatural purpose.

§ 3. Use is also made of penal remedies and penances, referred to in cann. 1339 and 1340: the former primarily to prevent offences, the latter rather to substitute for or to augment a penalty.

Can. 1313

§ 1. If a law is changed after an offence has been committed, the law more favourable to the offender is to be applied.

§ 2. If a later law removes a law, or at least a penalty, the penalty immediately lapses.

Can. 1314 — A penalty is ordinarily *ferendae sententiae*, that is, not binding upon the offender until it has been imposed. It is, however, *latae sententiae* if the law or precept expressly lays this down, so that it is incurred automatically upon the commission of an offence.

Can. 1315

§ 1. Whoever has power to issue penal laws may also reinforce a divine law with a fitting penalty.

§ 2. A lower legislator, taking into account can. 1317, can also:

1° reinforce with a fitting penalty a law issued by a higher authority, observing the limits of his competence in respect of territory or persons;

2° add other penalties to those laid down for a certain offence in a universal law;

3° determine or make obligatory a penalty which a universal law establishes as indeterminate or discretionary.

§ 3. A law can either itself determine the penalty or leave its determination to the prudent decision of a judge.

Can. 1316

Diocesan Bishops are to take care that as far as possible any penal laws are uniform within the same city or region.

Can. 1321

§ 1. Any person is considered innocent until the contrary is proved. No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability.

§ 2. A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§ 3. Where there has been an external violation, impudence is presumed, unless it appears otherwise.

Can. 1322

Those who habitually lack the use of reason, even though they appeared sane when they violated a law or precept, are deemed incapable of committing an offence.

Can. 1326

§ 1. A judge must inflict a more serious punishment than that prescribed in the law or precept when:

- 1° a person, after being condemned, or after the penalty has been declared, continues so to offend that obstinate ill will may prudently be concluded from the circumstances;
- 2° a person who is established in some position of dignity, or who, in order to commit a crime, has abused a position of authority or an office;
- 3° a person who, after a penalty for a culpable offence was constituted, foresaw the event but nevertheless omitted to take the precautions to avoid it which any careful person would have taken;
- 4° a person who committed an offence in a state of drunkenness or other mental disturbance, if these were deliberately sought so as to commit the offence or to excuse it, or through passion which was deliberately stimulated or nourished.

§ 2. In the cases mentioned in § 1, if the penalty constituted is *latae sententiae*, another penalty or a penance may be added.

§ 3. In the same cases, if the penalty constituted is discretionary, it becomes obligatory.

Can. 1331

§ 1. An excommunicated person is prohibited:

- 1° from celebrating the Sacrifice of the Eucharist and the other sacraments;
- 2° from receiving the sacraments;
- 3° from administering sacramentals and from celebrating the other ceremonies of liturgical worship;
- 4° from taking an active part in the celebrations listed above;
- 5° from exercising any ecclesiastical offices, duties, ministries or functions;
- 6° from performing acts of governance.

§ 2. If a *ferendae sententiae* excommunication has been imposed or a *latae sententiae* excommunication declared, the offender:

- 1° proposing to act in defiance of the provision of § 1 nn. 1-4 is to be removed, or else the liturgical action is to be suspended, unless there is a grave reason to the contrary;
- 2° invalidly exercises any acts of governance which, in accordance with § 1 n. 6, are unlawful;
- 3° is prohibited from benefiting from privileges already granted;
- 4° does not acquire any remuneration held in virtue of a merely ecclesiastical title;
- 5° is legally incapable of acquiring offices, duties, ministries, functions, rights, privileges or honorific titles.

Can. 1333

§ 1. Suspension prohibits:

- 1° all or some of the acts of the power of order;
- 2° all or some of the acts of the power of governance;
- 3° the exercise of all or some of the rights or functions attaching to an office.

§ 2. In a law or a precept it may be prescribed that, after a judgement or decree which impose or declare the penalty, a suspended person cannot validly perform acts of governance.

