

Sexual Misconduct Prevention and Response Policy and Procedures

January 2019



Office of / Bureau de la
vocation

The United Church of Canada
L'Église Unie du Canada

The United Church of Canada/L'Église Unie du Canada
Sexual Misconduct Prevention and Response Policy and Procedures (January 2019)



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WHAT'S NEW

- This edition replaces the July 2017 edition, and takes effect January 1, 2019.
- It contains changes made as a result of the implementation of the Office of Vocation.
- Please refer to the most current edition of *The Manual*.

I Theological Statement

We affirm: We are not alone, we live in God's world.

God intends for all life freedom from abuse and injustice; God desires for all human beings, created in God's image, mutual respect, care, protection, and empowerment.

We believe in God: who has created and is creating, who has come in Jesus, the Word made flesh, to reconcile and make new, who works in us and others by the Spirit. We trust in God.

Sexual misconduct, exploitation, and abuse are destructive to God's people, violating the love we know in Jesus and negating people's ability to develop and use their gifts of creativity and wholeness. We believe God continues to call God's people to love and to respect the Word made flesh, and where there is abuse to seek restorative justice and healing.

We are called to be the Church: to celebrate God's presence, to live with respect in Creation, to love and serve others, to seek justice and resist evil, to proclaim Jesus, crucified and risen, our judge and our hope.

God calls us to resist injustice. That call requires us to confess and lament times we have turned away from God's call to love and serve others and from our particular responsibility to protect the vulnerable, the weak, and those with limited voice. Recognizing that sexual misconduct occurs when one uses one's power to take advantage of the vulnerability of another and recognizing that it is a violation of both individuals and the community, we affirm God's call to the church to be a transforming presence by promoting right relationship within its midst and in the world, in the name of the One who is our judge and our hope.

Some of us are called into leadership in the church. We are set aside and designated as a trustworthy presence among our people. In this leadership role, we have power and authority intended to be used to support the church's ministry and the individuals we serve. When we betray that trust by taking advantage of the vulnerability of someone who seeks our help, it is a particularly extreme form of sexual misconduct. This misconduct undermines the integrity of the whole ministry and the whole church. The hospitality code that we learn from the Jewish and Christian traditions mandates us to protect the vulnerable among us, and offer healing and restoration.

It is our responsibility as church in order to maintain the integrity of the church to call to account anyone who uses their position to harm or exploit another. Such a person should not be allowed to represent our church in leadership or to use their status to gain access to vulnerable people.

In life, in death, in life beyond death, God is with us. We are not alone.

Jesus taught God's way of mutuality and respect, calling people to create and sustain life-giving relationships based on the dignity of each person. God is with us, blessing us and calling us to live with respect and care within that blessing.

Thanks be to God.

II Preface

This resource contains policy and procedures for individuals who have experienced betrayal of trust within the United Church community because of sexual misconduct, which includes sexual harassment, pastoral sexual misconduct, sexual assault, child abuse, and sexual abuse. This resource outlines how these concerns may be addressed within the church. This policy applies to situations of sexual misconduct in the context of all sexual orientations.

The contents of the Sexual Misconduct Prevention and Response Policy and Procedures are grounded in a theological statement reflective of the basic faith beliefs of The United Church of Canada. Sexual misconduct, exploitation, and abuse are destructive to God's people, and God calls upon the church to resist injustice and protect the vulnerable and the weak.

The United Church seeks to ensure that the voice of a complainant is listened to and heard, and that pastoral care and support are provided to that individual and their family. It recognizes that sexual misconduct occurs when one uses one's power to take advantage of the vulnerability of another. Consent to a sexual relationship or act can be given only by an individual who is in a position to make such a choice, and that choice cannot be made by an individual who acts out of fear or who is taken advantage of by a person in a position of trust. While seeking to respect the difficult decision a complainant makes when deciding to initiate a complaint, the church also seeks to honour the duty of care that it has to its members, adherents, employees, and those who avail themselves of our services.

When a complaint of sexual misconduct is brought to the attention of the church, the church will thoroughly investigate the allegations, taking into account information from all relevant parties, and then determine the veracity of the complaint. Allegations of sexual misconduct must be proved based on clear and convincing evidence. We assume that the respondent against whom the complaint is made is innocent until proven guilty. If the complaint is confirmed and we determine that someone in a designated role of leadership in our church has violated our policy, we will make faithful efforts to ensure that person does not take advantage of someone else again. Whether or not the complaint is upheld, we will make faithful efforts to restore the relationships within our community and to assist the parties to recover from the stresses associated with making and responding to a complaint.

