



# Policy for Dealing with Sexual Abuse and Sexual Harassment

It is the policy of The Presbyterian Church in Canada that sexual abuse or sexual harassment of any kind by church leaders, staff or volunteers will not be tolerated. All complaints will be taken seriously and handled according to the terms of this policy.

## Policy for Dealing with Sexual Abuse and Sexual Harassment

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1-800-619-7301

50 Wynford Dr.

Toronto, ON M3C 1J7

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# Preface

This booklet contains the policy of The Presbyterian Church in Canada for dealing with complaints of sexual abuse and sexual harassment. It was approved at the General Assembly in June 1993, with revisions approved in subsequent years.

Several volunteers contributed to the writing of the policy at various stages. We wish to thank particularly, Deborah Lannon, Michael Farris, JoAnne Walter, and the Anglican Diocese of Toronto for the use of their resources. Special thanks go to Jean Armstrong for her leadership in developing this policy while serving in Ministry and Church Vocations. Special thanks also go to Maureen Walter for the time, energy and valuable input she has given to different editions of the policy and to several statements of clarification.

The church's legal counsel was consulted extensively to ensure that the policy would function within the Canadian justice system.

Sessions and presbyteries are invited to provide feedback about the policy to Ministry and Church Vocations of the Life and Mission Agency, which has ongoing responsibility for recommending revisions to future General Assemblies.

Ministry and Church Vocations  
Life and Mission Agency

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# Policy Overview

It is the policy of The Presbyterian Church in Canada that sexual abuse or sexual harassment of any kind by church leaders, staff or volunteers will not be tolerated.

Because of the serious consequences of sexual abuse or sexual harassment, the Church will make every effort to ensure that such abuse or harassment does not occur within its jurisdiction. When complaints of sexual abuse or sexual harassment arise, the Church will respond with seriousness, sensitivity and concern for all involved, and will recognize the necessity of dealing with both complainant and complainee in a fair and just manner. This policy is designed to ensure that the Church deals with complaints. It is not designed to help search out wrongdoing.

Every complaint will be taken seriously, and every response will include the following steps:

## Discovery:

When a complaint has been received, the process of dealing with the complaint will be set in motion, and those with a need to know will be informed (Section 5-A, p. 18 or Section 6-A p. 38).

## Intervention:

Resources and support will be offered to the principal people involved, as deemed appropriate and in keeping with the provisions of the policy. Such support may include the appointment of advisors to both the complainant and the person complained against, and the provision of pastoral care wherever needed (Section 5-B, p. 21 or Section 6-B, p. 41).

## Investigation:

Complaints will be investigated to gather the information necessary for deciding the facts and determining appropriate courses of action. Interviews will be conducted with both the complainant and the person complained against, and others as necessary (Section 5-C, p. 25 or Section 6-C p. 45).

## Adjudication:

Decisions will be made regarding the facts of the complaint, whether or not misconduct occurred, and if so, its nature and scope. After determining the nature and scope of any misconduct, decisions will be made regarding any actions to be taken (Section 5-D, p. 29 or Section 6-D, p. 49).

# SECTION 1

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## Theological Basis

The policy of The Presbyterian Church in Canada on sexual abuse is set in the framework of what it means to be a sexual person of Christian faith and a servant in the Church. Our sexuality, as a dimension of our whole selves, is to be offered to God. In the expression of sexual desires, we are called to holiness. God values sexuality as good, blessed and purposeful, both as an expression of love and for the procreation of children. Sexuality is a gift to be celebrated. We are called to be responsible in the use of our sexuality and to respect each other as human beings made in God's image. From this belief in the sacredness of our physical beings we understand and declare that every person has the right to sexual and bodily integrity.

All those who serve the Church, especially clergy, church leaders, staff and volunteers, are expected to adhere to Christian ethical principles in their sexual conduct and in their exercise of authority and power. The Church in all its extended ministries is to be seen as a safe place in the community; a place where it is known that sexual abuse is not tolerated. This is part of our Christian witness to the community. Therefore, the leadership of any group using church premises for their activities is also subject to this policy.

Our commitment is to model the example of Christ and to be rooted in the love of Christ in all our relationships. For any Christian to betray trust by the grave ethical transgression of sexually abusing another, whether child or adult, is to deny their own Christian identity, as well as to deny to the one abused the witness to the risen Christ in the world. Such a betrayal will be a gross injury to the one abused and a violation of faithfulness to Christ. Because of the serious consequences of sexual abuse, the Church must make every effort to ensure that sexual abuse does not occur within its jurisdiction. When such abuse does occur, the Church must make a clear and just response.

**It is, therefore, the policy of The Presbyterian Church in Canada that sexual abuse or sexual harassment of any kind by any church leader, staff or volunteer will not be tolerated.**

## SECTION 2

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# Guiding Principles

All complaints of sexual abuse or sexual harassment will be taken seriously. Every complaint will be received, investigated and acted upon in accordance with the terms of this policy.

The person complained against is always presumed innocent until proven guilty. If the presbytery or session cannot conclude from the evidence on a balance of probabilities that the actions did occur as alleged, then it must decide that the complaint cannot be substantiated. In simple terms, the person complained against will be found innocent. Any complaint must be substantiated before discipline can occur.

The protection of children is a priority. In accordance with civil law, any complaint of sexual abuse of a child will be reported to the child protection agency (Children's Aid Society or equivalent) immediately.

A person who is alleging to have been sexually harassed shall be informed of the right to seek assistance of, and take their complaint to, the appropriate Provincial Human Rights Commission.

This policy is the policy of The Presbyterian Church in Canada. Therefore, church courts are expected to implement this policy as it is written. Changes to the policy will be made for the whole Church by the General Assembly. In the interests of fairness and consistency, presbyteries, sessions and other church bodies will refrain from implementing unilaterally procedures not outlined in the policy.

The church is called to implement this policy in the spirit of prayerfulness, love, affection, and humility, under the continual illumination of the Holy Spirit.

**Together with the theological basis (p. 6), these guiding principles form the foundation for the church's policy for dealing with sexual abuse or sexual harassment. Therefore the policy can be understood properly only in light of them.**

## SECTION 3

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# Implementing the Policy

### A. | Who is Subject to this Policy?

The policy applies to all the individuals and ministries accountable to The Presbyterian Church in Canada: to all church leaders, staff and volunteers; to all sessions, presbyteries and synods; to all congregations; to all agencies and committees of the church; and to all non-church groups using church facilities.

Complaints of sexual abuse or sexual harassment are dealt with by the church court to which the person complained against is accountable. The sole exception is found in complaints of sexual abuse or sexual harassment made by a minister serving in a congregation against a lay member, adherent or salaried staff person of the same congregation. Such complaints are to be taken directly to the presbytery.

#### **Accountable to Presbytery**

Presbyteries deal with complaints against individuals who are subject to their discipline. This includes ministers of Word and Sacraments and diaconal ministers whose names appear on the roll or appendix to the roll of the presbytery; presbytery-appointed lay missionaries; and certified candidates for ordination and certified candidates for ministry under the care of the presbytery. As noted above, presbyteries also receive complaints of sexual abuse or sexual harassment against a lay member, adherent or salaried staff person of a congregation when the complaint is made by the minister of the same congregation.

## **Accountable to Synod**

Synods deal with complaints against individuals who are subject to their discipline. This includes lay employees of the synod who are not accountable to a presbytery. Lay regional staff and lay camp directors are two examples.

## **Accountable to Session**

Sessions deal with complaints against individuals who are subject to their discipline. This includes members and adherents of the congregation, provided they are not accountable to the presbytery or synod. This is true whether the individuals serve as volunteers, including ruling elders, or as salaried employees of the congregation. As noted above, the sole exception is found in complaints of sexual abuse or sexual harassment made by a minister serving in a congregation against a lay member, adherent or salaried staff person of the same congregation. Such complaints are to be taken directly to the presbytery. Non-church groups using the congregation's facilities are also accountable to the session.

## **Special Note on Ruling Elders**

Ruling elders are subject to the discipline of the session, and hence complaints against them are dealt with by the session. However, only presbyteries can depose a ruling elder for cause. Therefore, sessions must be prepared to make a full report of their findings to the presbytery if their response to a complaint under the policy is to recommend that a ruling elder be deposed.

## **National Offices and Colleges**

The national church office, colleges and other institutions within The Presbyterian Church in Canada are required to follow the policy, or an equivalent policy if they have different governing structures, and to lodge a copy of the equivalent policy with Ministry and Church Vocations.

# **B. | Structures Supporting the Policy**

## **Standing Committee of Synod**

Each synod shall appoint a standing committee to receive, investigate, and recommend decisions concerning complaints of sexual abuse or sexual harassment. The standing committee will consist of four or more people and should have the power to add new members. Incidents of sexual abuse and sexual harassment often also include uneven power dynamics and discrimination on the basis of gender identity or expression, age, race or ethnicity, sexual orientation, disability and/or socioeconomic status. The committee should be prepared to assess the power dynamics involved in the complaints before them. Care should be taken to ensure diversity among committee members, keeping in mind the power dynamics which may exist between the parties in each specific case. Members of the standing committee shall be members of The Presbyterian Church in Canada. They are responsible to the synod for this function and bound by appropriate rules of conduct. The committee keeps records of all its proceedings, including interviews, meetings, and any other relevant activity, and reports regularly to the synod.

In addition, the standing committee may assist the synod in addressing appeals and church court trials referred to it under the policy by its presbyteries. As well, the committee could serve as a resource to the presbyteries, providing expert advice, information and support as required.

The standing committee should know how to contact the local child protection agency (Children's Aid Society or equivalent).

## **Standing Committee of Presbytery**

Each presbytery shall appoint a standing committee to receive, investigate, and recommend decisions concerning complaints of sexual abuse or sexual harassment. The standing committee will consist of four or more people and should have the power to add new members. Incidents of sexual abuse and sexual harassment often also include uneven power dynamics and discrimination on the basis of gender identity or expression, age, race or ethnicity, sexual orientation, disability and/or socioeconomic status. The committee should be prepared to assess the power dynamics involved in the complaints before them. Care should be taken to ensure diversity among committee members, keeping in mind the power dynamics which may exist between the parties in each specific case. Members of the standing committee shall be members of The Presbyterian Church in Canada, but not necessarily members of the presbytery. However, they are responsible to the presbytery for this function and bound by appropriate rules of conduct. The committee keeps records of all its proceedings, including interviews, meetings, and any other relevant activity, and reports regularly to the presbytery.

In addition, the standing committee may assist the presbytery in fulfilling its responsibility for training about the policy.

The standing committee should know how to contact the local child protection agency (Children's Aid Society or equivalent).

## **Committee of Session**

Each session may appoint a standing committee to receive, investigate, and recommend decisions concerning complaints of sexual abuse or sexual harassment. Otherwise, the session shall be prepared to appoint a committee when a complaint is received. Church members with relevant skills and expertise may be asked to serve on the committee along with elders. Incidents of sexual abuse and sexual harassment often also include uneven power dynamics and discrimination on the basis of gender identity or expression, age, race or ethnicity, sexual orientation, disability and/or socioeconomic status. The committee should be prepared to assess the power dynamics involved in the complaints before them. Care should be taken to ensure diversity among committee members, keeping in mind the power dynamics which may exist between the parties in each specific case. Members of the committee are responsible to the session for this function and bound by appropriate rules of conduct. The committee keeps records of all its proceedings, including interviews, meetings, and any other relevant activity, and reports regularly to the session.

Each session should know how to contact its local child protection agency (Children's Aid Society or equivalent).

## C. | Communicating the Policy

This policy shall be communicated clearly to all individuals and ministries accountable to The Presbyterian Church in Canada: to all church leaders, staff and volunteers; to all sessions, presbyteries and synods; to all congregations; to all agencies and committees of the church; and to all non-church groups using church facilities.

## D. | Training

Since the policy was approved in 1993, presbyteries, sessions and colleges have held workshops about it to educate church leaders and candidates for ministry. To ensure that this education continues, the General Assembly in 1994 approved the following requirements:

- ▶ Professional church workers and certified candidates under the care of presbyteries shall attend or demonstrate that they have attended a workshop on dealing with sexual abuse or sexual harassment by church leaders.
- ▶ Presbyteries shall continue to provide new church leaders within their bounds with training on dealing with sexual abuse or sexual harassment by church leaders.
- ▶ Synods and regional staff shall be encouraged to assist presbyteries in the provision of training for new church leaders on dealing with sexual abuse or sexual harassment by church leaders.
- ▶ The Church's colleges shall provide all certified candidates of The Presbyterian Church in Canada with education on dealing with sexual abuse or sexual harassment by church leaders.
- ▶ Ministers of congregations shall arrange for elders and other congregational leaders to receive training on dealing with sexual abuse or sexual harassment by church leaders.

(A&P 1994, p. 385, 44; A&P 1996, p. 363, 37)

## E. | Resources for Training

### Print Resources

*Training for Sessions and Congregations in dealing with Sexual Abuse/Harassment Issues* is a workshop guide. The guide may be downloaded ([presbyterian.ca/sexual-abuse-policy-resources](http://presbyterian.ca/sexual-abuse-policy-resources)). To order paper copies go to [presbyterian.ca/resource-centre](http://presbyterian.ca/resource-centre), call 1-800-619-7301 or email [resources@presbyterian.ca](mailto:resources@presbyterian.ca).

Other printed resources are listed in Appendix 3, p. 74.

### Audio-Visual Resources

Several videos are available for purchase directly from the distributor (Appendix 3, p. 73).

## People

Faith Trust Institute (formerly the Centre for the Prevention of Sexual and Domestic Violence) pioneered much of the foundational work in understanding issues of sexual abuse and sexual harassment by the leaders of faith communities, including the production of training materials. The institute also trains people to lead workshops in educating others on the issues of sexual misconduct by faith community leaders. Contact the institute for an up-to-date list of people in your area trained to lead workshops.

2400 N. 45th Street, Suite 10, Seattle, WA 98103 USA

Phone: 206-634-0055 (outside U.S.A.)

Website: [faithtrustinstitute.org](http://faithtrustinstitute.org)

Also, Ministry and Church Vocations may be able to suggest resource people.

Phone: 1-800-619-7301 or 416-441-1111

## Other Workshops

Presbyteries with only one or two members requiring training concerning the policy could consider the following options:

- ▶ Contact neighboring presbyteries about jointly holding a workshop.
- ▶ Ask the synod standing committee or synod staff for assistance.
- ▶ Ask one of the theological colleges whether members of the presbytery could join the candidates for ministry in their workshop.
- ▶ Contact Ministry and Church Vocations for information about workshops being planned by presbyteries or synods.

## SECTION 4

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# Definitions

## What is Sexual Abuse?

Sexual abuse includes, but is not limited to, any unwanted sexual contact.

Sexual contact includes, but is not limited to, sexual intercourse, genital contact, petting, fondling, sexually suggestive language or the display of pornography.

Sexual abuse includes, but is not limited to, sexual assault and other sexual offences involving children as defined in the Criminal Code of Canada (Appendix 2, p. 61).

Sexual abuse includes, but is not limited to, sexual harassment. Sexual harassment is defined as:

- ▶ a course of vexatious comment or conduct that is known or ought reasonably to have been known to be unwelcome, including repeated sexual remarks or physical contact that is degrading;
- ▶ a sexual advance or solicitation made by a person who is in a position to grant or deny a benefit to another;
- ▶ the threat of or an actual reprisal by a person in authority against a person who has rejected a sexual advance from that person in authority.

Sexual abuse is often accompanied by violence. Violence impairs or destroys mutual consent, which is needed to ensure that sexual activity is voluntary. Sexual abuse therefore includes spousal violence.

# Consent

In order not to be abusive, any sexual act must be done by mutual consent of the parties involved. Mutual consent presumes that the parties are on an equal footing with each other, so that one person is not pressured by any consideration of the stature or position of the other person.

Clergy and all other church leaders are in a position of authority and trust that makes the achievement of mutual consent difficult and increases the potential for harm and abuse of those whom they serve.

The pastoral counselling function creates a particular relationship of trust. Exploitation of the trust developed in the counselling relationship through sexual activity is considered to be abuse and will not be tolerated.

In relationships of unequal power or trust, consent may not exist even when sexual activity has been initiated by the one who feels violated and alleges abuse has occurred. Therefore, the claim of mutually consensual or private sexual contact does not relieve the church leader of ethical responsibility. Sexual contact will normally be considered a serious breach of pastoral responsibility and subject to strict disciplinary action.