§ 3. The prohibition never affects:

- 1° any offices or power of governance which are not within the control of the Superior who establishes the penalty;
- 2° a right of residence which the offender may have by virtue of office;
- 3° the right to administer goods which may belong to an office held by the person suspended, if the penalty is *latae sententiae*.

§ 4. A suspension prohibiting the receipt of benefits, stipends, pensions or other such things, carries with it the obligation of restitution of whatever has been unlawfully received, even though this was in good faith.

Can. 1334

§ 1. The extent of a suspension, within the limits laid down in the preceding canon, is defined either by the law or precept, or by the judgement or decree whereby the penalty is imposed.

§ 2. A law, but not a precept, can establish a *latae sententiae* suspension without an added determination or limitation; such a penalty has all the effects enumerated in can. 1333 §1.

Can. 1335

§ 1. If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal.

§ 2. If a censure prohibits the celebration of the sacraments or sacramentals or the performing of acts of the power of governance, the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever one of the faithful requests a sacrament or sacramental or an act of the power of governance; for any just reason it is lawful to make such a request.

Can. 1336

§ 1. Expiatory penalties can affect the offender either for ever or for a determined or an indeterminate period. Apart from others which the law may perhaps establish, they are those enumerated in §§ 2-5.

§ 2. An order: 1° to reside in a certain place or territory;

2° to pay a fine or a sum of money for the Church's purposes, in accordance with the guidelines established by the Episcopal Conference.

§ 3. A prohibition:

1° against residing in a certain place or territory;

2° against exercising, everywhere or inside or outside a specified place or territory, all or some offices, duties, ministries or functions, or only certain tasks attaching to offices or duties;

3° against performing all or some acts of the power of order;

4° against performing all or some acts of the power of governance;

5° against exercising any right or privilege or using insignia or titles;

6° against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges;

7° against wearing ecclesiastical or religious dress.

§ 4. A deprivation:

1° of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties;

2° of the faculty of hearing confessions or of preaching;

3° of a delegated power of governance;

4° of some right or privilege or insignia or title;

5° of all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the Episcopal Conference, without prejudice to the provision of can. 1350 § 1.

§ 5. Dismissal from the clerical state.

Can. 1341

The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.

Can. 1342

§ 1. Whenever there are just reasons against the use of a judicial procedure, a penalty can be imposed or declared by means of an extra-judicial decree, observing canon 1720, especially in what concerns the right of defence and the moral certainty in the mind of the one issuing the decree, in accordance with the provision of can. 1608. Penal remedies and penances may in any case whatever be applied by a decree.

§ 2. Perpetual penalties cannot be imposed or declared by means of a decree; nor can penalties which the law or precept establishing them forbids to be applied by decree.

§ 3. What the law or decree says of a judge in regard to the imposition or declaration of a penalty in a trial is to be applied also to a Superior who imposes or declares a penalty by an extra-judicial decree, unless it is otherwise clear, or unless there is question of provisions which concern only procedural matters.

Can. 1343

If a law or precept grants the judge the faculty to apply or not to apply a penalty, he is, without prejudice to the provision of can. 1326 § 3, to determine the matter according to his own conscience and prudence, and in accordance with what the restoration of justice,

the reform of the offender and the repair of scandal require; in such cases the judge may also, if appropriate, modify the penalty or in its place impose a penance.

Can. 1344

Even though the law may use obligatory words, the judge may, according to his own conscience and prudence:

1° defer the imposition of the penalty to a more opportune time, if it is foreseen that greater evils may arise from a too hasty punishment of the offender, unless there is an urgent need to repair scandal;

2° abstain from imposing the penalty or substitute a milder penalty or a penance, if the offender has repented, as well as having repaired any scandal and harm caused, or if the offender has been or foreseeably will be sufficiently punished by the civil authority;

3° may suspend the obligation of observing an expiatory penalty, if the person is a first-offender after a hitherto blameless life, and there is no urgent need to repair scandal; this is, however, to be done in such a way that if the person again commits an offence within a time laid down by the judge, then that person must pay the penalty for both offences, unless in the meanwhile the time for prescription of a penal action in respect of the former offence has expired.