What We Have Learned

The United Church of Canada will not tolerate sexual misconduct. Procedures to enforce that policy have been in place since 1992. The policy remains the same; however, the procedures for a complaint under the policy have undergone several changes. Some of those changes were substantial; all of them strengthen the church's commitment to its position that it will not tolerate sexual misconduct. It is important to regularly evaluate the policy and procedures and their effectiveness and to endeavour to live out the policy mandate: to hear those who have suffered, to honour the duty of care, and to support those in leadership in the church.

The church's approach to sexual misconduct is that it will not be tolerated and that we are committed to the creation of safe environments for work, witness, and worship. This approach must be balanced with the open acknowledgement that sexual abuse and misconduct continue to occur, in our church and in our communities. Openly acknowledging this reality and making the Sexual Misconduct Prevention and Response Policy and Procedures resource much more visible within the life of the church may make it easier for those affected to come forward and to be heard. Continuing education is required for those in leadership about the responsibilities that their roles carry, and to let those who are vulnerable know that misconduct will not be tolerated, and that their concerns have a place to be heard.

Since 2007, when substantial changes were made to the policy procedures, there have not been as many complaints as many had expected. We don't know why that is the case, or whether that is simply because the information about how to make complaints has not been provided to those who need the information. As of July 1, 2018,

- 71 complaints were brought forward; 63 of those proceeded to investigation
- 8 complaints were not investigated because the complaint did not fit within the policy
- 38 of the complaints were brought against ministry personnel and 25 against lay leaders
- of the 63 complaints that proceeded to investigation, 49 were against men and 14 against women
- no complaints that were brought forward were determined to be deliberate false complaints

III Policy

Sexual Misconduct Prevention and Response Policy and Procedures

The United Church will not tolerate, and will seek to eradicate, any behaviour by its members, lay and order of ministry, adherents, or employees that constitutes sexual misconduct, sexual abuse, or child abuse.

The United Church is committed to providing a safe environment for worship, work, and study in all pastoral charges, congregations, institutions, agencies, organizations, or other bodies that operate under its name. Complaints of sexual misconduct, sexual abuse, or child abuse will be taken seriously and will be dealt with in a spirit of compassion and justice.

The General Council has approved the Sexual Misconduct Prevention and Response Policy and Procedures to deal with formal complaints of sexual abuse. These policies and procedures are referred to as the “Sexual Misconduct Policy” in these bylaws. They must be followed.

The United Church seeks to protect from abuse all people who use the pastoral or professional services of the United Church, whether or not they are members or adherents. Any person who has used the professional or pastoral services of ministry personnel or employees of the United Church for purposes of pastoral care, counselling, marriage workshops, daycare, and so on, has the right not to be abused in any way. They are entitled to make a formal complaint under the Sexual Misconduct Policy.

(The Manual, 2019, section J.12)

IV Application of Policy and Procedures

A complaint may be made by an individual who alleges a breach of the policy committed by a person to whom this policy applies, by a person who has first-hand knowledge (has observed or has evidence) of sexual misconduct by a person to whom this policy applies, or by the church. In the case of allegations of misconduct involving a minor, a parent or guardian may initiate a complaint. The individual who has been the recipient of sexual misconduct by a person to whom this policy applies shall be offered the opportunity to participate in the investigation and may become the complainant at any time.

Anonymous complaints will not be acted upon under this policy.

The policy and procedures apply to ministry personnel, employees, members, adherents, volunteers, and any other person who is carrying out a responsibility or activity on behalf of The United Church of Canada. This policy does not apply and is not intended to be used for complaints that may be brought between members or adherents in a congregation.

The Sexual Misconduct Prevention and Response Policy applies as well to camps and other bodies that have a direct affiliation with The United Church of Canada and have adopted the policy. In such cases, all complaints are to be directed to the board of directors, or its designate, of the camp or other affiliated body.