Sexual contact between a church leader and parishioner, counsellor, colleague, employee or any person over whom the church leader has pastoral oversight is fundamentally at odds with a pastoral relationship. It is one or more of the following:

- ▶ a breach of the trust placed in a spiritual leader;
- ▶ an abuse of the power of the church leader over the vulnerability of the parishioner, counsellor, colleague or employee;
- ▶ a scandal to the Church; and
- ▶ a breaking of the vow taken at ordination by ministers of Word and Sacraments, “to conduct yourself in your public and private life as befits a minister of the gospel.”

# Acceptable Social Relationships

Sexual contact is not invariably defined as sexual abuse. The Church acknowledges that its leaders and members date, fall in love and marry. The Church is the natural environment in which Christians can develop healthy relationships. Where there is pastoral responsibility, care must be taken not to exploit the pastoral trust while developing a private relationship. The minister or church leader who wishes to develop a mutually loving relationship that may eventually include sexual contact shall ensure that the pastoral needs of the other person will be met by another church leader. Within the bounds of private relationships, the church leader is called to the highest standards of Christian ethics. Such relationship is not considered to fall into the category of sexual abuse. This does not imply that sexual abuse or sexual harassment may not occur within such relationships.

# Vocabulary

**A&P** — The minutes (Acts and Proceedings) of the General Assembly and annual reports to the Assembly of committees and agencies, bound by year; also called the “blue book.”

**Adjudicate** — To make a decision.

**Advisor** — See Section 5-B.2, p. 22 or Section 6-B.2, p. 42.

**Balance of Probabilities** — See Principles of Decision Making, Section 5-D.2, p. 30, Section 6-D.2, p. 50.

**Book of Forms** — The book outlining the operating rules of The Presbyterian Church in Canada (the law and practice of the church). It is revised regularly by the General Assembly, after a process of approval involving all presbyteries.

**Citation** — A summons by a church court to appear before it. Individuals who are members of the church or office-bearers within the church are cited by the authority of the court; other persons can only be requested to attend (Book of Forms, 406 and 408).

**Committee** — In this policy, “the committee” refers to the committee appointed by the synod, presbytery or session to receive, investigate, and recommend decisions concerning complaints of sexual abuse or sexual harassment. See Section 3-B, p. 9.

**Complainant** — The person making the complaint.

**Complaine** — The person against whom the complaint is made.

**Complaint** — In this policy, a complaint is a statement alleging sexual abuse or sexual harassment by the complaine. This statement is placed in written form before the committee’s first interview with the complaine during the investigation phase of the procedures.  
(The Book of Forms uses the word “complaint” differently. Section 317 defines it as a written summary outlining the grounds for initiating a non-disciplinary case or a corrective c case.)

**In Camera** — Where voting members of a court only are present (Book of Forms, 10, 10.1, and 196.2).

**In Retentis** — Minutes that are kept apart from the ordinary record.

**Pastoral Care Provider** — See Section 5-B.1, p. 21 or Section 6-B.1, p. 41.

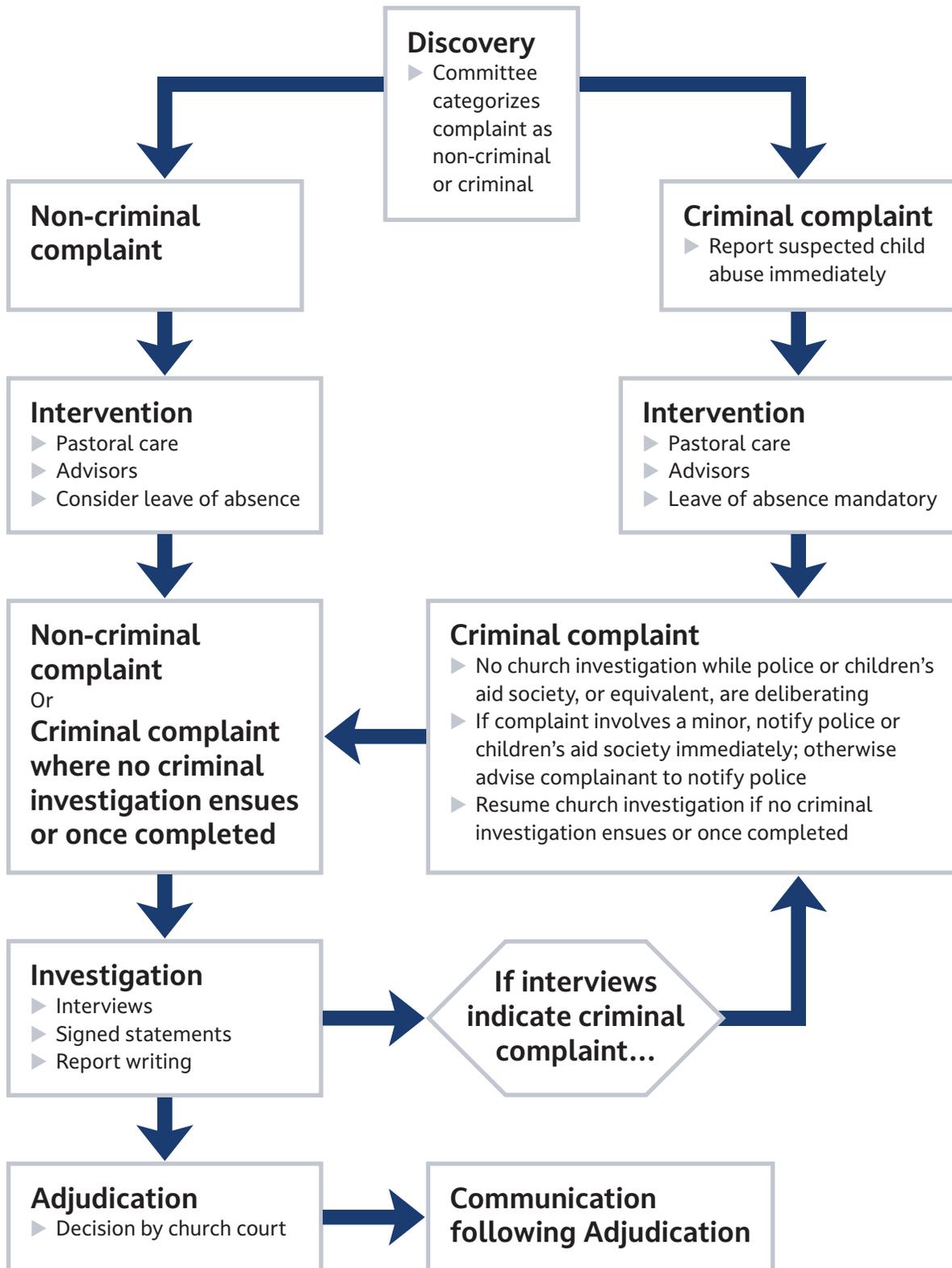
**Petition** — A document making a request of a church court.



SECTION 5

# Presbytery Procedures for Dealing with Complaints

# Procedures Flow Chart for Presbytery



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# A. ► Discovery

## A.1 | Receiving Complaints

### The Beginning: A Complaint Is Made

Presbyteries receive complaints of sexual abuse or sexual harassment against ministers of Word and Sacraments, diaconal ministers, presbytery-appointed lay missionaries, and certified candidates for ministry or ordination.

Presbyteries also receive complaints of sexual abuse or sexual harassment against a lay member, adherent or salaried staff person of a congregation when the complaint is made by the minister of the same congregation. Such complaints are to be taken directly to the presbytery.

For complaints against other individuals see Section 3-A, p. 8.

Complaints of sexual abuse or sexual harassment that fall under the jurisdiction of the presbytery are directed to the moderator or clerk of presbytery, the convener of the presbytery sexual abuse or sexual harassment standing committee, or any other appropriate person. Any person receiving a complaint of sexual abuse or sexual harassment must direct it to the appropriate channel immediately.

The person bringing the complaint is referred to as the complainant. The person complained against may be referred to as the complainee.

Complaints of sexual abuse or sexual harassment are not directed first to the person complained against (Book of Forms, 349.1). In fact, the church's procedures for dealing with these complaints do not require direct communication or face-to-face meetings between complainant and complainee. Instead, the standing committee of the presbytery communicates directly with the complainee about the complaint.

The presbytery shall inform the complainant of the right to seek the assistance of, and to take their complaint to, the appropriate Provincial Human Rights Commission.

Any person who is aware of a criminal investigation for sexual abuse or sexual harassment of any individual accountable to the presbytery should inform the moderator, clerk, or standing committee of the presbytery.

### Other Involved Presbyteries

When presbytery bounds are crossed by the complaint, the complaint is dealt with by the presbytery where the complainee is:

- on the constituent roll or appendix to the roll
- under the care of the presbytery as a lay missionary
- under the care of the presbytery as a certified candidate for ordination or a certified candidate for ministry.

## Standing Committee May Begin

The standing committee may begin dealing with the complaint prior to the next regular meeting of the presbytery.

## Records

The committee keeps records of all its proceedings, including interviews, meetings, and any other relevant activity.

## Reporting

The committee is responsible to report to the presbytery on an ongoing basis.

## A.2 | Third Party Complaints

If the person making the complaint is a third party to the complaint, the complaint is dealt with by petition. When a petition is presented to the court:

1. The court decides whether to receive or not receive it based on whether or not it is in proper form.
2. If there is no request for further transmission, the court shall decide what action is to be taken.

If the petition is received with a request that it be transmitted to a higher court, it shall be sent on with one of the following designations: with approval, with disapproval, or without comment.

(Book of Forms, 75)

If the petition pertains to a complaint of sexual abuse or sexual harassment, the action of the presbytery will be to investigate the complaint according to the rules of the policy.

## A.3 | Determining if a Criminal Issue Will Affect the Procedures

### Categorizing Complaint

The committee shall determine as soon as possible if the complaint alleges behaviour that is covered by the Canadian criminal code. The committee should obtain legal advice if there is any question whether the complaint concerns a criminal matter.

The criminal code should be consulted (Appendix 2, p. 61). As the code is amended every year, it is necessary to consult the current code. Generally, a complaint involving minors or physical force almost certainly is a criminal matter. Also, a threat that creates fear for physical safety or continuous pursuit of a person that amounts to “stalking” may violate the criminal code.

In deciding whether the complaint involves a criminal matter, it is better to err on the side of caution.

## Duty To Report Suspected Child Abuse

In accordance with Canadian law, all cases of suspected abuse of a child must be reported immediately to the child protection agency (Children’s Aid Society or equivalent). Once the child protection agency has been contacted, their staff will begin an investigation and contact the individuals as they see fit. Under the process mandated for investigation by the civil authorities, only the child protection agency or the police may question the alleged victim or offender so that the investigation may proceed unhindered. However, offering pastoral care is always appropriate as long as the church refrains from hindering the police or child protection agency investigation (Intervention, Section 5-B, p. 21).

## Reporting to Police

If the complaint alleges behaviour of a criminal nature that is not child abuse, the committee may choose to report the complaint to the police.

## Limited Action during Criminal Investigation

When the committee determines that the complaint alleges behaviour of a criminal nature, it continues with intervention procedures (Section 5-B, p. 21) but cannot proceed to investigate (Section 5-C, p. 25) until the matter has been dealt with (including appeals) by the legal authorities.

The committee shall not interfere with the investigation of the child protection agency (Children’s Aid Society or equivalent) or the police.

If any member of the presbytery is questioned during the course of a police or child protection agency investigation of a criminal complaint, they may assist the authorities by answering the questions asked. However, if the person being questioned fears that such assistance will violate pastoral confidentiality, or in some other way harm the integrity of the Church court, they may seek the advice of a lawyer before proceeding.

To avoid inadvertently violating the rights of the person against whom the complaint is made, the committee shall not approach the complainee on the subject of the complaint during the course of the criminal investigation unless the committee has first consulted a lawyer.

## Contacting Police Regularly

It is appropriate for the presbytery to contact the police on a regular basis to keep the presbytery advised about the criminal investigation. If the police advise that the matter is no longer under investigation, then the presbytery may proceed to deal with the complaint before it. (See also Section 5-C, p. 25.)

## A.4 | Information to Relevant Parties

The committee will ensure that all concerned parties are informed as needed, in a manner appropriate to concerns of confidentiality and pastoral care.

## Confidentiality

Discretion shall be used to keep confidential the identity of the complainant and the person against whom the complaint is made unless otherwise necessary.

## Child Protection Agency

Any case of suspected child abuse shall be reported immediately to the child protection agency.

## Complainee

The committee must inform the person against whom the complaint is made that a complaint has been received.

## Presbytery

The moderator and clerk of the presbytery may call a special or emergent meeting of presbytery if they deem it necessary.

## Session and Congregation

The presbytery shall keep the session informed of the progress of the matter during the course of the investigations, and especially of any decision made by the presbytery that affects the ministry of the congregation.

The presbytery may discuss with the session appropriate communication to the congregation (Appendix 5, p. 81).

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## B. ▶ Intervention

### B.1 | Pastoral Care Providers

The committee arranges for pastoral care to be put in place immediately, as follows.

#### For Complainant and Family

The committee requests the presbytery executive or equivalent to appoint a qualified person to offer pastoral care to the complainant and family, as appropriate.

#### For Person Complained Against

The committee requests the presbytery executive or equivalent to appoint a qualified person to offer pastoral care to the complainee, as appropriate.

The person against whom the complaint is made should be cautioned that pastoral confidences may not be protected by the law in Canada, and that the pastoral care giver could be required to testify in a court of law about matters the complainee discloses to them.

## For Complainee's Family

Another person may be appointed to offer pastoral care to the family of the person against whom the complaint is made.

## Who Can Be Appointed for Pastoral Care

Those people appointed for pastoral care need not be active members of the presbytery, but they are responsible to the presbytery in these functions.

## Avoiding Conflict of Interest

To avoid conflict of interest, those persons who offer pastoral care cannot be members of the committee, notwithstanding the limited resources of small presbyteries. If necessary, they must withdraw from the committee.

## Offer of Pastoral Care Always Appropriate

It is always appropriate to offer pastoral care to any involved person during the course of these procedures.

## B.2 | Advisors

The committee requests the presbytery to appoint an advisor for each party of the complaint, as appropriate. Advisors are members of The Presbyterian Church in Canada who are assigned the task of advising the complainant and the complainee on the procedures of the church courts. Advisors are not considered to be a replacement for trained legal counsel.

### Role of Advisors

Advisors give advice on the procedures of the church courts.

The advisor to any party may be present as an observer when the investigating committee interviews the complainant or other witnesses. The advisor is not permitted to speak during the interview other than to request a brief recess. During the recess the advisor may speak privately to the investigative committee to raise concerns or suggest questions to be asked in the interview. Cross-examination of witnesses by advisors is not permitted.

Advisors do not participate in the deliberations of the investigative committee.

Although they may be members of the presbytery, advisors do not participate in the decisions of the presbytery on this case. Advisors who are not on the constituent roll of the presbytery require the permission of the presbytery to attend its *in camera* meetings.

The term 'advisor' has been used instead of 'advocate' to avoid the notion that someone else would represent the person against whom the complaint has been made before the church court. The advisor, however, may assist the person against whom the complaint has been made in preparing to answer the questions of the church court.

## Avoiding Conflict of Interest

To avoid conflict of interest, those persons who act as advisors cannot be members of the committee, notwithstanding the limited resources of small presbyteries. If necessary, they must withdraw from the committee.

## B.3 | Liaison to Congregation

The presbytery may want to consider assigning to a presbyter other than the interim moderator the responsibility for serving as liaison between the presbytery and the congregation in all matters relating to the investigation, to allow the interim moderator to enter a pastoral relationship with the congregation more fully. The presbytery should keep the session informed during the course of the investigation.

### Rumours

The liaison between the presbytery and the congregation, or the interim moderator, should attempt to deal with persons engaging in rumour, with a goal to minimizing the harm created. If necessary, the person using rumour should be subject to appropriate discipline.

## B.4 | Leave of Absence while Investigation Proceeds

Any leave of absence given during an investigation does not imply the guilt or innocence of the person under investigation.

### During Criminal Investigation

During a criminal investigation the person against whom the complaint is made shall be placed on a leave of absence with pay. In the case of a moderator of session, the presbytery appoints an interim moderator for the congregation.