Can. 1345

Whenever the offender had only an imperfect use of reason, or committed the offence out of necessity or grave fear or in the heat of passion or, without prejudice to the provision of can. 1326 § 1 n. 4, with a mind disturbed by drunkenness or a similar cause, the judge can refrain from inflicting any punishment if he considers that the person's reform may be better accomplished in some other way; the offender, however, must be punished if there is no other way to provide for the restoration of justice and the repair of any scandal that may have been caused.

Can. 1346

§ 1. Ordinarily there are as many penalties as there are offences.

§ 2. Nevertheless, whenever the offender has committed a number of offences and the sum of penalties which should be imposed seems excessive, it is left to the prudent decision of the judge to moderate the penalties in an equitable fashion, and to place the offender under vigilance.

Can. 1347

§ 1. A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so.

§ 2. The offender is said to have purged the contempt if he or she has truly repented of the offence and has made suitable reparation for the scandal and harm, or at least seriously promised to make it.

Can. 1348

When the person has been found not guilty of an accusation, or where no penalty has been imposed, the Ordinary may provide for the person's welfare and for the common good by opportune warnings or other solicitous means, and even, if the case calls for it, by the use of penal remedies.

Can. 1349

If a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not however to impose graver penalties, unless the seriousness of the case really demands it. He may not impose penalties which are perpetual.

Can. 1350

§ 1. In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support.

§ 2. If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible, but not by the conferral of an office, ministry or function.

Can. 1362

§ 1. A criminal action is extinguished by prescription after three years, except for:

1° offences reserved to the Congregation for the Doctrine of the Faith, which are subject to special norms;

2° without prejudice to n. 1, an action arising from any of the offences mentioned in cann. 1376, 1377, 1378, 1393 § 1, 1394, 1395, 1397, or 1398 § 2, which is extinguished after seven years, or one arising from the offences mentioned in can. 1398 § 1, which is extinguished after twenty years;

3° offences not punished by the universal law, where a particular law has prescribed a different period of prescription.

§ 2. Prescription, unless provided otherwise in a law, runs from the day the offence was committed or, if the offence was enduring or habitual, from the day it ceased.

§ 3. When the offender has been summoned in accordance with can. 1723, or informed in the manner provided in can. 1507 § 3 of the presentation of the petition of accusation according to can. 1721 § 1, prescription of the criminal action is suspended for three years; once this period has expired or the suspension has been interrupted through the cessation of the penal process, time runs once again and is added to the period of prescription which

has already elapsed. The same suspension equally applies if, observing can. 1720 n. 1, the procedure is followed for imposing or declaring a penalty by way of an extra-judicial decree.

Can. 1385

A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the offence, with suspension, prohibitions and deprivations; in the more serious cases he is to be dismissed from the clerical state.

Can. 1394

§1. A cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension, without prejudice to the provisions of can. 194 § 1 n. 3, and 694 § 1 n. 2. If, after warning, he has not reformed or continues to give scandal, he must be progressively punished by deprivations, or even by dismissal from the clerical state.

§ 2. Without prejudice to the provisions of can. 694 § 1 n. 2, a religious in perpetual vows who is not a cleric but who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict.

Can. 1395

§ 1. A cleric living in concubinage, other than in the case mentioned in can. 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

§ 2. A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed in public, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

Can. 1398

§ 1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he:

1° commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection;

2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated;

3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

§ 2. A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits an offence mentioned in § 1 or in can. 1395 § 3 is to be punished according to the provision of can. 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.

Can. 1475

§ 1. When the trial has been completed, documents which belong to private persons must be returned; a copy of them, however, is to be retained.

§ 2. Without a mandate of the judge, notaries and the chancellor are forbidden to furnish a copy of the judicial acts and documents acquired in the process.