V Cases Involving Minors

When a complaint of sexual or physical misconduct toward a child designated by provincial or territorial law as a minor is disclosed, or where there are reasonable grounds to suspect misconduct, the person to whom the disclosure is made or who suspects such misconduct shall immediately report the suspicion and the information on which it is based to the authority or agency as defined in provincial or territorial laws in the jurisdiction in which the misconduct is alleged to have occurred. These procedures also apply in cases where time has elapsed and the individual who is the subject of the misconduct has reached the age of an adult.

The person reporting is encouraged to record the details of the disclosure or the reasonable grounds of suspicion and relevant dates and times. The person reporting is to keep the information confidential, except as required by law.

The authority or agency to which suspected sexual or physical misconduct toward a minor is reported has the responsibility of investigating the suspected misconduct. In order that such investigation is not hindered, no representative of The United Church of Canada will question the alleged victim, the alleged perpetrator, or any potential witness concerning the investigation while the investigation by the provincial or territorial agency, authority, and/or police is being undertaken or until such time as those authorities indicate such questioning may proceed.

When the alleged perpetrator is in an accountable relationship with The United Church of Canada, and the matter has not been reported to the appropriate court of the United Church by the legal authorities, the matter should also be reported, as soon as it is permitted by provincial/territorial legislation, to the appropriate court of the United Church by the person who has taken the allegations to the authorities.

VI Procedures

These procedures offer an opportunity to all involved for the truth to be spoken and believed, for any sexual misconduct violation to be acknowledged, for accountability to be exercised, and for compassion to be demonstrated in ways that serve justice. All procedures are based on providing protection for the vulnerable and ensuring accountability for the offender. Effort needs to be made to offer restitution to the complainant(s) and to enable them to be vindicated, to be set free from the power of the violation in their life.

Please refer to Appendix III (page 22) for definitions of terms used in this section and throughout the policy and procedures.

It is intended that these procedures will begin to call the respondents to undertake a journey toward their own well-being and the well-being of the community.

1. The complainant contacts a consultant on the roster maintained by the Office of Vocation. The list of consultants is available online (www.united-church.ca) or through the Office of Vocation, the regional council offices, or the General Council Office.
2. The complainant informs the consultant of the allegations of sexual misconduct.
3. The consultant reviews the policy with the complainant and determines if the complaint is one to which the policy applies. Where this policy does not apply, the complainant will be advised on alternate processes available to them. Where the complaint fits within the policy, the consultant will review the policy with the complainant.
4. The complainant puts the complaint in writing. In the event that the complainant chooses not to put the complaint in writing, the notes made by the consultant of the conversation with the complainant will serve as the written record of the complaint. A complaint by a person with first-hand knowledge of a complaint must be made in writing; otherwise, no further action will be taken. In such a case the subject of the complaint may, at any time, become the complainant.
5. The consultant informs the Response Committee—Office of Vocation that a complaint has been received and provides a copy of the written complaint and/or the written record of the meeting. Complaints brought against a layperson will be referred to the governing body of the community of faith to which the layperson is accountable. The governing body of the community of faith may request the Office of Vocation to assume responsibility for carrying out the procedure under this policy and that the result of the process be provided to the governing body at the conclusion of this process.
6. Another consultant on the roster maintained by the Office of Vocation is assigned to the respondent.

7. The consultant assigned to the respondent contacts the respondent to inform them that a complaint has been made and provides them with a copy of the complaint, discusses pastoral care for the respondent and family, and reviews the policy with the respondent.
8. (a) An officer of the regional council and an officer of the Office of Vocation determine, in consultation with the Office of Vocation and regional council ministers, and other resources as appropriate (appointed by the Response Committee—Office of Vocation), whether or not it is necessary to place the respondent on administrative leave pending the outcome of the investigation. If the decision is to place the respondent on administrative leave and the respondent is ministry personnel or an employee, the period of administrative leave will be with pay and benefits.
 - (b) In making the decision to place the respondent on administrative leave, those responsible will
 - (i) give the respondent an opportunity to meet with them to provide comment on the appropriateness of administrative leave;
 - (ii) consider the positive and negative impacts the removal of the respondent from the accountable position would have on the people directly involved in the complaint, others in the affected church community, and the investigation;
 - (iii) not make any determination or assumption concerning the innocence or guilt of the respondent; and
 - (iv) consider the criteria in Appendix II (page 21 of this resource).

This is a decision to be made in the best interests of the community of faith. It is not, nor is it intended to be, a decision with respect to the innocence or guilt of the respondent.