### During Legal Appeal of Criminal Conviction

The right to a paid leave of absence during criminal investigation does not extend to the time period during which a complainee appeals a criminal conviction. Once an individual has been convicted in a criminal court, the presumption of innocence is lost. While the person complained against must continue on a leave of absence and the church court must wait to resolve the complaint until all appeal procedures are completed, the church is under no obligation to continue providing stipend and benefits to the complainee during this time.

### During Investigation into Non-Criminal Matter

If there is no criminal element to the complaint, the presbytery or the committee must use its discretion as to whether the person is placed on a paid leave of absence or continues in their position during the investigation, attaching any conditions considered appropriate, keeping in mind the serious consequences if abuse occurs during the investigation. If the committee has made the decision, it reports to the next presbytery meeting, at which time the presbytery may agree with or change the committee's action.

## Duration

Except during a legal appeal for a criminal conviction, the paid leave of absence continues until the presbytery has investigated fully and resolved the complaint before it.

## Special Note about Term-Limited Employment

Complaints may arise against individuals working on a term-limited basis. Examples include stated supply, interim or assistant ministers, ministers serving under appointment of the Life and Mission Agency, presbytery-appointed lay missionaries, and students on annual or summer appointment.

In such cases, the words “leave of absence with pay” may be used until the end of the term of employment. However, they no longer apply after that time, when both the employment and the pay are concluded. When the presbytery decides to remove the complainee from the position during an investigation and when the investigation outlasts the length of term, the person is paid until the end of the term. The investigation continues until the complaint has been resolved.

If a person under investigation wishes to enter into a new contract prior to the resolution of the complaint, they must obtain the permission of the presbytery of care.

## Special Note about Certified Candidates for Ministry

This provision may affect certified candidates for ministry who are working in short-term student positions when a complaint is made against them. A certified candidate for ministry will be allowed to continue theological education even while under investigation, but the presbytery responsible for their care (Book of Forms, 204) must decide whether the candidate may do field education or be allowed to take other student ministry positions prior to the resolution of the complaint.

## Relationship to Presbytery

A member of the presbytery on a leave of absence retains the right to sit and correspond in the presbytery, and in particular, has the right to address the presbytery directly on the issue of the complaint of sexual abuse or sexual harassment against them.

## Limitations on Minister during Paid Leave of Absence

A member of the presbytery on a leave of absence may not moderate a session on an interim basis, nor preach pulpit supply or anniversary services, nor conduct other services. The minister or diaconal minister must withdraw from any of these appointments that have already been scheduled. During the period of the leave of absence, if a special event occurs (such as the wedding of a family member) in which the minister wishes to participate in their capacity as a minister of religion, the minister must receive the permission of the presbytery.

## Informing Session and Congregation

When a member of the presbytery is placed on a paid leave of absence, the presbytery must inform the affected congregation as quickly as possible. Before the next Sunday service, the moderator of the presbytery or their designate will meet with the session and inform them of the investigation and assure them of the support of the presbytery, advise them on the appointment of an interim moderator, and make arrangements

to conduct worship. Appropriate information should be offered to the congregation at the Sunday service, respecting the confidentiality of the information, and having the goal of quelling rumour and speculation (Appendix 5, p. 81). If the member of the presbytery is on a leave of absence from a non-congregational position, the presbytery must inform the necessary parties as quickly and confidentially as possible.

## Financial Assistance for Congregation

A minister under investigation continues to receive a stipend. Criminal investigation by the civil authorities can extend the period when a paid leave of absence is required for many months, causing financial hardship for a congregation whose minister is under investigation. In such cases, some presbyteries have chosen to cover the costs of pulpit supply or the stipend and benefits for a part-time stated supply or interim minister. In 2004, the General Assembly made provision for funds to help the congregation to cover the cost of stipend and benefits for the minister on paid leave of absence, beginning in the second year of the leave. (Details are available from the office of the Chief Financial Officer.)

## Manse

If a manse is involved, the person against whom the complaint is made and their family continue to reside in it during the investigation. If the presbytery deems that such close proximity is inappropriate, other suitable residence must be arranged during this time period. Should marital breakup ensue during this period, the presbytery must strive to respond in a supportive and just manner to both spouses.

## B.5 | Limitations on Minister during Investigation

The ministerial certificate of any person against whom a complaint is made shall not be transferred to another presbytery until the investigating presbytery has concluded its decisions about the complaint.

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# C. ► Investigation

Before investigating a complaint, the committee ensures that the presbytery has addressed the intervention issues outlined in Section B, namely pastoral care, advisors, leave of absence, and limitations on those complained against (p. 21-25).

## C.1 | Determining when the Presbytery May Begin its Investigation of the Complaint

The presbytery begins its investigation when:

- a) the committee has decided that there are no criminal issues;
- b) the criminal courts have made a final decision (either acquittal or conviction) and all appeals have been exhausted;
- c) the police have decided not to lay charges or the case is no longer subject to a criminal investigation.

The committee must determine that the criminal courts or the police have concluded their actions in the matter before proceeding. It is appropriate for the presbytery or its committee to contact the police on a regular basis to keep the presbytery advised about the criminal investigation.

The committee must begin its investigation as soon as possible after the complaint has been received and criminal aspects of the complaint, if any, have been addressed fully.

## Investigation after Criminal Conviction

If the complaint has involved a criminal matter and has resulted in the person complained against receiving a criminal conviction, a full investigation may not be required by the presbytery. The investigative portion of the committee's work could be simply to take note of the fact of the criminal conviction. However, the person against whom the complaint is made may wish to give their reasons why the conviction may not be relevant to the presbytery's investigation, or to show other reasons why the committee should conduct a full investigation prior to adjudication of the complaint by the presbytery. The committee should conduct a full investigation if requested to do so by the complainant or the person complained against.

## C.2 | Guidelines for Interviews

### Who Interviews?

As many members of the committee as possible should participate in all interviews.

### Who Is Interviewed?

The committee shall interview all complainants and all persons complained against, and any other person whom it reasonably believes to have corroborative evidence or information about the complaint.

### No Face-to-Face Meetings between Complainant and Complainee

Because of possible risk to the persons involved in the complaint, the committee communicates directly and separately with the complainant, the complainee, and other witnesses.

## Overview of Sequence of interviews

1. The committee meets with the complainant to hear the complaint. A written statement of the complaint is prepared. It is signed by the complainant.
2. The committee meets with the person against whom the complaint has been made and the written complaint is presented. The committee hears the response of the complainee. A written statement of the complainee's response to the complaint is prepared. It is signed by the complainee.
3. The committee meets with the complainant a second time. The written response of the complainee is presented. The committee hears the complainant's response.

## Advisors May Attend Interviews

The advisor to the complainant and the advisor to the complainee may be present at interviews of the complainant, the complainee, and other witnesses. Advisors attending interviews must adhere to the guidelines for advisors (Section 5-B.2, p. 22).

## Techniques

The committee should develop appropriate interviewing techniques. It should ask questions designed to elicit as full an account as possible from the person being interviewed.

## Maintaining Records

The committee keeps careful and complete written records of all its interviews and meetings, and treats its proceedings as confidential.

## C.3 | Interviewing the Complainant

### Hear Directly

The committee meets with the complainant to hear the complaint directly.

### Written Statement

The committee asks the complainant for a written statement (signed and dated), along with any corroborating evidence of the complaint. If the complainant does not provide a written statement, the committee prepares the complaint in written form.

The committee requests permission to use the written statement in its meeting with the person against whom the complaint is made.

### Explaining Procedures to Complainant

Since the presbytery may decide to hear evidence directly from the complainant or witnesses as part of the report of the committee to the presbytery, the committee explains the possible need for the complainant to appear before the presbytery, if requested by the presbytery.

The committee explains to the complainant the process of presbytery investigation of complaints or ensures that the person's advisor has done so.

### If Complainant Hesitates or Withdraws Complaint

If the complainant refuses to allow the complaint to be put into writing, or refuses such written document to be used during the investigation, or refuses to appear before the presbytery if requested by it, the investigation will be hampered seriously. The committee proceeds with interviewing the person against whom the complaint is made, however discipline normally cannot be based on complaints for which the complainant is not prepared to provide written or oral testimony.

A witness who chooses not to proceed with their complaint by refusing to testify to the complaint before the presbytery is not liable to censure (Book of Forms, 407.1). The committee, however, must inform the complainant that their refusal to testify, in most cases, will cause the complaint to founder, unless other clear evidence is presented to the court.

## Interviewing Children

The committee wishing to interview a child should proceed with the utmost care, to avoid possible trauma to the child. Civil courts are experimenting with videotape evidence, or with the use of screens in the court, so that children may present testimony without being required to face a room full of people.

In cases involving children that have resulted in a criminal conviction, the committee may choose not to interview the child. Instead it makes its report to the presbytery based on the evidence of the conviction.

## When Investigation Uncovers Possible Criminal Complaint

In the course of interviewing the complainant, the committee may discover that the alleged behaviour might be of a criminal nature (Appendix 2, p.61). The committee has the duty to inform the complainant that criminal charges may be warranted. If the complainant refuses to go to the police, the committee must seek the guidance of a lawyer before proceeding to interview the person against whom the complaint is made.

Whenever the conclusion is reached that the complaint alleges behaviour of a criminal nature, the committee immediately follows the procedures outlined for criminal complaints (Section 5-A.3 p. 19).

## C.4 | Interviewing the Person against whom the Complaint Is Made

If there is no suggestion of possible criminal charges, or when all criminal matters have been dealt with by the civil authorities, the person against whom the complaint is made is interviewed.

### Direct Meeting

The committee meets directly with the person against whom the complaint is made as soon as possible. The committee has the right to compel an expeditious meeting, with the right of appeal to the presbytery reserved for all concerned.

### Written Complaint Presented

The committee presents the complaint in writing to the person being complained against.

### Complainant Not Present

The complainant is not present at the committee's meetings with the person being complained against. However, the advisor to the complainant may be present (Section 5-B.2, p. 22).

### Explaining the Process

The committee outlines the process followed by the presbytery in dealing with complaints, emphasizing the presumption of innocence and the right to due process, or ensures that the person's advisor has done so.

### Listening

The committee hears the complainees response to the complaint.

## Written Response

The committee requests a written statement of the response.

## C.5 | Returning to the Complainant

The committee meets again with the complainant and presents the complainee's written response to the complaint. The committee hears the complainant's response.

## C.6 | The Committee Prepares its Report to the Presbytery

The committee meets to determine if it has conducted all the interviews it thinks necessary before reporting its findings to the presbytery. The complainant, the complainee or their advisors are not permitted to attend these meetings.

The committee may choose to present its report to the presbytery with or without recommendations.

### Notice of Recommendations

The committee informs the person against whom the complaint has been made of what recommendations, if any, it is prepared to make to the presbytery regarding the complaint, so that the person has time to prepare a response to be heard by the presbytery. Ideally, the committee informs the complainee of its recommendations 10 days prior to the scheduled presbytery meeting at which the report will be considered.

The committee gives similar notice to the complainant.

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## D. ▶ Adjudication

### D.1 | Reporting to the Presbytery

#### Reporting Privately to Presbytery

The committee reports in full to the presbytery *in camera*. The committee may make recommendations, but only the presbytery determines whether the complaint has been substantiated.

#### Reporting All Relevant Information

All relevant information in the investigation must be shared with the presbytery in order that it may arrive at a fair decision. The presbytery may choose to hear the evidence of any witness directly. In the case of a confession, the court may choose not to hear all information collected by the committee.

## Appropriate Areas of Recommendation

The committee may make recommendations on discipline as well as on the issue of whether the complaint has been substantiated (Section 5-D.7, p. 32).

## Reporting Conviction of Criminal Offence

If a criminal conviction has been entered against the complaine, the committee reports the fact of the conviction to the presbytery, along with any other relevant information arising from the committee's investigation.

## Right To Address Presbytery

The person against whom the complaint is made has the right to address the presbytery directly on the subject of the complaint, even if that person is on a leave of absence from their position. The complainant also is permitted to address the presbytery directly.

## D.2 | Principles of Decision Making

For each complaint that comes to it under the Policy for Dealing with Sexual Abuse and Sexual Harassment, the presbytery must decide ultimately between two outcomes:

- a) The complaint has been substantiated. In this case, the presbytery is satisfied that the complaint has been established on a balance of probabilities.
- b) The complaint has not been substantiated. In this case, the presbytery is satisfied that the complaint has not been established on a balance of probabilities.

## Basis for Decisions about Complaint

All decisions made under the Policy for Dealing with Sexual Abuse and Sexual Harassment are made on the basis of the balance of probabilities, a standard of proof used in civil law courts. This is to be contrasted with the standard of proof used in criminal law courts, which is proof beyond a reasonable doubt.

The balance of probabilities is a high standard of proof that protects the interests of the person against whom the complaint is made. To establish a decision based on the balance of probabilities, the presbytery must be able to say that the existence of the contested facts is more probable than their non-existence. The more serious the alleged offence and possible penalty at issue, the more rigorous and exacting the evidence of guilt must be. Oral reports can be accepted as evidence, but such reports must be subject to questioning by the committee or by the presbytery to satisfy the presbytery that the report is truthful and not exaggerated.

In determining whether the complaint has been substantiated, the complaint must be established on the balance of probabilities by a majority vote of those members of the presbytery considering the complaint. If a majority vote of those members of the presbytery considering the complaint is not reached, the complaint is not substantiated and the person against whom the complaint has been made is found to be innocent.

## D.3 | The Presbytery Decides the Issue

The presbytery considers the full report of the committee and any additional information it desires, and then decides whether the complaint has been substantiated.

If, on a balance of probabilities, the presbytery decides that the complaint has been substantiated, then it moves to considerations of discipline.

If, on a balance of probabilities, the presbytery decides that the complaint has not been substantiated, then it declares the complaint to be dismissed.

## D.4 | Procedures of Decision Making

### Voting

Even if they are members of the presbytery, the person complained against and the complainant are not permitted to vote on the question of whether the complaint is substantiated.

### Paper Ballots

The presbytery may choose to vote by paper ballot when deciding whether the complaint is substantiated. A paper ballot removes the possibility that presbytery members might be affected by the way other members, particularly the members of the committee, cast their votes.

## D.5 | Records

### Records Must Be Kept

Regardless of the decision arrived at by the presbytery, all records shall be kept, and the files regarding the whole matter shall be held *in retentis* in the same manner as outlined for trial records in the Book of Forms (sections 30 and 31).

## D.6 | Discipline

### Complaint Substantiated Prior to Decision on Discipline

Decisions about discipline must never be made before the presbytery has decided that the complaint has been substantiated.

### Presbytery Determines Appropriate Discipline

The presbytery determines what discipline is appropriate in the circumstances (Forms of Discipline, Section 5-D.7, p. 32), although the committee may make recommendations. Where the report of the committee includes the fact of a conviction of a criminal offence involving sexual abuse, the presbytery normally considers the conviction to be grounds for administering discipline.

## Right To Address

The complainant and the person complained against have the right to address the presbytery directly on the subject of the discipline to be administered.

## The Spirit of Discipline

When the presbytery is required to discipline an individual under its care, the instruction of the Book of Forms should be recalled: “Administering censure is a ministerial act, performed by the authority of the court, and should be carried out with solemnity, in meekness, and with love and tenderness” (Book of Forms, 366).

## D.7 | Forms of Discipline

The censures of the church are admonition, rebuke, suspension from church privileges or office, removal from membership or office, deposition from office, and excommunication, all of which are pronounced by the moderator in the name of the presbytery (Book of Forms, 365–375).

### Admonition

If the abuse is considered isolated and relatively minor, such as a temporary lapse of judgment, then an admonition may be administered (Book of Forms, 367). An admonition may only be used if the accused displays remorse. The presbytery must be satisfied that the abuse will not recur to use this level of discipline.

### Rebuke

If the abuse shows a willful flouting of ethical sexual behaviour, or if the accused person shows an inadequate acknowledgment of the seriousness of the situation, a rebuke may be administered (Book of Forms, 368). The rebuke may include a temporary suspension from office without pay, a requirement to enter therapy, or any other disciplinary task designed to prevent a recurrence of the abuse. Evidence should be offered that the task has been completed to the presbytery’s satisfaction.