Can. 1502

A person who wishes to bring another to trial must present to a competent judge a libellus which sets forth the object of the controversy and requests the services of the judge.

Can. 1503

§ 1. The judge can accept an oral petition whenever the petitioner is impeded from presenting a libellus or the case is easily investigated and of lesser importance.

§ 2. In either case, however, the judge is to order the notary to put the act into writing; the written record must be read to and approved by the petitioner and has all the legal effects of a libellus written by the petitioner.

Can. 1504

The libellus, which introduces litigation, must:

- 1/ express the judge before whom the case is introduced, what is being sought and by whom it is being sought;
- 2/ indicate the right upon which the petitioner bases the case and, at least generally, the facts and proofs which will prove the allegations;
- 3/ be signed by the petitioner or the petitioner's procurator, indicating the day, month, and year, and the address where the petitioner or procurator lives or where they say they reside for the purpose of receiving the acts;

4/ indicate the domicile or quasi-domicile of the respondent.

Can. 1527

§ 1. Proofs of any type whatever may seem useful for deciding the case and which are licit can be adduced.

§ 2. If a party insists that a proof rejected by the judge be admitted, the judge is to determine the matter most expeditiously.

Can. 1717

§ 1. Whenever the ordinary receives information which at least seems to be true of an offense, he shall cautiously inquire personally or through another suitable person about the facts and circumstances and about imputability unless this investigation appears to be entirely superfluous.

§ 2. Care must be taken lest anyone's good name be endangered by this investigation.

§ 3. The one who conducts the investigation has the same powers and obligations as an auditor in the process; this person cannot act as a judge in the matter, if a judicial process is set in motion later.

Can. 1718

§ 1. When sufficient evidence appears to have been collected, the ordinary shall decide:

1° whether the process for inflicting or declaring a penalty can be set in motion

2° whether this is expedient in light of can.1341

3° whether a judicial process must be used or unless the law forbids it whether he must proceed by a decree without a trial.

§ 2. The ordinary is to revoke or change the decree mentioned in §1 whenever it appears to him from new evidence that a different decision is called for.

§ 3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two or more judges or other experts in the law, if he prudently sees fit to do so.

Can. 1719

The acts of the investigation, the decrees of the ordinary by which the investigation was opened and closed, and all that preceded it are to be kept in the secret archive of the curia if they are not necessary for the penal process.

Can. 1720

If the ordinary decides that he is to proceed by a decree without a trial:

1° he is to inform the accused about the accusation and the proofs, giving the person the opportunity of self-defense unless the accused neglects to be in court after having been duly summoned

2° he is to consider carefully the proofs and the arguments with two assessors

3° if the offense is certainly proved and the criminal action has not been terminated, he is to issue the decree in accord with cann.1342-1350, explaining the reasons in law and in fact, at least briefly.

Can. 1721

§ 1. If the ordinary decrees that a judicial penal process is to be begun, he is to give the acts of the investigation to the promoter of justice who is to present a *libellus* of accusation to the judge in accord with the norms of cann. 1502 and 1504.

§ 2. The promoter of justice constituted as such by the higher court acts as the petitioner before that tribunal.

APPENDIX C

The Law on Child and Family Services

Preamble

The Government of Ontario acknowledges that children are individuals with rights to be respected and voices to be heard.

The Government of Ontario is committed to the following principles:

Services provided to children and families should be child-centred.

Children and families have better outcomes when services build on their strengths. Prevention services, early intervention services and community support services build on a family's strengths and are invaluable in reducing the need for more disruptive services and interventions.

Services provided to children and families should respect their diversity and the principle of inclusion, consistent with the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families. Services to children and families should, wherever possible, help maintain connections to their communities.

In furtherance of these principles, the Government of Ontario acknowledges that the aim of the *Child, Youth and Family Services Act, 2017* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child.

With respect to First Nations, Inuit and Métis children, the Government of Ontario acknowledges the following:

The Province of Ontario has unique and evolving relationships with First Nations, Inuit and Métis peoples.