If a person serving as ministry personnel is charged with a criminal offence, section J.7 of *The Manual* applies.

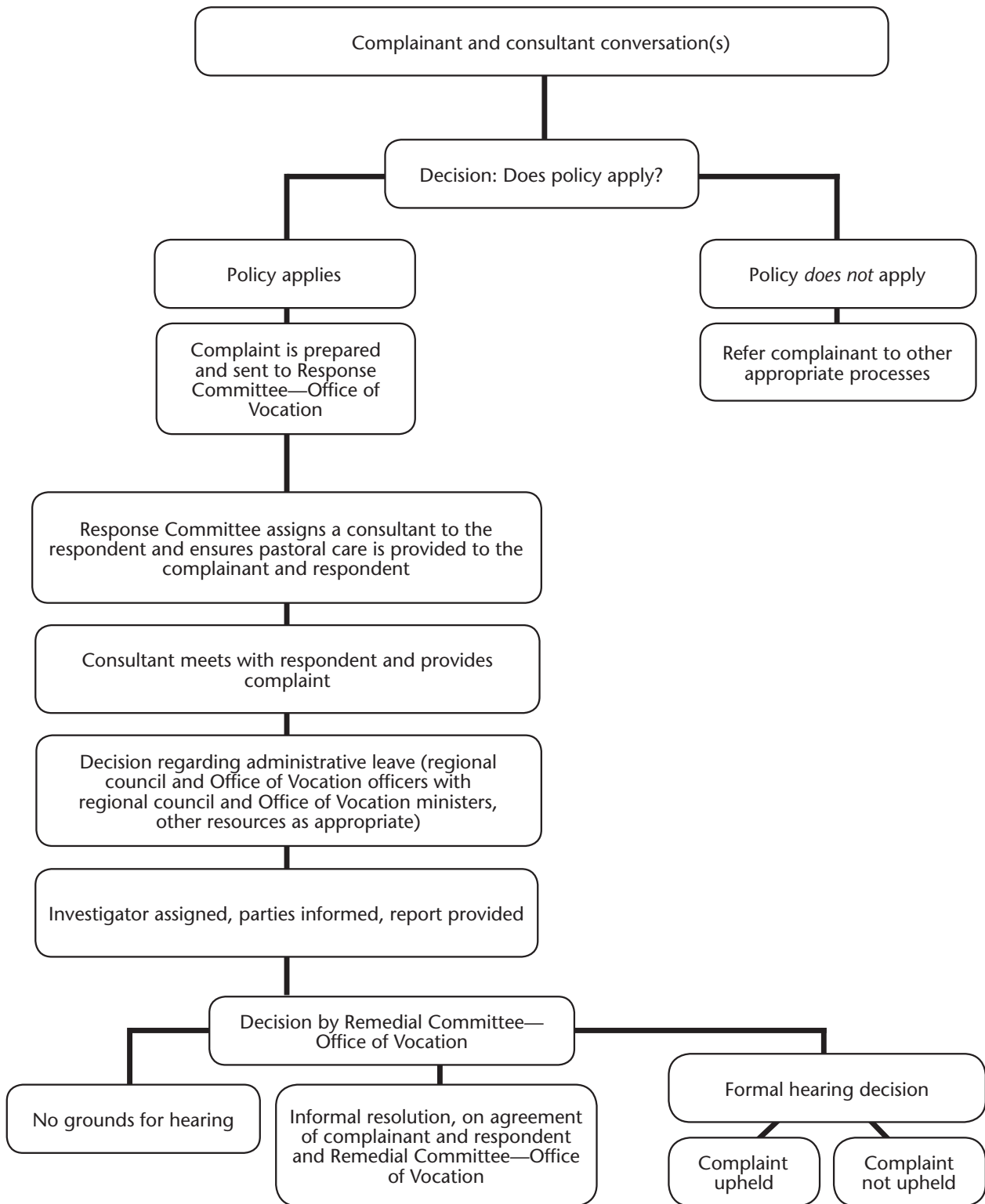
9. The Response Committee—Office of Vocation assigns an investigator to investigate the complaint; provides the investigator with the name and contact information of the complainant, the respondent, and the regional council and Office of Vocation ministers; and ensures that the consultants are informed who the assigned investigator is in order that the consultants can inform the complainant and respondent.
10. The investigator investigates the complaint and provides a written report to the Remedial Committee—Office of Vocation. The investigation occurs whether or not the respondent is away from their position for any reason, including medical leave initiated by the respondent.
11. A copy of the investigator's report is provided to the consultants, who provide it to the complainant and respondent.
12. On receipt of the investigator's report, the Remedial Committee—Office of Vocation or the governing body of the community of faith make a decision as to how to proceed. A determination must be made whether there are reasonable grounds to proceed with a formal hearing, whether there are reasonable grounds to proceed and use informal resolution