### Removal from Office or Position

If the presbytery considers the abuse has been the cause of severe damage, or will recur in the future, or if healing of professional relations is not possible, it may sever the pastoral tie, or remove the accused person from their position. The ministerial certificate shall not be released until the presbytery is satisfied that steps have been completed to prevent future abuse. Such steps may include therapy, withholding the certificate for a set period of time, spiritual direction or any other task set by the presbytery (Book of Forms, 369 – 372).

### Deposition from Ministerial Office

When the offender is an ordained minister of Word and Sacraments or a diaconal minister and if the abuse is substantial, involving criminal acts, violence, abuse of minors, or repeated episodes of abuse, the abuse shall be treated as gross immorality and the offender shall be deposed from the ministerial office (Book of Forms, 373 – 373.2).

## D.8 | Church Court Trial under the Book of Forms

In most cases, decisions made under the policy will be accepted by the complainant, the person complained against, and the presbytery.

However in other cases, the presbytery may decide that the matter should proceed to a church court trial as outlined in the Book of Forms. There are three situations in which the matter proceeds to trial (Book of Forms, 356.1–356.3):

- ▶ The presbytery, after hearing the report of the committee, determines that a trial is required. The trial shall be held before the presbytery.
- ▶ The person against whom the complaint is made is dissatisfied with the presbytery's decision made under the policy and demands a trial. The trial shall be held before the synod or the General Assembly.
- ▶ The complainant is dissatisfied with the presbytery's decision made under the policy and demands a trial. The trial shall be held before the synod or the General Assembly.

Evidence found by the committee may be used in the trial, subject to direction from the court conducting the trial (presbytery, synod or General Assembly) to ensure that the trial is conducted fairly.

Following a church court trial, provisions for appeal are in effect (Book of Forms, 376-380).

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## E. ▶ Communication Following Adjudication

### E.1 | Recording the Decision

Whatever decision is made by the presbytery, all relevant information including records of interviews and meetings of the committee and the presbytery, shall be retained. Sections 30 and 31 of the Book of Forms shall be followed.

The presbytery may meet *in camera* to determine which facts shall constitute the public record of the presbytery. These facts shall be entered into the minutes. Care should be taken to ensure that only those facts that have been substantiated become part of the public record of the presbytery. Complaints that have not been substantiated should not be discussed outside the court.

When a complaint has been dismissed, the public record of the presbytery should respect the privacy of the complainant as well as of the person complained against.

Even when a complaint has been substantiated, the public record of the presbytery should attempt to respect the privacy of the individuals involved as much as possible. Only those details that are vital to understanding the decision should be put in the public record.

## E.2 | Communicating with the Individuals Concerned

The complainant and the person complained against are informed in writing of the decision to dismiss or substantiate the complaint and, if applicable, the discipline imposed.

## E.3 | Communicating with the Session and the Congregation

If the person complained against is a moderator of session or serving a congregation, the presbytery will inform the concerned session in writing of the result of the investigation or trial, and the action it has taken.

The presbytery may discuss with the session appropriate communication to the congregation, taking care to ensure respect for the privacy of the complainant. Any statement prepared for the congregation should be reviewed by the presbytery clerk to ensure its accuracy. The statement shall disclose only information held in the public record of the presbytery.

A congregational meeting may be called in order that presbytery representatives may answer questions, with a follow-up visitation to occur within one year.

### When Discipline Involves Dissolving a Pastoral Tie

When the presbytery has decided to dissolve a pastoral tie, the presbytery must arrange for the sentence to be read before the congregation, and the charge forthwith declared vacant (Book of Forms, 372.2 and 373.1).

## E.4 | Communication with the Wider Church

### Forwarding a Verdict that Violation Has Occurred

The fact of the substantiation of the complaint, together with a copy of the public record of the relevant sections of the presbytery minutes, shall be forwarded to the Office of Ministry and Church Vocations (Book of Forms, 201.3).

### Checking Files When Calling or Appointing a Minister

Interim Moderators are required to consult the Ministry and Church Vocations Office regarding the files of candidates for calls or appointments (Book of Forms, 215.2). The search committee should be informed of a substantiated complaint under the policy prior to a decision to extend a call to the candidate.

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## F. ► Aftercare

The church should provide effective guidance and pastoral care to any person, group or congregation affected by the complaint, regardless of the outcome. After dealing with a complaint, the presbytery should consider its own need for pastoral care and renewal.

See Appendix 3 (p. 73) for resources that address these concerns, particularly books by Nancy Meyers Hopkins.

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## G. ► Conclusion

Presbyterians must be willing to recognize that sexual abuse and sexual harassment do occur within the church. This policy is one step in preventing such abuse and harassment. The church will continue to consider how ministry that has been disturbed by sexual abuse or sexual harassment may be renewed most effectively.

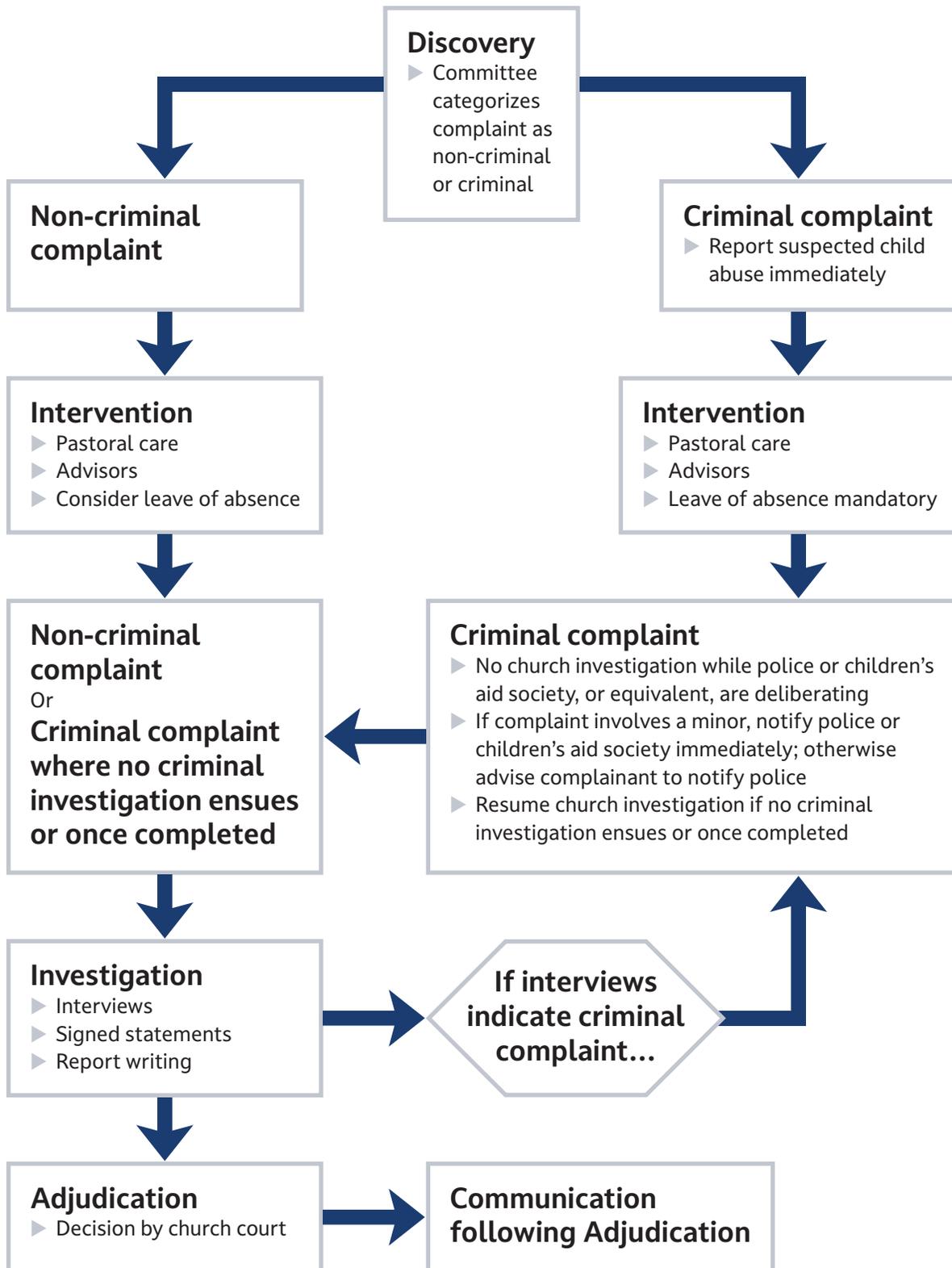
The church desires to prevent abuse. Recognizing our need to create environments that foster healthy relationships and sound leadership, the General Assembly in 2005 adopted *Leading with Care: A Policy for Ensuring a Climate of Safety for Children, Youth and Vulnerable Adults in The Presbyterian Church in Canada*. This policy outlines the principles and practices by which the ministries of The Presbyterian Church in Canada are to structure their activities so as to reduce the possibility of harm to the persons under their care.



SECTION 6

# Session Procedures for Dealing with Complaints

# Procedures Flow Chart for Session



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# A. ► Discovery

## A.1 | Receiving Complaints

### The Beginning: A Complaint Is Made

Sessions receive complaints of sexual abuse or sexual harassment against members and adherents of the congregation, provided they are not accountable to the presbytery or synod. This is true whether the individuals serve as volunteers, including ruling elders, or as salaried employees of the congregation. Non-church groups using the congregation's facilities are also accountable to the session.

The sole exception is found in complaints of sexual abuse or sexual harassment made by a minister serving in a congregation against a lay member, adherent or salaried staff person of the same congregation. Such complaints are to be taken directly to the presbytery.

For complaints against other individuals, see Section 3-A, p. 8.

Complaints of sexual abuse or sexual harassment that fall under the jurisdiction of the session are directed to the minister or the clerk of session. Any person receiving a complaint of sexual abuse or sexual harassment must direct it to the appropriate channel immediately.

The person bringing the complaint is referred to as the complainant. The person complained against may be referred to as the complainee.

Complaints of sexual abuse or sexual harassment are not directed first to the person complained against (Book of Forms, 349.1). In fact, the church's procedures for dealing with these complaints do not require direct communication or face-to-face meetings between the complainant and the complainee. Instead, the committee of the session communicates directly with the complainee about the complaint.

The session shall inform the complainant of the right to seek the assistance of, and to take their complaint to, the appropriate Provincial Human Rights Commission.

Any person who is aware of a criminal investigation for sexual abuse or sexual harassment of any individual accountable to the session should inform the minister or the clerk of session.

### Other Involved Sessions

If the person complained against is a member of a Presbyterian congregation, the session of that congregation deals with the complaint.

If the person complained against is not a member of a Presbyterian congregation (or is on the list of adherents), the complaint is dealt with where it arises.

### Sessions May Request Presbytery Assistance

The session is urged to consult the presbytery standing committee, and/or the synod standing committee, in order to educate itself. The session can request the standing committee of the presbytery to conduct an investigation or to provide help and advice, but the session will still adjudicate the complaint.

## Standing Committee May Begin

The committee, if it is in place, may begin dealing with the complaint prior to the next regular meeting of the session. The moderator may call a special meeting of session to receive the complaint, set up a committee, or take any action relating to the complaint, if deemed necessary (Book of Forms, Section 121).

## Records

The committee keeps records of all its proceedings, including interviews, meetings, and any other relevant activity.

## Reporting

The committee is responsible to report to the session on an ongoing basis.

## A.2 | Third Party Complaints

If the person making the complaint is a third party to the complaint, the complaint is dealt with by petition. When a petition is presented to the court:

1. The court decides whether to receive or not receive it based on whether or not it is in proper form.
2. If there is no request for further transmission, the court shall decide what action is to be taken.

If the petition is received with a request that it be transmitted to a higher court, it shall be sent on with one of the following designations: with approval, with disapproval, or without comment.

(Book of Forms, 75)

If the petition pertains to a complaint of sexual abuse or sexual harassment, the action of the session will be to investigate the complaint according to the rules of the policy.

## A.3 | Determining if a Criminal Issue Will Affect the Procedures

### Categorizing Complaint

The committee shall determine as soon as possible if the complaint alleges behaviour that is covered by the Canadian criminal code. If there is any question whether the complaint concerns a criminal matter, the committee should consult with the standing committee of the presbytery or synod and, if uncertainty remains, obtain legal advice.

The criminal code should be consulted (Appendix 2, p. 61). As the code is amended every year, it is necessary to consult the current code. Generally, a complaint involving minors or physical force is almost certainly a criminal matter. Also, a threat that creates fear for physical safety or continuous pursuit of a person that amounts to “stalking” may violate the criminal code.

In deciding whether the complaint involves a criminal matter, it is better to err on the side of caution.

## Duty To Report Suspected Child Abuse

In accordance with Canadian law, all cases of suspected abuse of a child must be reported immediately to the child protection agency (Children’s Aid Society or equivalent). Once the child protection agency has been contacted, their staff will begin an investigation and contact the individuals as they see fit. Under the process mandated for investigation by the civil authorities, only the child protection agency or the police may question the alleged victim or offender so that the investigation may proceed unhindered. However, if the church refrains from hindering the police or child protection agency investigation, offering pastoral care is still appropriate (Section 6-B, p. 41).

## Reporting to Police

If the complaint alleges behaviour of a criminal nature that is not child abuse, the committee may choose to report the complaint to the police.

## Limited Action during Criminal Investigation

When the committee determines that the complaint alleges behaviour of a criminal nature, it continues with intervention procedures (Section 6-B, p. 41) but cannot proceed to investigate (Section 6-C, p. 45) until the matter has been dealt with (including appeals) by the legal authorities.

The committee shall not interfere with the investigation of the child protection agency (Children’s Aid Society or equivalent) or the police.

If any member of the session is questioned during the course of a police or child protection agency investigation of a criminal complaint, they may assist the authorities by answering the questions asked. However, if the person being questioned fears that such assistance will violate pastoral confidentiality, or in some other way harm the integrity of the Church court, they may seek the advice of a lawyer before proceeding.

To avoid inadvertently violating the rights of the person against whom the complaint is made, the committee shall not approach the complainee on the subject of the complaint during the course of the criminal investigation unless the committee has first consulted a lawyer.

## Contacting Police Regularly

It is appropriate for the session to contact the police on a regular basis to keep the session advised about the criminal investigation. If the police advise that the matter is no longer under investigation, then the session may proceed to deal with the complaint before it (Section 6-C.1, p. 45).

## A.4 | Information to Relevant Parties

The committee will ensure that all concerned parties are informed as needed, in a manner appropriate to concerns of confidentiality and pastoral care.

## Confidentiality

Discretion shall be used to keep confidential the identity of the complainant and the person against whom the complaint is made unless otherwise necessary.

## Child Protection Agency

Any case of suspected child abuse shall be reported immediately to the child protection agency.

## Complainee

The committee must inform the person against whom the complaint is made that a complaint has been received.

## Presbytery

The session should immediately inform the presbytery that a complaint under the policy has been received. The presbytery may require the session to consult the presbytery standing committee, and/or the standing committee of the synod.

## Congregation

The session should keep the complaint confidential, if possible, during the course of the investigations (Book of Forms, 120.1). Any decision made by the session that affects the ministry of the congregation must be communicated to the congregation appropriately. The session should discuss with the presbytery standing committee appropriate communication to the congregation (Appendix 5, p. 81).

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## B. ▶ Intervention

### B.1 | Pastoral Care Providers

The committee arranges for pastoral care to be put in place immediately, as follows.

#### For Complainant and Family

The committee requests the session to appoint a qualified person to offer pastoral care to the complainant and family, as appropriate.

#### For Person Complained Against

The committee requests the session to appoint a qualified person to offer pastoral care to the complainee, as appropriate.

The person against whom the complaint is made should be cautioned that pastoral confidences may not be protected by the law in Canada, and that the pastoral care giver could be required to testify in a court of law, about matters the complainee discloses to them.

## For Complainee's Family

Another person may be appointed to offer pastoral care to the family of the person against whom the complaint is made.

## Who Can Be Appointed for Pastoral Care

Those people appointed for pastoral care need not be active members of the session, but they are responsible to the session in these functions. Sessions may ask presbytery members to assist in providing pastoral care.

## Avoiding Conflict of Interest

To avoid conflict of interest, those persons who offer pastoral care cannot be members of the committee, notwithstanding the limited resources of small sessions. If necessary, they must withdraw from the committee.

## Offer of Pastoral Care Always Appropriate

It is always appropriate to offer pastoral care to any involved person during the course of these procedures.