First Nations, Inuit and Métis peoples are constitutionally recognized peoples in Canada, with their own laws, and distinct cultural, political and historical ties to the Province of Ontario.

Where a First Nations, Inuit or Métis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan's Principle.

The United Nations Declaration on the Rights of Indigenous Peoples recognizes the importance of belonging to a community or nation, in accordance with the traditions and customs of the community or nation concerned.

Further, the Government of Ontario believes the following:

First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.

Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.

For these reasons, the Government of Ontario is committed, in the spirit of reconciliation, to working with First Nations, Inuit and Métis peoples to help ensure that wherever possible, they care for their children in accordance with their distinct cultures, heritages and traditions.

**PART I
PURPOSES AND INTERPRETATION**

PURPOSES

Paramount purpose and other purposes

Paramount purpose

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.

Other purposes

(2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well-being of children, are to recognize the following:

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
 - i. respects a child's or young person's need for continuity of care and for stable relationships within a family and cultural environment,
 - ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
 - iii. takes into account a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - iv. takes into account a child's or young person's cultural and linguistic needs,
 - v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
 - vi. includes the participation of a child or young person, the child's or young person's parents and relatives and the members of the child's or young person's extended family and community, where appropriate.
4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

Duty to report

72. Duty to report child in need of protection

Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.
5. The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behavior, or
 - v. delayed development,and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.

7. The child has suffered emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is less than 12 years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment.
13. The child is less than 12 years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

1 Ongoing duty to report

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if the person has made previous reports with respect to the same child. 2017, c. 14, Sched. 1, s. 125 (2).

2 Person must report directly

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on the person's behalf. 2017, c. 14, Sched. 1, s. 125 (3).

3 Duty to report does not apply to older children

(4) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists. 2017, c. 14, Sched. 1, s. 125 (4).

4 Offence

(5) A person referred to in subsection (6) is guilty of an offence if,

- (a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and
- (b) the information on which it was based was obtained in the course of the person's professional or official duties. 2017, c. 14, Sched. 1, s. 125 (5).

5 Professionals and officials

(6) Subsection (5) applies to every person who performs professional or official duties with respect to children including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;
- (c) a religious official;
- (d) a mediator and an arbitrator;
- (e) a peace officer and a coroner;
- (f) a lawyer; and
- (g) a service provider and an employee of a service provider. 2017, c. 14, Sched. 1, s. 125 (6).

6 Volunteer excluded

(7) In clause (6) (b),

“youth and recreation worker” does not include a volunteer. 2017, c. 14, Sched. 1, s. 125 (7).

7 Director, officer or employee of corporation

(8) A director, officer or employee of a corporation who authorizes, permits or concurs in the commission of an offence under subsection (5) by an employee of the corporation is guilty of an offence. 2017, c. 14, Sched. 1, s. 125 (8).

8 Penalty

(9) A person convicted of an offence under subsection (5) or (8) is liable to a fine of not more than \$5,000. 2017, c. 14, Sched. 1, s. 125 (9).

9 Section overrides privilege; protection from liability

(10) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion. 2017, c. 14, Sched. 1, s. 125 (10).

10 Solicitor-client privilege

(11) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client. 2017, c. 14, Sched. 1, s. 125 (11).

11 Conflict

(12) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*. 2017, c. 14, Sched. 1, s. 125 (12).

Section Amendments with date in force (d/m/y)

2020, c. 25, Sched. 1, s. 26 (6) - 01/03/2021

12 Society to assess and verify report of child in need of protection

126 (1) A society that receives a report under section 125 that a child, including a child in the society's care or supervision, is or may be in need of protection shall as soon as possible carry out an assessment as prescribed and verify the reported information, or ensure that the information is assessed and verified by another society.

13 Protection from liability

(2) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (1) or for an alleged neglect or default of that duty.

14 Society to report abuse of child in its care and custody

127 (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall report the information to a Director as soon as possible.

15 Definition

(2) In this section and in sections 129 and 133,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