(on agreement of the complainant, the respondent, and the Remedial Committee—Office of Vocation or the governing body of the community of faith), or whether there are no reasonable grounds to proceed with the complaint. If the determination is that there are no reasonable grounds to proceed with the complaint, the Remedial Committee—Office of Vocation will declare that there will be no further action under this policy. In the case of a decision not to proceed with the complaint, the reasons for such decision will be provided. There is no appeal from a decision with respect to the disposition of the complaint.

13. The decision of the Remedial Committee—Office of Vocation is made known in writing to the complainant and the respondent.
14. In the event that the decision is to hold a formal hearing, the complaint will be heard by a Formal Hearing Committee—Office of Vocation. Counsel will be appointed, whose task is to call evidence to establish the particulars of the complaint. Section J.9 of *The Manual*, concerning formal hearings, will apply.
15. The Formal Hearing Committee—Office of Vocation hearing the complaint determines whether or not the complaint is upheld.
 - (a) If the formal hearing committee determines that the complaint is proven, it may make a decision that any of the actions provided for in section J.9.6 of *The Manual* be taken as appropriate. These actions include, but are not limited to, admonition, rebuke, suspension, deposition, or having their name placed on the Discontinued Service List (Disciplinary). The decision of the Formal Hearing Committee is to be implemented as provided for in section J.9.7 of *The Manual*.
 - (b) If the complaint is not proven, the Formal Hearing Committee will dismiss the complaint.

All records and related materials of complaints will be kept confidential, except as provided for in the policy and procedures and as required by law.

Complaint Flow Chart



Appendix I: Roles and Responsibilities

Consultants

A pool of consultants is maintained by the Office of Vocation. The pool will have representation of all gender identities and sexual orientations, with a majority of consultants being women.

Responsibilities

1. To act in a consultative capacity for either an individual who has come forward with an allegation that they have been subject to sexual misconduct by a person who is accountable to The United Church of Canada, or to act in a consultative capacity for the individual who is accountable to The United Church of Canada and who has been accused of sexual misconduct or child abuse.
2. To become familiar with The United Church of Canada's policies and procedures regarding sexual misconduct, to be familiar with issues involved in all forms of sexual misconduct, to be committed to keeping up to date on related issues, and to be positive and accepting of all sexual orientations.
3. To be committed to confidentiality with respect to the work they are to carry out and to demonstrate skills of sensitivity and discernment.
4. To identify and seek support for the pastoral care needs of the complainant, the individual who has been the recipient of sexual misconduct (if that person is not the complainant), the respondent, and their families, and to ensure that pastoral care is provided.
5. To ensure that the individual to whom they are assigned receives a complete copy of the Sexual Misconduct Prevention and Response Policy and Procedures and to review the policy and procedures with that individual.
6. To encourage the complainant and individual who has been the recipient of sexual misconduct (if that person is not the complainant) to have a family member or supportive friend present at all meetings.
7. To encourage the complainant to put the complaint in written form and inform complainants who have observed or have first-hand knowledge of a complaint that the matter will not be pursued under this policy if the complaint is not in writing. In the event that the complainant is the person who experienced the misconduct and that person is not prepared to provide a written complaint, the consultant shall advise the complainant that once they are made aware of an allegation of sexual misconduct, it must be investigated. The consultant shall determine whether or not the complainant is willing to speak to the investigator who is assigned to investigate the complaint.