## B.2 | Advisors

The committee requests the session to appoint an advisor for each party of the complaint, as appropriate. Advisors are members of The Presbyterian Church in Canada who are assigned the task of advising the complainant and the complainee on the procedures of the church courts. Advisors are not considered to be a replacement for trained legal counsel.

## Role of Advisors

Advisors give advice on the procedures of the church courts.

The advisor to any party may be present as an observer when the investigating committee interviews the complainant, or other witnesses. The advisor is not permitted to speak during the interview other than to request a brief recess. During the recess the advisor may speak privately to the investigative committee to raise concerns or suggest questions to be asked in the interview. Cross-examination of witnesses by advisors is not permitted.

Advisors do not participate in the deliberations of the investigative committee.

Although they may be members of the session, advisors do not participate in the decisions of the session on this case. Advisors who are not on the constituent roll of the session require the permission of the session to attend its *in camera* meetings.

The term 'advisor' has been used instead of 'advocate' to avoid the notion that someone else would represent the person against whom the complaint has been made before the church court. The advisor, however, may assist the person against whom the complaint has been made in preparing to answer the questions of the church court.

## Avoiding Conflict of Interest

To avoid conflict of interest, those persons who act as advisors cannot be members of the committee, notwithstanding the limited resources of small sessions. If necessary, they must withdraw from the committee.

## B.3 | Liaison to Congregation

The session, through its Clerk, will communicate promptly and appropriately to all individuals and groups affected by the investigation.

### Rumour

The session should be alert to deal with persons engaging in rumour, with a goal to minimizing the harm created. If necessary, the person using rumour should be subject to appropriate discipline.

## B.4 | Leave of Absence while Investigation Proceeds

Any leave of absence given during an investigation does not imply the guilt or innocence of the person under investigation.

### During Criminal Investigation

During a criminal investigation the person against whom the complaint is made shall be placed on a leave of absence. If the person complained against is a salaried staff person, the leave will be with pay. In the case of an essential position, the session will appoint or hire a suitable replacement on an interim basis.

Non-church groups may not use church space while being criminally investigated for complaints of sexual abuse, unless the person being investigated has been placed on a leave of absence. As far as it is able, the session should facilitate the continuation of services, such as day care facilities, under new leadership.

### During Legal Appeal of Criminal Conviction

The right to a paid leave of absence during criminal investigation does not extend to the time period during which a complainee appeals a criminal conviction. Once an individual has been convicted in a criminal court, the presumption of innocence is lost. While the person complained against must continue on a leave of absence and the church court must wait to resolve the complaint until all appeal procedures are completed, the church is under no obligation to continue providing stipend and benefits or salary to the complainee during this time.

### During Investigation into Non-Criminal Matter

If there is no criminal element to the complaint, the session or the committee must use its discretion as to whether the person is placed on a paid leave of absence or continues in their position during the investigation, attaching any conditions considered appropriate, keeping in mind the serious consequences if abuse occurs during the investigation. If the committee has made the decision, it reports to the next session meeting, at which time the session may agree with or change the committee's action.

## Duration

Except during a legal appeal for a criminal conviction, a paid leave of absence continues until the session has investigated fully and resolved the complaint before it.

## Special Note about Term-Limited Employment

Complaints may arise against individuals working on a term-limited basis.

In such cases, the words “leave of absence with pay” may be used until the end of the term of employment. However, these words no longer apply after that time, when both the employment and the pay are concluded. When the session decides to remove the complainee from the position during an investigation and when the investigation outlasts the length of term, the person is paid until the end of the term. The investigation continues until the complaint has been resolved.

If a person under investigation wishes to enter into a new contract prior to the resolution of the complaint, they must obtain the permission of the session.

## Special Note about Certified Candidates for Ministry

If the person on contract is a certified candidate for ministry, the investigation would be carried out by the presbytery responsible for their care. If the session wanted the person to complete the contract, they would have to ask the permission of the presbytery of care.

## Relationship to Session

A person complained against has the right to address the session directly on the issue of the complaint of sexual abuse or sexual harassment against them.

## Limitations on Persons Complained Against during Leave of Absence

The leave of absence requires a complainee to withdraw from performing all duties normally assigned to them. Before doing otherwise, for instance participating in some previously scheduled special event, the complainee must receive the permission of the session.

## Informing Congregation

When a complainee is placed on a leave of absence, the session must inform the congregation. The clerk of session, or their designate, will offer appropriate information, respecting the confidentiality of the information, and having the goal of quelling rumour and speculation (Appendix 5, p. 81).

## Financial Assistance for Congregation

If the investigation lasts so long that financial hardship may result to the congregation, the presbytery may be asked to assist the session in meeting its commitment.

## B.5 | Limitations on Church Member during Investigation

The certificate of membership of any church member against whom a complaint is made shall not be transferred to another congregation until the investigating session has concluded its decisions about the complaint (Book of Forms, Section 126).

# C. ► Investigation

Before investigating a complaint, the committee ensures that the session has addressed the intervention issues outlined in Section 6-B, namely pastoral care, advisors, leave of absence (with pay, if applicable), and limitations on those complained against (p. 41-45).

## C.1 | Determining when the Session May Begin its Investigation of the Complaint

The session begins its investigation when:

- a) the committee has decided that there are no criminal issues;
- b) the criminal courts have made a final decision (either acquittal or conviction) and all appeals have been exhausted;
- c) the police have decided not to lay charges or the case is no longer subject to a criminal investigation.

The committee must determine that the criminal courts or the police have concluded their actions in the matter before proceeding. It is appropriate for the session or its committee to contact the police on a regular basis to keep the session advised about the criminal investigation. The session is reminded that it may request assistance of the presbytery standing committee, if desired.

The committee must begin its investigation as soon as possible after the complaint has been received and criminal aspects of the complaint, if any, have been addressed fully.

### Investigation after Criminal Conviction

If the complaint has involved a criminal matter and has resulted in the person complained against receiving a criminal conviction, a full investigation may not be required by the session. The investigative portion of the committee's work could be simply to take note of the fact of the criminal conviction. However, the person against whom the complaint is made may wish to give their reasons why the conviction may not be relevant to the session's investigation, or show other reasons why the committee should conduct a full investigation prior to adjudication of the complaint by the session. The committee should conduct a full investigation if requested to do so by the complainant or the person against whom the complaint is made.

## C.2 | Guidelines for Interviews

### Who Interviews?

As many members of the committee as possible should participate in all interviews.

### Who Is Interviewed?

The committee shall interview all complainants and all persons complained against, and any other person whom it reasonably believes to have corroborative evidence or information about the complaint.

### No-Face-to-Face Meetings between Complainant and Complainee

Because of possible risk to the persons involved in the complaint, the committee communicates directly and separately with the complainant, the complainee, and other witnesses.

### Overview of Sequence of Interviews

1. The committee meets with the complainant to hear the complaint. A written statement of the complaint is prepared. It is signed by the complainant.
2. The committee meets with the person against whom the complaint has been made and the written complaint is presented. The committee hears the response of the complainee. A written statement of the complainee's response to the complaint is prepared. It is signed by the complainee.
3. The committee meets with the complainant a second time. The written response of the complainee is presented. The committee hears the complainant's response.

### Advisors May Attend Interviews

The advisor to the complainant and the advisor to the complainee may be present at interviews of the complainant, the complainee, and other witnesses. Advisors attending interviews must adhere to the guidelines for advisors (Section 6-B.2, p. 42).

### Techniques

The committee should develop appropriate interviewing techniques. It should ask questions designed to elicit as full an account as possible from the person being interviewed.

### Maintaining Records

The committee keeps careful and complete written records of all its interviews and meetings, and treats its proceedings as confidential.

## C.3 | Interviewing the Complainant

### Hear Directly

The committee meets with the complainant to hear the complaint directly.

### Written Statement

The committee asks the complainant for a written statement (signed and dated) along with any corroborating evidence of the complaint. If the complainant does not provide a written statement, the committee prepares the complaint in written form.

The committee requests permission to use the written statement in its meeting with the person against whom the complaint is made.

### Explaining Procedures to Complainant

Since the session may decide to hear evidence directly from the complainant or witnesses as part of the committee's report to the session, the committee explains the possible need for the complainant to appear before the session, if requested.

The committee explains to the complainant in detail the process of session investigation of complaints or ensures that the person's advisor has done so.

### If Complainant Hesitates or Withdraws Complaint

If the complainant refuses to allow the complaint to be put into writing, or refuses such written document to be used during the investigation, or refuses to appear before the session if requested by it, the investigation will be hampered seriously. The committee proceeds with interviewing the person against whom the complaint is made, however discipline normally cannot be based on complaints for which the complainant is not prepared to provide written or oral testimony.

A witness who chooses not to proceed with their complaint by refusing to testify to the complaint before the session is not liable to censure. The committee, however, must inform the complainant that their refusal to testify, in most cases, will cause the complaint to founder, unless other clear evidence is presented to the court.

### Interviewing Children

The committee wishing to interview a child should proceed with the utmost care, to avoid possible trauma to the child. Civil courts are experimenting with videotape evidence, or with the use of screens in the court, so that children may present testimony without being required to face a room full of people.

In cases involving children that have resulted in a criminal conviction, the committee may choose not to interview the child. Instead it makes its report to the session based on the evidence of the conviction.

Any session wishing to interview a child should consult with the presbytery standing committee or the synod standing committee before proceeding.

## When Investigation Uncovers Possible Criminal Complaint

In the course of interviewing the complainant, the committee may discover that the alleged behaviour might be of a criminal nature (Appendix 2, p. 61). The committee has the duty to inform the complainant that criminal charges may be warranted. If the complainant refuses to go to the police, the committee must seek the guidance of a lawyer before proceeding to interview the person against whom the complaint is made.

Whenever the conclusion is reached that the complaint alleges behavior of a criminal nature, the committee immediately follows the procedures outlined for criminal complaints (Section 6-A.3, p. 39).

## C.4 | Interviewing the Person against whom the Complaint Is Made

If there is no suggestion of possible criminal charges, or when all criminal matters have been dealt with by the civil authorities, the person against whom the complaint is made is interviewed.

### Direct Meeting

The committee meets directly with the person against whom the complaint is made as soon as possible. The committee has the right to compel an expeditious meeting, with right of appeal to the session reserved for all concerned.

### Written Complaint Presented

The committee presents the complaint in writing to the person being complained against.

### Complainant Not Present

The complainant is not present at the committee's meetings with the person being complained against. However, the advisor to the complainant may be present (Section 6-B.2, p. 42).

### Explaining the Process

The committee outlines the process followed by the session in dealing with complaints, emphasizing the presumption of innocence and the right to due process, or ensures that the person's advisor has done so.

### Listening

The committee hears the complaine'e's response to the complaint.

### Written Response

The committee requests a written statement of the response.

## C.5 | Return to the Complainant

The committee meets again with the complainant and presents the complainee's written response to the complaint. The committee hears the complainant's response.

## C.6 | The Committee Prepares its Report to the Session

The committee meets to determine if it has conducted all the interviews it thinks necessary before reporting its findings to the session. The complainant, the complainee or their advisors are not permitted to attend these meetings.

The committee may choose to present its report to the session with or without recommendations.

### Notice of Recommendations

The committee informs the person against whom the complaint has been made of what recommendations, if any, it is prepared to make to the session regarding the complaint, so that the person has time to prepare a response to be heard by the session. Ideally, the committee informs the complainee of its recommendations 10 days prior to the scheduled session meeting at which the report will be considered.

The committee gives similar notice to the complainant.

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## D. ▶ Adjudication

### D.1 | Reporting to the Session

#### Reporting Privately to Session

The committee reports in full to the session *in camera*. The committee may make recommendations, but only the session determines whether the complaint has been substantiated.

#### Reporting All Relevant Information

All relevant information in the investigation must be shared with the session in order that it may arrive at a fair decision. The session may choose to hear the evidence of any witness directly. In the case of a confession, the court may choose not to hear all information collected by the committee.

#### Appropriate Areas of Recommendation

The committee may make recommendations on discipline as well as on the issue of whether the complaint has been substantiated (Section 6-D.7, p.52).

## Reporting Conviction of Criminal Offence

If a criminal conviction has been entered against the complainee, the committee reports the fact of the conviction to the session, along with any other relevant information arising from the committee's investigation.

## Right To Address Session

The person against whom the complaint is made has the right to address the session directly on the subject of the complaint, even if that person is on a leave of absence from their position. The complainant also is permitted to address the session directly.

## D.2 | Principles of Decision Making

For each complaint that comes to it under the Policy for Dealing with Sexual Abuse and Sexual Harassment, the session must decide ultimately between two outcomes:

- a) The complaint has been substantiated. In this case, the session is satisfied that the complaint has been established on a balance of probabilities.
- b) The complaint has not been substantiated. In this case, the session is satisfied that the complaint has not been established on a balance of probabilities.

### Basis for Decisions about Complaint

All decisions made under the Policy for Dealing with Sexual Abuse and Sexual Harassment are made on the basis of the balance of probabilities, a standard of proof used in civil law courts. This is to be contrasted with the standard of proof used in criminal law courts, which is proof beyond a reasonable doubt.

The balance of probabilities is a high standard of proof that protects the interests of the person against whom the complaint is made. To establish a decision based on the balance of probabilities, the session must be able to say that the existence of the contested facts is more probable than their non-existence. The more serious the alleged offence and possible penalty at issue, the more rigorous and exacting the evidence of guilt must be. Oral reports can be accepted as evidence, but such reports must be subject to questioning by the committee or the session to satisfy the session that the report is truthful and not exaggerated.

In determining whether the complaint has been substantiated, the complaint must be established on the balance of probabilities by a majority vote of those members of the session considering the complaint. If a majority vote of those members of the session considering the complaint is not reached, the complaint is not substantiated and the person against whom the complaint has been made is found to be innocent.

## D.3 | The Session Decides the Issue

The session considers the full report of the committee and any additional information it desires, and then decides whether the complaint has been substantiated.

If, on a balance of probabilities, the session decides that the complaint has been substantiated, then it moves to considerations of discipline.

If, on a balance of probabilities, the session decides that the complaint has not been substantiated, then it declares the complaint to be dismissed.

## D.4 | Procedures of Decision Making

### Voting

Even if they are members of the session, the person complained against and the complainant are not permitted to vote on the question of whether the complaint is substantiated.

### Paper Ballots

The session may choose to vote by paper ballot when deciding whether the complaint is substantiated. A paper ballot removes the possibility that session members might be affected by the way other members, particularly the members of the committee, cast their votes.

## D.5 | Records

### Records Must Be Kept

Regardless of the decision arrived at by the session, all records shall be kept, and the files regarding the whole matter shall be held *in retentis* in the same manner as outlined for trial records in the Book of Forms (Book of Forms, 30-31).

## D.6 | Discipline

### Complaint Substantiated Prior to Decision on Discipline

Decisions about discipline must never be made before the session has decided that the complaint has been substantiated.

### Session Determines Appropriate Discipline

The session determines what discipline is appropriate in the circumstances, although the committee may make recommendations (Section 6-D.7, p. 52). Where the report of the standing committee includes the fact of a conviction of a criminal offence involving sexual abuse, the session normally considers the conviction to be grounds for administering discipline.

## Right To Address

The complainant and the person complained against have the right to address the session directly on the subject of the discipline to be administered.

## The Spirit of Discipline

When the session is required to discipline an individual under its care, the instruction of the Book of Forms should be recalled: “Administering censure is a ministerial act, performed by the authority of the court, and should be carried out with solemnity, in meekness, and with love and tenderness” (Book of Forms, 366).

## D.7 | Forms of Discipline

### For Church Members, including Ruling Elders

The censures of the church are admonition, rebuke, suspension from church privileges or office, removal from membership or office, and deposition from office, all of which are pronounced by the moderator in the name of the session (Book of Forms, 365 – 375).

#### Admonition

If the abuse is considered isolated and relatively minor, such as a temporary lapse of judgment, then an admonition may be administered (Book of Forms, 367). An admonition may only be used if the accused displays remorse. The session must be satisfied that the abuse will not recur to use this level of discipline.

#### Rebuke

If the abuse shows a willful flouting of ethical sexual behaviour, or if the accused person shows an inadequate acknowledgment of the seriousness of the situation, a rebuke may be administered (Book of Forms, 368). The rebuke may include a temporary suspension from office without pay, a requirement to enter therapy, or any other disciplinary task designed to prevent a recurrence of the abuse. Evidence should be offered that the task has been completed to the session’s satisfaction.