8. To prepare a written account of the meeting with a complainant and provide a copy of the account and the written signed complaint of the complainant, if available, to the Response Committee—Office of Vocation.
9. When assigned to a respondent, to inform the respondent that they are to have no contact with the complainant or the individual who has brought the complaint of sexual misconduct, the immediate families of the complainant and the individual who is alleged to have been the recipient of sexual misconduct, or individuals who may have an influence on the complainant or the individual who has been the recipient of the sexual misconduct.
10. To advise the individual to whom they are assigned as a consultant, that as a consultant they are not an advocate for the complainant or respondent. Further to advise the complainant or respondent that they may choose an advocate and/or legal counsel to assist them with the process.
11. To provide information to the complainant or respondent concerning the investigator and other required information.
12. To keep records of all complaints and concerns of sexual misconduct brought to the consultant's attention and keep a record of all meetings and other forms of contact with the individual to whom the consultant is assigned, in particular, records of the times, dates, and locations of the meetings or contacts and a brief description of matters discussed during the meetings or contacts.
13. To become familiar with resources (e.g., secular resource people, educational materials, distress centres, women's centres, legal and medical advisors, counsellors, therapists) and attend the training sessions as required.

Office of Vocation Minister (or Equivalent Position)

Responsibilities

1. To carry out responsibility for the administration of the Sexual Misconduct Prevention and Response Policy for the Office of Vocation and to ensure that the process moves forward as provided for in the policy.
2. To be knowledgeable about the Sexual Misconduct Prevention and Response Policy and Procedures of The United Church of Canada and their administration, and to act as a resource person in relation to the implementation of the policy and procedures.
3. To assist with the training and education in relation to the policy and procedures, serve as staff resource to the Office of Vocation, and promote understanding of the policy and procedures within the church.
4. Together with the regional council minister and officers of the regional council and Office of Vocation, and other resources if assigned, to make the determination if it is necessary to place the respondent on administrative leave from all of their church positions until the investigator's report is received.
5. To provide the investigator with any information that is relevant to the investigation.
6. To be available for consultation with consultants and investigators.
7. To be available for consultation with those who are responding to a complaint.
8. To assist the community of faith, in consultation with the regional council, to identify and respond to its pastoral care needs when a complaint has been made against ministry personnel serving the community of faith or an individual. To ensure that necessary information is provided to the regional council minister and the community of faith and that the information is communicated appropriately. To be aware of the Personnel Emergency Fund and counselling available through Financial Assistance.
9. To ensure that support is provided for the consultants working on a particular case.

Investigators

An investigation will be initiated following the receipt of a complaint. The investigation will occur whether or not the respondent is away from their position for any reason, including medical leave initiated by the respondent.

Investigative Team

1. A pool of investigators will be maintained by the Office of Vocation to conduct investigations as provided for in the Sexual Misconduct Prevention and Response Policy. A person may be designated as an investigator who
 - (a) is a professional who is contracted for this service,
 - (b) is a volunteer who has the appropriate qualifications or has received the appropriate training to carry out investigative functions under this policy, and/or
 - (c) is an employee of The United Church of Canada who has the appropriate qualifications.

The investigators will have representation of all gender identities and sexual orientations, and to the extent possible be selected from the various regions of the country.

2. The Response Committee—Office of Vocation will assign an investigator to investigate a complaint.
3. Notwithstanding any of the preceding, nothing prevents the Response Committee—Office of Vocation from obtaining the services of an investigator not named through section 1 above when, in the opinion of the staff member, considerations of ethnicity or language warrant such a decision.
4. The Office of Vocation is responsible for the costs incurred by investigators and approved training.

Responsibilities

1. To become familiar with the polity of The United Church of Canada and the Sexual Misconduct Prevention and Response Policy in particular.
2. To be sensitive and discerning when conducting an investigation and to ensure that the respect that the Sexual Misconduct Prevention and Response Policy demands for the parties is demonstrated in the investigative process.
3. To have experience and/or education in investigative procedures.
4. To have a clear understanding of the inappropriateness of any form of sexual relationship or activity between an individual in a position of power, authority, or trust and an individual who is subject to that power, authority, or trust.

5. To ensure confidential information remains confidential, except as required for the implementation of this policy or by provincial, territorial, or federal legislation or court of law.
6. To have strong skills in writing investigative reports.
7. To conduct an investigation of a complaint or concern that is referred. In the conduct of such investigation the investigator will:
 - (a) meet with the complainant, the respondent, and other witnesses as named by the complainant and the respondent; and other individuals deemed to be helpful by the investigator;
 - (b) prepare a written report for submission to the Remedial Committee—Office of Vocation that will include a recommendation whether or not there are reasonable and probable grounds for the church court to proceed to a formal hearing of the complaint, and any other recommendation(s) the investigator deems appropriate;
 - (c) indicate in the written report of the investigation whether or not the complainant is prepared to appear before a formal hearing to tell their story; and
 - (d) should the investigator recommend that there are insufficient grounds to proceed to a formal hearing, the investigator may recommend an alternative(s) to address the issues raised by the complainant.

Office of Vocation

Staff Member to Response Committee

The staff member assigned the responsibility for overseeing the implementation of the Sexual Misconduct Prevention and Response Policy will

1. develop and implement, after consultation with appropriate bodies and individuals, training programs for investigators and consultants;
2. assign consultants; and
3. assign investigators to investigate complaints referred to the Response Committee—Office of Vocation.

Maintenance and Retention of Records: All records and related materials of complaints initiated under this policy are to be confidential except as provided for in the policy and procedures and as required by law. Records of complaints dealt with by the General Council will be retained securely by the Office of Vocation.

Appendix II: Criteria for Considering Administrative Leave

A. For Respondents Who Are Ministry Personnel or Lay Employees

The following criteria must be considered (in addition to any others that may be relevant) when making the decision whether or not the respondent to the complaint should be placed on administrative leave as provided for in the Sexual Misconduct Prevention and Response Policy.

Where any one or more of the first four factors are present, it is strongly recommended that the respondent be placed on administrative leave pending investigation.

1. Is administrative leave required in order to ensure that there is no undue contact with the complainant, family, supporters, or advocates?
2. Is the respondent making a request to be placed on administrative leave?
3. Is there a vulnerable sector in the relevant work community that may be at ongoing risk?
4. Do the allegations include any level of violence?
5. Are the allegations recent or from some years in the past?
6. Is the allegation that the alleged offences occurred over a period of time, or was it a single incident?
7. Is there a single complaint or multiple complaints against the respondent?
8. Is the ministry site where the respondent is currently engaged in carrying out their duties in close proximity or at some distance from where the complainant is now residing and from where the complaint is alleged to have occurred?
9. Are concerns for the health and welfare of the parties or ministry site best served by placing the respondent on an administrative leave pending investigation?

B. Respondents Who Are Lay Leaders

It is recommended that, when a complaint is brought against a lay leader in a volunteer position, that person be heard from with respect to determining whether an agreement can be reached that the respondent will take leave from their position pending the investigation into the complaint.

Appendix III: Definitions

Accountable Relationship

An accountable relationship is one which a person who is a member or adherent of The United Church of Canada, an individual designated as ministry personnel, an employee, or a volunteer creates with a court of the church when the person agrees to carry out a responsibility or an activity on behalf of that court, or with an incorporated body under The United Church of Canada that adopts this policy.

Adherent

Adherent means a person who is attached to a community of faith and who contributes regularly to its life and work while not being a member thereof.

Administrative Leave

When an allegation of misconduct is made against a ministry personnel or an employee, that person may be placed on administrative leave, which is a temporary leave from a job assignment with pay and benefits maintained, while the complaint is investigated in order to determine an appropriate course of action.

Cause—Reasonable and Probable

Grounds that are founded upon circumstances that are sufficiently strong to warrant a reasonable person to believe that the charge is true.

Child Abuse

Child abuse in the context of this policy means child sexual abuse, which includes sexual assault, sexual interference, invitation to touching, sexual exploitation, procurement, and indecent acts to a legal minor as defined by law.

Complaint

A complaint is an accusation of sexual misconduct made by the person who experienced the misconduct or a person who has first-hand knowledge of the misconduct (i.e., has observed or has evidence of same) and has reported it to a consultant. An admission of misconduct is also treated as a complaint.

Complainant

The complainant is the person who informs a consultant that they have been the recipient of sexual misconduct or have first-hand knowledge of misconduct by a person subject to the provisions of this policy.

Confidential

Confidential means the holding of information and protecting it from unauthorized disclosure.

Consent

Consent is voluntary agreement to engage in an activity by an individual in a position to make such a choice. No consent will be deemed to be given where the complainant submits or does not resist by reason of:

1. the application of force to the complainant or another person;
2. threats or fear of the application of force;
3. the exercise of authority;
4. fraud;
5. the respondent being in a position of trust with the complainant; or
6. the complainant being a legal minor in accordance with the provisions of the *Criminal Code of Canada*.