#### Removal from Position

If the session considers the abuse has been the cause of severe damage, or will recur in the future, or if healing of professional relations is not possible, it may remove the person being disciplined from their position. In the case of church members, the certificate of transference shall not be released until the session is satisfied that steps have been completed to prevent future abuse. Such steps may include therapy, withholding the certificate for a set period of time, spiritual direction or any other task set by the session (Book of Forms, 369 - 372).

## Deposition from Office

When the offender is an ordained ruling elder or congregational deacon and if the abuse is substantial, involving criminal acts, violence, abuse of minors, or repeated episodes of abuse, the abuse shall be treated as gross immorality and the offender shall be deposed from the office held (Book of Forms, 373 – 373.2). Sessions may not depose from office without reference to the presbytery (Book of Forms, 374.1).

## For Church Staff Who are not Church Members

Regular forms of church discipline are not applicable to individuals who are not church members. In the case of a church staff person who is not a church member, if the offence is considered serious enough, the session may remove the offender from their position. If the offence is considered minor, the session may choose to warn the offender in writing that further offences would cause the session to remove the individual from their position.

## For Non-Church Groups Using Church Space

The session must determine, given all the pertinent facts, whether an offence under the policy requires them to withdraw the use of church space from the non-church group. As well as the seriousness of the offence, the session should consider the effect such withdrawal of space from the group would have on those persons attending the group or making use of the group activities.

## D.8 | Church Court Trial under the Book of Forms

In most cases, decisions made under the policy will be accepted by the complainant, the person complained against, and the session.

However in other cases, the session may decide that the matter should proceed to a church court trial as outlined in the Book of Forms. There are three situations in which the matter proceeds to trial (Book of Forms, 356.1–356.3):

- ▶ The session, after hearing the report of the committee, determines that a trial is required. The trial shall be held before the session.
- ▶ The person against whom the complaint is made is dissatisfied with the session’s decision made under the policy and demands a trial. The trial shall be held before the presbytery.
- ▶ The complainant is dissatisfied with the session’s decision made under the policy and demands a trial. The trial shall be held before the presbytery.

Evidence found by the committee may be used in the trial, subject to direction from the court conducting the trial (session or presbytery) to ensure that the trial is conducted fairly.

Following a church court trial, provisions for appeal are in effect (Book of Forms, 376–380).

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# E. ► Communication Following Adjudication

## E.1 | Recording the Decision

Whatever decision is made by the session, all relevant information including records of interviews and meetings of the committee and the session, shall be retained. Sections 30 and 31 of the Book of Forms shall be followed.

The session meets to prepare a statement for use in communicating with the concerned individuals or groups. The session shall determine which facts shall constitute the session's public statement. The statement shall be entered into the minutes. Care should be taken to ensure that only those facts that have been substantiated become part of the session's statement. Complaints that have not been substantiated should not be discussed outside the court.

The moderator should remind the session that complaints under this policy are confidential, and only agreed-upon statements and facts may be discussed with those who are not members of the court. The discretion of the session is required.

When a complaint has been dismissed, the session's public statement should respect the privacy of the complainant as well as of the person complained against.

Even when a complaint has been substantiated, the session's public statement should attempt to respect the privacy of the individuals involved as much as possible. Only those details that are vital to understanding the decision should be put in the statement.

## E.2 | Communicating with the Individuals Concerned

The complainant and the person complained against are informed in writing of the decision to dismiss or substantiate the complaint and, if applicable, the discipline imposed.

## E.3 | Communicating with the Congregation

The session may discuss with the presbytery appropriate communication to the congregation, taking care to ensure respect for the privacy of the complainant. Any statement prepared for the congregation should be reviewed by the clerk of session to ensure its accuracy. The statement will disclose only information that the session has agreed to place in its public statement.

A congregational meeting may be called in order that session representatives may answer questions, with a follow-up meeting to occur within one year. It is strongly recommended that the session request the presbytery to send a representative to the meeting to assist in communication with the congregation.

## E.4 | Communication with the Wider Church

### Forwarding a Verdict that Violation Has Occurred

The session shall inform the presbytery of the decision it makes regarding the complaint and provide a copy of its public statement.

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## F. ▶ Aftercare

The church should provide effective guidance and pastoral care to any person, group or congregation affected by the complaint, regardless of the outcome. After dealing with a complaint, the session should consider its own need for pastoral care and renewal.

See Appendix 3 (p. 73) for resources that address these concerns, particularly books by Nancy Meyers Hopkins.

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## G. ▶ Conclusion

Presbyterians must be willing to recognize that sexual abuse and sexual harassment do occur within the church. This policy is one step in preventing such abuse and harassment. The church will continue to consider how ministry that has been disturbed by sexual abuse or sexual harassment may be renewed most effectively.

The church desires to prevent abuse. Recognizing our need to create environments that foster healthy relationships and sound leadership, the General Assembly in 2005 adopted *Leading with Care: A Policy for Ensuring a Climate of Safety for Children, Youth and Vulnerable Adults in The Presbyterian Church in Canada*. This policy outlines the principles and practices by which the ministries of The Presbyterian Church in Canada are to structure their activities so as to reduce the possibility of harm to the persons under their care.

# APPENDIX 1

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## Excerpts from the Book of Forms

To help make the procedures of the church accessible to everyone, the sections of the Book of Forms (2021 version) that are most pertinent to the Policy for Dealing with Sexual Abuse and Sexual Harassment have been copied in this appendix.

### Church Courts

10. The courts of the church, except the session, are open courts; but on motion made any court may sit with closed doors.

10.1 This is commonly done when matters affecting character, that should not be made public, are under consideration.

### Records *in retentis*

30. Courts of the church are enjoined to keep full minutes and complete records of all judicial processes (see sections 313–443). In Disciplinary cases (sections 345–380) no entry need be made in the permanent record until the trial has been completed or the matter otherwise disposed of. At such time, whatever verdict is reached, the charges, the answer, the judgment and censure are recorded in the minutes of the court and all other records and minutes of the proceedings including: citations, certificates of service of citations, actions and orders of the court, and evidence gathered, are attached together, sealed and held separately by the clerk.

31. Minutes and other papers that are sealed and held separately by the clerk are listed in the presence of the court, and the seal may not be broken except by order of that court or any higher court.

### Petitions

71. A petition is a formal request made to a church court initiating specific business concerning the petitioners. A petition is one of the primary ways that members of the church have access to the courts of the church. A petition may begin, but not replace judicial process (see sections 324–392).

72. A petition may be made by a lower court, or by one or more church members. A petition must be presented to the lowest court that has oversight of the petitioners and a petition by members of the church must first be presented to their session.

73. A petition must be in respectful language and it should contain: the name of the court to which it is addressed, the rationale for the request and the specific request. The petition may include a request that it be transmitted to a higher court provided that court has jurisdiction in the matter raised in the petition.

74. A petition may not be used to bring the proceedings of a lower court under the review of a higher court. Corrective cases and appeals are used for that purpose.

75. The court to which a petition is presented decides whether to receive or not receive it based on whether or not it is in proper form. If there is no request for further transmission, the court shall decide what action is to be taken. If the petition is received with a request that it be transmitted to a higher court, it shall be sent on with one of the following designations: with approval, with disapproval, or without comment.

76. A petitioner may be given the opportunity to speak in advance of the decision whether or not to receive it and must be given the opportunity to speak to the petition at any court that agrees to receive it.

77. If a court decides to not receive a petition it shall be returned to the petitioner and the matter ends unless the petitioner chooses to amend and resubmit the petition. The petitioner, subject to section 383 regarding standing, may commence a corrective case, but only based on the court's refusal to receive the petition. A petition may be presented directly to a higher court, but only if the lower court refuses to consider the corrective case. The higher court must hear from the lower court before deciding whether or not to receive the petition.

78. Petitions to the General Assembly must be received by the Clerks of Assembly prior to April 1.

79. When considering how to act on a petition, a court may give any who might be affected by the petition the opportunity to be present. (See Appendix A-7b)

## Privacy of Session Discipline

120.1 In dealing with matters affecting the good name of members of the congregation, the session, and all members thereof, must observe strict privacy.

## Reporting to Ministry and Church Vocations

201.3 Presbyteries are required to report to the Ministry and Church Vocations Office of the Life and Mission Agency decisions of presbyteries that have resulted in judicial censure that places any restriction on the minister, noting the nature of the restriction.

215.2 Presbyteries are required to include in their standing orders that interim moderators are required to consult the Ministry and Church Vocations Office of the Life and Mission Agency regarding the files of candidates for calls or appointments.

## Disciplinary Cases

Several sections concerning disciplinary cases make specific reference to the Policy for Dealing with Sexual Abuse and Sexual Harassment, as follows.

349. If an alleged offence has not been addressed within three years it should not be revived with a judicial process, unless it is of a serious nature. Complaints falling within the “Policy for Dealing with Sexual Abuse and Sexual Harassment (the SASH Policy)” shall be considered to be of a serious nature and dealt with according to that policy regardless of when the alleged offence occurred.

349.1 Sections 350, 351, 352 and 353 do not apply to a complaint made under the SASH Policy.

353.1 Where a church court trial is required under the SASH Policy, the complaint will be framed as a charge under section 354.1. Sections 354 to 375 and sections 393 to 443 shall apply to such a charge.

## Trial

356.1 Where a session or presbytery, acting under the SASH Policy, determines that a church trial is required after hearing the report of the standing committee under the SASH Policy, the trial, in the case of a session, shall be held before the session, and in the case of a presbytery, shall be held before the presbytery.

356.2 Where a person against whom a complaint is made under the SASH Policy is dissatisfied with the decision of the session or the presbytery and demands a trial, the trial, in the case of a session’s decision, will be held before the presbytery and in the case of a presbytery’s decision, shall be held before the synod or the General Assembly.

356.3 Where a complainant under the SASH Policy is dissatisfied with a decision of the session or a presbytery and is entitled to and demands a trial, the trial, in the case of a session’s decision will be held before the presbytery, and in the case of a presbytery, shall be held before the synod or the General Assembly.

## Censure

365. The censures of the church are admonition, rebuke, suspension from church privileges or office, removal from membership or office and deposition, all of which are pronounced by the moderator in the name of the court.

366. Administering censure is a ministerial act, performed by the authority of the court, and should be carried out with solemnity, in meekness, and with love and tenderness.

367. Admonition consists in solemnly addressing the offender, placing the offence before the offender and exhorting them to greater circumspection. It is administered in private.

368. Rebuke is a higher form of censure resorted to after conviction or confession of one or more serious offences. It may, if the court deems it necessary, be administered in public.

369. Suspension from church privileges is the removal of particular privileges of membership such as voting or participation at the Lord's Table. It may be for a longer or shorter period of time and is added to rebuke, when the court deems it necessary, in order to impress the offender with the gravity of the offence and to give public testimony against the offence. The privileges are automatically restored at the end of the suspension.

369.1 Suspension of an office-bearer from particular privileges of church membership will include suspension from office.

370. Suspension from office is the removal of responsibilities attending an elected or appointed position. It is either with or without limit of time. Any privileges or duties temporarily removed are automatically restored at the end of the suspension. (see Appendices A-69 and A-70)

370.1 Suspension from office does not necessarily include suspension from other privileges of church membership.

370.2 When a suspension is of a minister, the presbytery shall send notice of this action to all the presbyteries of the church.

371. Removal from membership is the removal of a professing member's name from the session's roll of professing members.

372. Removal from office is removal of a member or minister from a particular office and applies to function in that office.

372.1 An elder removed from office ceases to function as an elder but may be re-elected to serve depending on the terms for restoration.

372.2 A minister removed from office ceases to hold office in a particular ministry and therefore the removal from office involves the dissolution of the pastoral tie and the placing of their name on the appendix to the roll. The presbytery shall send notice of this action to all the presbyteries of the church.

372.3 A member of a congregation removed from elected office within a congregation may be eligible for re-election depending on the terms for restoration.

373. Deposition is the removal of an individual from the office of elder or minister and follows upon the confession or conviction of one or more of the following offences: heresy; wilful, flagrant, or shameless immorality; a scandalous life; persistent and wilful refusal to submit to the courts of the church; or the pursuit of an obstinately divisive course within the church. Upon deposition, an elder is no longer considered an elder of the church and a minister is no longer considered a minister of the church. (see sections 252, 375, 441, Appendices A-67 and A-68)

373.1 Deposition of a minister necessitates the dissolution of the pastoral tie and the removing of the minister's name from the roll of presbytery. The sentence of deposition is read before the congregation, and the pastoral charge is declared vacant, except in the case where there is more than one minister on staff and the one position is declared vacant.

373.2 The presbytery shall send notice of deposition to all the presbyteries of the church.

375. When a minister or an elder in good standing, renounces the oversight of this church by joining another Christian body, or withdraws from the Christian church, their action is noted in the record of the court having jurisdiction, and their name is removed from the roll. In the case of a minister, a notice shall be sent to all presbyteries. If a charge is pending against them, it may still be prosecuted. If the body that they join is non-Christian, they may, with due notice, be declared no longer a minister or elder of the church, or be deposed, as the court may determine necessary in the interests of the honour of Christ and the Church. (see sections 252, 373, 441)

## Appeal

- 397.1 In the matter of an appeal made by an accused person from a church court trial that has decided a charge that originated as a complaint under the SASH Policy, section 397 shall not apply. On such an appeal, the decision of the church court is not suspended, unless the accused person:
- a. applies to the church court hearing their appeal and
  - b. establishes that the appeal is not frivolous or vexatious and
  - c. establishes a strong case that no serious harm will result if the decision appealed from is suspended during the time of the appeal.

## Citations

407.1 Complainants under the “Policy for Dealing with Sexual Abuse and Sexual Harassment” are not liable to censure for a refusal to testify to their complaint in a church court.

## APPENDIX 2

# Excerpts from the Criminal Code of Canada

(current as of October 2021)

NOTE: As the criminal code is amended every year, the current criminal code should be consulted. This appendix is not a substitute for legal advice.

### Consent no defence

**150.1 (1)** Subject to subsections (2) to (2.2), when an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of 16 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

#### Exception — complainant aged 12 or 13

**(2)** When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 12 years of age or more but under the age of 14 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused

**(a)** is less than two years older than the complainant; and

**(b)** is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

#### Exception — complainant aged 14 or 15

**(2.1)** If an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused

- (a) is less than five years older than the complainant; and
- (b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

## Exception for transitional purposes

(2.2) When the accused referred to in subsection (2.1) is five or more years older than the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if, on the day on which this subsection comes into force,

- (a) the accused is the common-law partner of the complainant, or has been cohabiting with the complainant in a conjugal relationship for a period of less than one year and they have had or are expecting to have a child as a result of the relationship; and
- (b) the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

## Exception for transitional purposes

(2.3) If, immediately before the day on which this subsection comes into force, the accused referred to in subsection (2.1) is married to the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge.

## Exemption for accused aged twelve or thirteen

(3) No person aged twelve or thirteen years shall be tried for an offence under section 151 or 152 or subsection 173(2) unless the person is in a position of trust or authority towards the complainant, is a person with whom the complainant is in a relationship of dependency or is in a relationship with the complainant that is exploitative of the complainant.

## Mistake of age

(4) It is not a defence to a charge under section 151 or 152, subsection 160(3) or 173(2), or section 271, 272 or 273 that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

## Idem

(5) It is not a defence to a charge under section 153, 170, 171 or 172 or subsection 286.1(2), 286.2(2) or 286.3(2) that the accused believed that the complainant was 18 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

## Mistake of age

(6) An accused cannot raise a mistaken belief in the age of the complainant in order to invoke a defence under subsection (2) or (2.1) unless the accused took all reasonable steps to ascertain the age of the complainant.

## Sexual interference

**151** Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years

**(a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

**(b)** is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

## Invitation to sexual touching

**152** Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,

**(a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

**(b)** is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

## Sexual exploitation

**153 (1)** Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

**(a)** for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

**(b)** for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

## Punishment

**(1.1)** Every person who commits an offence under subsection (1)

**(a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

**(b)** is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

## Inference of sexual exploitation

**(1.2)** A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

- (a)** the age of the young person;
- (b)** the age difference between the person and the young person;
- (c)** the evolution of the relationship; and
- (d)** the degree of control or influence by the person over the young person.

## Definition of *young person*

**(2)** In this section, *young person* means a person 16 years of age or more but under the age of eighteen years.

## Sexual exploitation of person with disability

**153.1 (1)** Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of

- (a)** an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b)** an offence punishable on summary conviction.

## Definition of *consent*

**(2)** Subject to subsection (3), *consent* means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question.

## Consent

**(2.1)** Consent must be present at the time the sexual activity in question takes place.

## Question of law

**(2.2)** The question of whether no consent is obtained under subsection (3) or (4) or 265(3) is a question of law.

## When no consent obtained

**(3)** For the purposes of this section, no consent is obtained if

- (a)** the agreement is expressed by the words or conduct of a person other than the complainant;
  - (a.1)** the complainant is unconscious;
  - (b)** the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);

- (c) the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;
- (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

### **Subsection (3) not limiting**

(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.

### **When belief in consent not a defence**

(5) It is not a defence to a charge under this section that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge if

- (a) the accused's belief arose from
  - (i) the accused's self-induced intoxication,
  - (ii) the accused's recklessness or wilful blindness, or
  - (iii) any circumstance referred to in subsection (3) or (4) or 265(3) in which no consent is obtained;
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or
- (c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

### **Accused's belief as to consent**

(6) If an accused alleges that he or she believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

## **Incest**

**155 (1)** Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

### **Punishment**

(2) Everyone who commits incest is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and, if the other person is under the age of 16 years, to a minimum punishment of imprisonment for a term of five years.

## Defence

(3) No accused shall be determined by a court to be guilty of an offence under this section if the accused was under restraint, duress or fear of the person with whom the accused had the sexual intercourse at the time the sexual intercourse occurred.

## Definition of *brother* and *sister*

(4) In this section, *brother* and *sister*, respectively, include half-brother and half-sister.

## Criminal harassment

**264 (1)** No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

### Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

### Punishment

(3) Every person who contravenes this section is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.

### Factors to be considered

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened

- (a) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or
- (b) the terms or conditions of any other order or recognizance, or of an undertaking, made or entered into under the common law, this Act or any other Act of Parliament or of a provincial legislature that is similar in effect to an order or recognizance referred to in paragraph (a).

### Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection (4), but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

## Uttering threats

**264.1 (1)** Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or bodily harm to any person;
- (b) to burn, destroy or damage real or personal property; or
- (c) to kill, poison or injure an animal or bird that is the property of any person.

## Punishment

**(2)** Every one who commits an offence under paragraph (1)(a) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

## Idem

**(3)** Every one who commits an offence under paragraph (1)(b) or (c)

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) is guilty of an offence punishable on summary conviction.

## Assault

**265 (1)** A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

## Application

**(2)** This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

## Consent

**(3)** For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) fraud; or
- (d) the exercise of authority.

## Accused's belief as to consent

**(4)** Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

## Sexual assault

**271** Everyone who commits a sexual assault is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b)** an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

## Sexual assault with a weapon, threats to a third party or causing bodily harm

**272 (1)** Every person commits an offence who, in committing a sexual assault,

- (a)** carries, uses or threatens to use a weapon or an imitation of a weapon;
- (b)** threatens to cause bodily harm to a person other than the complainant;
- (c)** causes bodily harm to the complainant;
- (c.1)** chokes, suffocates or strangles the complainant; or
- (d)** is a party to the offence with any other person.

## Punishment

**(2)** Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

- (a)** if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of
  - (i)** in the case of a first offence, five years, and
  - (ii)** in the case of a second or subsequent offence, seven years;
- (a.1)** in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years; and

**(a.2)** if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and

**(b)** in any other case, to imprisonment for a term not exceeding fourteen years.

## Subsequent offences

**(3)** In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

**(a)** an offence under this section;

**(b)** an offence under subsection 85(1) or (2) or section 244 or 244.2; or

**(c)** an offence under section 220, 236, 239 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

## Sequence of convictions only

**(4)** For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

# Aggravated sexual assault

**273 (1)** Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

## Aggravated sexual assault

**(2)** Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable

**(a)** if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

**(i)** in the case of a first offence, five years, and

**(ii)** in the case of a second or subsequent offence, seven years;

**(a.1)** in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

**(a.2)** if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and

**(b)** in any other case, to imprisonment for life.

## Subsequent offences

(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under this section;
- (b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or
- (c) an offence under section 220, 236, 239 or 272, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

## Sequence of convictions only

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

## Meaning of *consent*

**273.1 (1)** Subject to subsection (2) and subsection 265(3), **consent** means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

### Consent

(1.1) Consent must be present at the time the sexual activity in question takes place.

### Question of law

(1.2) The question of whether no consent is obtained under subsection 265(3) or subsection (2) or (3) is a question of law.

### No consent obtained

(2) For the purpose of subsection (1), no consent is obtained if

- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
  - (a.1) the complainant is unconscious;
- (b) the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);
- (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;

(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

## Subsection (2) not limiting

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

## Where belief in consent not a defence

**273.2** It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

(a) the accused's belief arose from

(i) the accused's self-induced intoxication,

(ii) the accused's recklessness or wilful blindness, or

(iii) any circumstance referred to in subsection 265(3) or 273.1(2) or (3) in which no consent is obtained;

(b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or

(c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

## False information

**372 (1)** Everyone commits an offence who, with intent to injure or alarm a person, conveys information that they know is false, or causes such information to be conveyed by letter or any means of telecommunication.

## Indecent communications

(2) Everyone commits an offence who, with intent to alarm or annoy a person, makes an indecent communication to that person or to any other person by a means of telecommunication.

## Harassing communications

(3) Everyone commits an offence who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by a means of telecommunication.

## Punishment

(4) Everyone who commits an offence under this section is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) guilty of an offence punishable on summary conviction.

# Intimidation

**423 (1)** Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

- (a)** uses violence or threats of violence to that person or their intimate partner or children, or injures the person's property;
- (b)** intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;
- (c)** persistently follows that person;
- (d)** hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
- (e)** with one or more other persons, follows that person, in a disorderly manner, on a highway;
- (f)** besets or watches the place where that person resides, works, carries on business or happens to be; or
- (g)** blocks or obstructs a highway.

## Exception

**(2)** A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

# APPENDIX 3

## Resources

### Audio Visual Resources

#### **Faith Trust Institute**

([faithtrustinstitute.org/store/digital](http://faithtrustinstitute.org/store/digital))

The videos created by the Faith Trust Institute are available to stream online for a rental fee or a physical DVD is available for purchase. For online steaming rental: the video is accessible for a set period of time based on the chosen option, such as one week or one month.

#### **Healthy Boundaries 101 & 201: A Curriculum for Clergy and Spiritual Leaders**

A two-part training program. The goals of the programs are to: increase awareness of the need for healthy boundaries; provide guidelines for appropriate boundaries and self-care; illustrate strategies to sustain a safe, healthy church; and to define boundaries and why they are important. The 101 curriculum uses the DVD *A Sacred Trust* and is intended for leaders who are looking for an introduction to the nature of boundaries and the issues of power and vulnerability. The 201 curriculum uses excerpts from *A Sacred Trust*, as well as *Once You Cross the Line* and is intended for those already familiar with the basic principles of healthy boundaries. It includes two DVDs (*A Sacred Trust* DVD – 104 minutes; and *Teaching Excerpts* DVD – 23 minutes), a teacher's guide and two participant workbooks for levels 101 Fundamentals and 201 Beyond Basics. Produced by Faith Trust Institute, 2012.

#### **A Sacred Trust: Boundary Issues for Clergy and Spiritual Leaders**

Four training videos that illustrate the need for healthy boundaries in the clergy-laity or teacher-student relationship and the impact of appropriate boundaries in promoting effective ministry. The videos also provide some guidelines for developing such boundaries and self-care strategies. Facilitators guide included. In total: 90 minutes. Produced by Faith Trust Institute, 2003.

#### **Once You Cross the Line**

This 50-minute video, describes three scenarios where a ministerial relationship is at risk. Each scenario unfolds with two different endings – the first is unhealthy, the second healthy. The scenarios are interspersed with excellent lecture segments on appropriate boundaries, power and vulnerability, and justice-making. Viewers of the third scenario, which offers a condensed version of the Video “Not in My Church”, should be aware that the investigative committee is following a process that is not consistent with our policy and procedures. Produced by Faith Trust Institute, 1991.

### **Not in My Church**

The story of a church faced with a betrayal of trust by its minister. The 45-minute video helps people deal with the problem of clergy sexual misconduct. Includes a study guide and a package of awareness brochures. Produced by Faith Trust Institute, 1991.

### **Wings Like a Dove: Healing for Abused Christian Women**

Through the voices of victims, clergy and helping professionals, this 34-minute DVD offers hope and healing to abused women and valuable information for religious and community groups. Includes a study guide and package of awareness brochures. Produced by Faith Trust Institute, 1997.

### **Sexual Misconduct in Our Churches: Learn to Spot It. Learn to Stop It.**

Using real-life scenarios, this 28-minute video shows clergy, church staff, and lay people how to recognize the various forms of sexual misconduct that can occur in a church community, and how to prevent them. Designed to stimulate discussion and generate solutions. Produced by the Diocese of Toronto, the Anglican Church of Canada. Available to stream for free on the Anglican Church of Canada Vimeo website. ([toronto.anglican.ca](http://toronto.anglican.ca))

## **Websites**

[advocateweb.org](http://advocateweb.org)

This website has been in existence since 1998. Resources for those who have been victimized by professional clergy misconduct.

[faithtrustinstitute.org](http://faithtrustinstitute.org)

FaithTrust Institute provides faith communities and advocates with the tools and knowledge they need to address the faith and cultural issues related to abuse, including current articles and extensive annotated bibliographies.

[religiousinstitute.org](http://religiousinstitute.org)

“An ecumenical interfaith organization dedicated to advocacy for sexual health, education and justice in faith communities and society.”

[wicc.org/restore](http://wicc.org/restore)

In 1988 “Hands to End Violence Against Women” was born: a tool to promote theological education about violence in churches and church schools. This was revised into a binder called “Healing Waters” in 1994. In 2018, “Healing Waters” was updated and converted into this digital resource, now called “Restore.”

## **Recommended Print Resources**

Cleland, Sylvia. *Training Sessions and Congregations in Dealing With Sexual Abuse And Harassment Issues*. The Presbyterian Church in Canada, revised 2004.

A workshop guide developed by Ministry and Church Vocations to assist ministers in arranging for the training of congregational leaders. The guide may be downloaded ([presbyterian.ca/sexual-abuse-policy-resources](http://presbyterian.ca/sexual-abuse-policy-resources)). To order paper copies go to [presbyterian.ca/resource-centre](http://presbyterian.ca/resource-centre), call 1-800-619-7301, or email [resources@presbyterian.ca](mailto:resources@presbyterian.ca).

Goering Reid, Kathryn. *Preventing Child Sexual Abuse Program*. United Church Press, 2012.

Sexual abuse prevention curricula designed for use in a Christian education setting. Each curriculum for a particular age group (5–8, 9–12, teenagers). Available for purchase from [uccresources.com/products](http://uccresources.com/products).

Laaser, Mark and Nancy Myer Hopkins, ed. *Restoring the Soul of a Church: Healing Congregations Wounded by Clergy Sexual Misconduct*. Collegeville: Liturgical Press, 1995.

Leading workers and researchers offer help for communities wounded by pastoral sexual abuse.

## Additional Books

Barnhouse, Ruth Tiffany. *Clergy and the Sexual Revolution*. Washington: Alban Institute, 1987.

Benyei, Candace R. *Understanding Clergy Misconduct in Religious Systems. Scapegoating, Family Secrets, and the Abuse of Power*. Binghamton NY: Haworth Pastoral Press, 1998.

Callahan, Joan C., ed. *Ethical Issues in Professional Life*. New York: Oxford University Press, 1988.

Coleman, Monica A. *The Dinah Project: A Handbook for Congregational Response to Sexual Violence*. Eugene, OR: Wipf & Stock, 2010.

Cory, Jill and Karen McAndless-Davis. *When Love Hurts: A Woman's Guide to Understanding Abuse in Relationships*. New York: Penguin Publishing, 2016.

Davis, Laura. *Allies in Healing: When the Person You Love was Sexually Abused as a Child*. New York: Harper Collins, 1991.

Fortune, Marie. *Keeping the Faith: Guidance for Christian Women Facing Abuse*. San Francisco: Harper, 1995.

Fortune, Marie. *Is Nothing Sacred? The Story of a Pastor and the Women He Sexually Abused and the Congregation He Nearly Destroyed*. Eugene, OR: Wipf & Stock, 2008.

Friberg, Nils C, and Mark R. Laaser. *Before the Fall: Preventing Pastoral Sexual Abuse*. Collegeville, MN: The Liturgical Press, 1998.

Heggen, Carolyn Holderread. *Sexual Abuse in Christian Homes and Churches*. Eugene, OR: Wipf & Stock, 2006.

Herman, Judith Lewis. *Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror*. 2nd ed. New York: BasicBooks, 2015.

Johnston, David and Jeff Vanvonden. *The Subtle Power of Spiritual Abuse: Recognizing and Escaping Spiritual Manipulation and False Spiritual Authority Within the Church*. Bloomington, MN: Bethany House Publishers, 1991.

Lebacqz, Karen & Ronald G. Barton. *Sex in the Parish*. Louisville: Westminster/John Knox Press, 1991.

Leeham, James. *Pastoral Care for Survivors of Family Abuse*. Louisville: Westminster/John Knox Press, 1989.

Lew, Mike. *Victims No Longer: The Classic Guide for Men Recovering from Child Sexual Abuse*. 2nd ed. New York: Harper Collins, 2004.

McClintock, Karen A. *Preventing Sexual Abuse in Congregations: A Resource for Leaders*. Washington: Alban Institute, 2004.

Myer Hopkins, Nancy. *The Congregational Response to Clergy Betrayal of Trust*. Collegeville, MN: The Liturgical Press, 1998.

Ross, Ellen and Laura Davis. *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*. 4th ed. New York: HarperCollins, 2008.

## APPENDIX 4

# The Church's Approval of the Policy

In 1993 the General Assembly approved the Policy for Dealing with Sexual Abuse and/or Harassment for use by The Presbyterian Church in Canada.

Presbyteries, synods, sessions, the General Assembly offices, colleges and other institutions within The Presbyterian Church in Canada are required to follow the policy (or an equivalent policy if they have different governing structures); and a copy of any equivalent policy shall be lodged with Ministry and Church Vocations of the Life and Mission Agency.

(A&P 1993, p. 325-326, 46, 51)

The policy pertains to abuse and harassment of a sexual nature by church leaders, staff or volunteers. In 2009 the policy name was changed to the Policy for Dealing with Sexual Abuse and Sexual Harassment, to eliminate ambiguity as to whether the policy also covered other kinds of harassment. A corresponding change was made in the church's zero-tolerance statement concerning sexual abuse and sexual harassment.

(A&P 2009, p. 367-8, 41)

Major decisions of General Assembly that have changed the policy, the practice of the church, or the Book of Forms are listed below. Other changes to the original policy have been adopted for the sake of clarity or to respond to the concerns of the church. All these changes are incorporated into the current edition of the policy.

### Advisors

The policy acknowledges the difficulty that complainants and persons complained against might have in understanding the procedures of the church courts, especially in the stressful context of dealing with a complaint. To address this need, the policy makes provision for the church court to appoint a different individual to serve as advisor on church procedures for each complainant and person complained against.

The original stipulation was that advisors must be members of the investigating church court. However, the church's experience in appointing advisors was that sometimes a complainant or complainee requested as advisor an individual who was a member of The Presbyterian Church in Canada, but not a member of the investigating church court. Church courts have found themselves in the awkward position of declining to make the appointment, even when the individual was well-respected and known to have the requisite knowledge and understanding to serve well as an advisor. Moreover, the requirement that all advisors were members of the investigating church court has strained the resources of some smaller presbyteries. For these reasons, the requirements for advisors were changed, such that they must be members of The Presbyterian Church in Canada, but not necessarily members of the investigating church court.

(A&P 2009, p. 370-1, 41)

## **Approaching a Person Against Whom a Complaint Is Made**

With complaints of sexual abuse or sexual harassment, the church waives its normal requirement, based on Matthew 18:15-17, that a person with a complaint first meet with the alleged offender to seek resolution and, if unsuccessful, inform them of the intention to make a complaint (Book of Forms, 349.1). In fact, the church's procedures for dealing with these complaints do not require direct communication or face-to-face meetings between complainant and complainee. Instead, the investigative committee receives the complaint and communicates directly with the complainee about it.

(A&P 1997, p. 360, 26)

(A&P 1998, p. 469, 471, 42)

## **Criminal Complaint: Mandatory Leave of Absence**

During investigation of a complaint alleging criminal behaviour, the person against whom the complaint is made is placed on a leave of absence until the presbytery has finished dealing with the complaint. The congregation or other church employer continues to provide the same stipend and benefits that the complainee has been receiving, if any. In the case of a moderator of session, the presbytery appoints an interim moderator for the congregation.

However, the original policy gave presbyteries discretion as to whether to reinstate the person complained against during a criminal investigation, in the following terms:

During a criminal investigation the presbytery may at its discretion reinstate the person complained against into his or her position subject to whatever conditions may be appropriate, keeping in mind the serious consequences if the person against whom the complaint is made commits abuse during the investigation.

In the church's experience, this discretionary power was fraught with difficulties and, rather than serving the church's needs, has done more harm than good – an observation supported by church legal counsel. First of all, a presbytery considering using this discretionary power must assess the risk of reinstating the minister and decide whether to do so before it has considered the details of the complaint (beyond the fact that it alleges criminal behaviour). It is essential to note that the church's investigation, including interviews with the people involved, is postponed until the criminal justice system has finished its proceedings. It is one thing to assess risk having heard the testimony of the parties (or a report of the same). Assessing risk is part of a presbytery's decision about the proper level of discipline, once a complaint has been substantiated. It is quite another thing to assess risk prior to hearing the testimony. On what basis can a decision in favour of reinstatement be made?

Secondly, this discretionary power appears to have created a rift between some congregations and presbyteries. In many cases, the congregation loves and respects their minister and wants a speedy conclusion to the leave of absence. At this point, they have less knowledge about the complaint than the presbytery, a situation that continues even after the presbytery, sitting in private, decides about the complaint. The pressure from some congregations to reinstate their minister has meant that some presbyteries have experienced this discretionary power as an imposition to be tolerated, rather than as a privilege to be desired.

Finally, this section of the policy was written before the Assembly's decision in 2004 to set aside funds to help support congregations financially during lengthy leaves of absence. To the extent that presbyteries were granted this discretionary power in the original policy so that they could alleviate the financial burdens of their congregations, those needs have now been met partially without reinstating a minister who is under investigation for a complaint alleging criminal behaviour.

In conclusion, the reasons for granting presbyteries this discretionary power appear to be less compelling than those for not granting it. Therefore, in 2009 the General Assembly approved a recommendation that this discretionary power be withdrawn from presbyteries. Leaves of absence are mandatory until the presbytery has finished dealing with a complaint alleging criminal behavior.

(A&P 2009, p. 371, 41)

## **Financial Assistance for Congregations**

When complaints alleging criminal behaviour are brought against a minister serving in a congregation, the minister's paid leave of absence can extend for many months, depending on the proceedings of the criminal justice system. The original policy anticipated correctly the financial hardship that congregations experience in these cases. The policy also correctly anticipated that presbyteries would help the congregation financially. To this end, the policy stated that presbyteries "must assume part of the financial burden of the stipend and benefits of the person complained against."

In practice however, the church responded to this need somewhat differently than anticipated. While the congregation has continued to provide the incumbent minister's stipend and allowances, some presbyteries have chosen to cover the costs of pulpit supply or an appointed stated supply or interim minister (often part-time). As well, in 2004 the General Assembly made provision for funds to help the congregation to cover the stipend and benefits of the incumbent minister beginning in the second year of the leave of absence (A&P 2004, p. 229-32). For these reasons, the original policy was revised to reflect the church's practice.

(A&P 2009, p. 370, 41)

## **Investigative Committees**

From its inception, the policy anticipated the church's need for committees to receive and deal with complaints. Presbyteries were instructed and sessions were advised to put standing committees in place, while synods were instructed to create a synod resource team of experts for the sole purpose of advising committees serving at presbytery and session levels.

In practice, however, the church has met its need to have people ready to deal with complaints somewhat differently than anticipated. Most sessions have not appointed standing committees, nor have they needed to do so. The few sessions that have dealt with a complaint have appointed a special committee for the task when it was needed. Most presbyteries have appointed standing committees to deal with

complaints, but so also have synods, recognizing that as entities that employ staff and accept the service of volunteers, they could be called upon to address complaints. The idea of a synod resource team of experts ready to advise investigative committees within the bounds has not borne fruit in most cases, perhaps because it exceeds the resources of most synods. At one time, one presbytery with considerable experience using the church's policy offered its investigative committee to serve as a sounding board to any other presbytery within the synod.

Whenever the church establishes a new policy and set of procedures, it is impossible to know from the outset how the church will meet the needs anticipated by the policy. Some of these simply are worked out as the church uses and lives with the policy. In 2009, the General Assembly changed the expectations in the policy concerning standing committees to reflect the church's practice: synods and presbyteries are required to appoint standing committees to receive, investigate and recommend decisions about complaints of sexual abuse or sexual harassment that properly come under their purview. Sessions retain discretion whether to appoint standing committees or to appoint committees as the need arises. Synod standing committees may serve as a resource to the presbyteries, providing expert advice, information and support as requested.

(A&P 2009, p. 368-9, 41)

## **Making Minor Changes**

The Life and Mission Agency has the right to make minor changes for the sake of clarity and ease of reading to *The Policy on Dealing with Sexual Abuse and Sexual Harassment*.

(A&P 1997, p. 366, 26)

## **Minister Complaint against Lay Person in Same Congregation**

Complaints of sexual abuse or sexual harassment are dealt with by the church court to which the person complained against is accountable. The sole exception is found in complaints of sexual abuse or sexual harassment made by a minister serving in a congregation against a lay member, adherent or salaried staff person of the same congregation. Such complaints are to be taken directly to the presbytery.

(A&P 2017, p. 407-410, 21)

## **Principles of Decision-Making**

Section D2: Principles of Decision Making in the Policy for Dealing with Sexual Abuse and Sexual Harassment has been revised to correspond to the chapter on Judicial Process in the Book of Forms.

(A&P 2006, p. 245-246)

## **Redundant Sections**

In 2009 the General Assembly considered sections of the policy that had outlived their usefulness or were no longer considered accurate. "Relationship of the Policy to the Book of Forms" was removed. In addition, presbyteries were released from the requirements, established in 1994, (1) to report to the Assembly their workshops on sexual abuse and sexual harassment; and (2) to prepare and distribute to all professional church leaders within the bounds a list of local counsellors who have expertise in treating sexual abusers.

(A&P 2009, p. 368-70, 41)

## Refusal To Testify in a Church Court

Complainants under the Policy for Dealing with Sexual Abuse and Sexual Harassment are not liable to censure for a refusal to testify to their complaint in a church court (Book of Forms, 407.1).

(A&P 1998, p. 349, 26)

(A&P 1999, p. 435, 47)

## Reporting Disciplinary Action

Presbyteries are required to report to Ministry and Church Vocations of the Life and Mission Agency decisions of presbyteries that have resulted in judicial censure that places any restrictions on the minister, noting the nature of the restriction.

(A&P 1994, p. 281-282, 40)

(A&P 1996, p.247, 26)

This requirement was inserted in the Book of Forms (Book of Forms, 201.3), along with a complementary requirement that interim moderators consult with Ministry and Church Vocations regarding the files of candidates for calls or appointments (Book of Forms, 215.2).

(A&P 1996, p.247, 26)

(A&P 1997, p. 42)

## Training

Presbyteries are required to arrange for training seminars on dealing with sexual abuse and sexual harassment for the presbytery and session members within their bounds. This continuing responsibility applies to all new church leaders within the bounds.

Synods and regional staff shall be encouraged to assist presbyteries in the provision of training for new church leaders on dealing with sexual abuse or sexual harassment by church leaders.

Professional church workers and certified candidates under the care of presbyteries are required to attend or demonstrate that they have attended a workshop on dealing with sexual abuse and sexual harassment by church leaders.

The church's colleges are required to provide all certified candidates of The Presbyterian Church in Canada with education on dealing with sexual abuse and sexual harassment by church leaders.

Ministers of congregations are required to arrange for elders and other congregational leaders to receive training in dealing with sexual abuse and sexual harassment by church leaders.

(A&P 1993, p. 326, 51)

(A&P 1994, p. 385, 44)

(A&P 1996, p. 363, 37)

# Communication to Congregation re Leave of Absence

## 1. For the Presbytery

*(See Intervention Section 5-B.4, p. 23)*

### A. During a Criminal Investigation

The Presbytery of [name of presbytery] has been informed that your [minister/diaconal minister] is being investigated for a criminal offense/has been charged with a criminal offense by the legal authorities.

While the complaint is investigated, your [minister/diaconal minister] is on a paid leave of absence, and will not be able to fulfill any of the duties normally associated with their position.

The leave of absence, with pay, is part of the standard procedures for dealing with complaints of this nature and is used to safeguard everyone involved in the matter. The leave of absence does not imply that any decision has been made by the presbytery as to whether your [minister/diaconal minister] has violated the rules of the church.

Since the complaint against your [minister/diaconal minister] is of a criminal nature, the presbytery must wait to conduct its own investigation until the police and the legal authorities have dealt with the matter. This means that the leave of absence will probably carry on for a lengthy period of time – several months at least.

*Use the following paragraph if the presbytery has appointed an interim-moderator:*

[Name of interim moderator] has been appointed as your interim-moderator/The presbytery will appoint an interim-moderator to assist in conducting the ongoing ministry of the congregation.

*Use the following paragraph if the presbytery has appointed a liaison to the congregation:*

In order to simplify communication about the investigation, [name of liaison] has been appointed as the liaison between the presbytery and the congregation. The liaison is the person to approach if you wish to obtain information about the investigation. Please remember, however, that much of the investigation remains confidential, and not all your questions can be answered. When the presbytery begins its investigation, the liaison is also the person through whom information can be directed to the investigation.

Continue with:

The presbytery understands that this will be a difficult time for the congregation and for your [minister/diaconal minister]. As much as is possible, we will endeavor to support everyone involved in this matter. Please contact us, through the [interim moderator/liaison] if you have concerns or need assistance.

## **B. During Presbytery Investigation**

The Presbytery of [name of presbytery] has received a complaint against your [minister/diaconal minister] under the Policy for Dealing with Sexual Abuse and Sexual Harassment.

While the complaint is investigated, your [minister/diaconal minister] is on a paid leave of absence and will not be able to fulfill any of the duties normally associated with their position.

The leave of absence, with pay, is part of the standard procedures for dealing with complaints of this nature and is used to safeguard everyone involved in the matter. The leave of absence does not imply that any decision has been made as to whether your [minister/diaconal minister] has violated the rules of the church.

*Use the following paragraph if the presbytery has appointed an interim-moderator:*

[Name of interim moderator] has been appointed as your interim-moderator/The presbytery will appoint an interim-moderator to assist in conducting the ongoing ministry of the congregation.

*Use the following paragraph if the presbytery has appointed a liaison to the congregation:*

In order to simplify communication about the investigation, [name of liaison] has been appointed as the liaison between the presbytery and the congregation. The liaison is the person to approach if you wish to obtain information about or direct information to the investigation.

Continue with:

Please remember that much of the investigation remains confidential, and not all your questions can be answered. For example, we cannot tell you at this time who has made the complaint.

The presbytery understands that this will be a difficult time for the congregation and for your [minister/diaconal minister]. As much as is possible, we will endeavor to support everyone involved in this matter. Please contact us, through the [interim moderator/liaison] if you have concerns or need assistance.

## 2. For the Session

(See Intervention Section 6-B.4, p. 43)

### A. During a Criminal Investigation

The session has been informed that [name of person complained against], (identify relationship to the congregation) *is being investigated for a criminal offense/has been charged with a criminal offense* by the legal authorities.

While the complaint is investigated, [name of person complained against] is on a (*paid*) leave of absence and will not be able to fulfill any of the duties normally associated with their position.

The leave of absence, (*with pay*), is part of the standard procedures for dealing with complaints of this nature and is used to safeguard everyone involved in the matter. The leave of absence does not imply that any decision has been made by the session as to whether [name of person complained against] has violated the rules of the church.

Since the complaint against [name of person complained against] is of a criminal nature, the session must wait to conduct its own investigation until the police and the legal authorities have dealt with the matter. This means that the leave of absence will probably carry on for a lengthy period of time – several months at least.

*Use the following paragraph if the session has appointed a liaison to the congregation:*

In order to simplify communication about the investigation, [name of liaison] has been appointed as the liaison between the session and the congregation. The liaison is the person to approach if you wish to obtain information about the investigation. Please remember, however, that much of the investigation remains confidential, and not all your questions can be answered. When the session begins its investigation, the liaison is also the person through whom information can be directed to the investigation.

Continue with:

The session understands that this will be a difficult time for the congregation and for [name of person complained against]. As much as is possible, we will endeavor to support everyone involved in this matter. Please contact us, through [your elder or the clerk of session/the liaison] if you have concerns or need assistance.

### B. During Session Investigation

The session has received a complaint against [name of person complained against] (*identify relationship to the congregation*) under the Policy for Dealing with Sexual Abuse and Sexual Harassment.

While the complaint is investigated, [name of person complained against] is on a (*paid*) leave of absence and will not be able to fulfill any of the duties normally associated with their position.

The leave of absence, (*with pay*), is part of the standard procedures for dealing with complaints of this nature and is used to safeguard everyone involved in the matter. The leave of absence does not imply that any decision has been made as to whether [name of person complained against] has violated the rules of the church.

*Use the following paragraph if the session has appointed a liaison to the congregation:*

In order to simplify communication about the investigation, [name of liaison] has been appointed as the liaison between the session and the congregation. The liaison is the person to approach if you wish to obtain information about or direct information to the investigation.

Continue with:

Please remember that much of the investigation remains confidential, and not all your questions can be answered. For example, we cannot tell you at this time who has made the complaint.

The session understands that this will be a difficult time for the congregation and for [name of person complained against]. As much as is possible, we will endeavor to support everyone involved in this matter. Please contact us, through [your elder or the clerk of session/liaison] if you have concerns or need assistance.

# APPENDIX 6

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## Statements of Clarification, 2001 for the Policy for Dealing with Sexual Abuse and Sexual Harassment, 1998 The Presbyterian Church in Canada

The General Assembly in 2001 approved several statements of clarification for the Policy for Dealing with Sexual Abuse and Sexual Harassment. These had been prepared by the Life and Mission Agency (Ministry and Church Vocations) in response to instruction from a General Assembly Special Commission. Some of the statements were made redundant later by revisions to the Book of Forms or to the policy itself. The statements with continuing relevance can be summarized as follows:

1. The Policy for Dealing with Sexual Abuse and Sexual Harassment applies in the context of the marital breakdown of a church leader when accompanied by a complaint alleging spousal violence by the church leader.
2. Complaints of financial or psychological abuse by a church leader are not considered under the Policy for Dealing with Sexual Abuse and Sexual Harassment. Instead, such alleged abuse would be dealt with under the provisions in the Book of Forms for a disciplinary case.

Church courts are to proceed with complaints under the Policy for Dealing with Sexual Abuse and Sexual Harassment while related civil court cases are ongoing.

For information about the Special Commission (re Appeal Nos. 3 and 4, 1999) or about the applicability of the policy during the marital breakdown of a church leader, for complaints of psychological or financial abuse, and during civil cases, see A&P 1999, p. 36, A&P 2000, p. 254-269, 19 and A&P 2001, p. 384-389, 40.

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# Additional Resource

## **Brochure on the Policy for Dealing with Sexual Abuse and Sexual Harassment**

The brochure on the Policy for Dealing with Sexual Abuse and Sexual Harassment has been developed especially for congregational use. It explains what The Presbyterian Church in Canada believes about sexual abuse and sexual harassment and the first steps to be followed in the case of a complaint. The brochure is currently available in English, French, Korean, Chinese, Arabic and Japanese and is available online ([presbyterian.ca/resources/](http://presbyterian.ca/resources/)). To order paper copies go to [presbyterian.ca/resource-centre](http://presbyterian.ca/resource-centre), call 1-800-619-7301 or email [resources@presbyterian.ca](mailto:resources@presbyterian.ca).