Consultant

The consultant is a person appointed to act in a consultative capacity as provided for in this policy either to an individual(s) who comes forward with a complaint of sexual misconduct or child abuse, or to an individual who is accountable to the United Church and who has been accused of sexual misconduct or child abuse.

Duty of Care

The requirement to exercise the care, diligence, and skill of a reasonably diligent person and to take such steps as will avoid causing foreseeable harm to another person.

Formal Complaint

A formal complaint is a complaint of sexual misconduct made in writing by the court of accountability against a respondent following consideration of a report of an investigation.

Formal Hearing

For a full explanation of a formal hearing, see section J.9 of *The Manual*.

Investigation

Investigation is the process used to gather and examine information from a complainant and respondent to a complaint under this policy and other persons who may have information relevant to the complaint.

Investigator

Investigator is a person who is named as an investigator in accordance with this policy.

The Manual

The Manual is the current publication that contains the Basis of Union and the Bylaws of The United Church of Canada.

Member

Member shall be a person who has been received into full membership in The United Church of Canada.

Ministry Personnel

Ministry personnel means those persons who are members of the order of ministry, those lay persons under appointment as a designated lay minister, candidate supply, intern supply, or student supply, and those persons from other denominations under appointment as a diaconal supply or ordained supply. It does not include persons serving as congregational designated ministers.

Pastoral Sexual Misconduct

Pastoral sexual misconduct is a sexual action, including sexual harassment, sexual abuse, or other sexual activity or conduct, by a person designated as ministry personnel where the person takes advantage of the vulnerability of a person under their pastoral care. It includes consensual actions initiated by an individual who is under the pastoral care of the minister, but does not include an act of sexual assault perpetrated against the minister by the person under the pastoral care of the minister.

Regional Council Minister

A regional council minister includes a pastoral relations minister or the equivalent position.

Regional Council Officer

A regional council officer is a person who has been appointed to act on behalf of the regional council.

Respondent

The respondent is the person against whom a complaint is made, and who is called upon to respond to the complaint.

Sexual Misconduct

Sexual misconduct within this resource includes sexual harassment, pastoral sexual misconduct, and sexual assault.

Sexual misconduct is demeaning, exploitive behaviour of a sexual nature ranging from jokes, to unwanted touching, to forced sexual activities and/or threats of such behaviour. Sexual assault, sexual harassment, and pastoral sexual misconduct are forms of sexual misconduct that are often primarily acts of power by one individual over another.

Sexual Assault

Sexual assault is as defined in section 265. (1) and (2) of the *Criminal Code of Canada*, which reads as follows:

265. (1) A person commits an assault when
- (a) without the consent of another person, he (sic.) applies force intentionally to that other person, directly or indirectly;
 - (b) he attempts or threatens, by an act or 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 imitation thereof, he accosts or impedes another person or begs.
- (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.

Sexual assault also includes intercourse with children under the age of 16, incest, bestiality, and gross indecency.

Sexual Harassment

Sexual harassment is any attempt, or exercise of power, to coerce an unwilling person into a sexual relationship, to subject a person to unwanted sexual attention, to punish a refusal to comply, or to reward compliance. Sexual harassment may be a single incident or a series of incidents involving a wide range of behaviours such as verbal innuendo, subtle suggestions, overt demands, and/or inappropriate conduct of a sexual nature. It is behaviour of a sexual nature that is known or ought to be known to be unwanted or unwelcome. It includes actions that contribute to an environment that is “poisoned” by persistent comments about sex, gender, appearance, marital status, sexual orientation, and/or pornographic pictures or cartoons.

Volunteer

A volunteer is any person who is carrying out a responsibility that has accountability in some manner to The United Church of Canada and who is deemed not to be ministry personnel, a congregational designated minister, a lay minister, or employee.

Appendix IV: Restoration of Relationship

This resource has been developed in order to provide some guidance and options to the church so that work can be done toward ensuring that parties to a complaint can resume participating in the life and ministry of the church after a complaint is concluded.

In every case where a complaint is made and an investigation is conducted, efforts must be made to restore relationships, whether or not further action is taken (whether by way of directed program or formal hearing).

The policy had previously referred to an obligation to restore the “respondent’s credibility where the court of accountability determines there are no reasonable grounds to pursue the matter.” But the complainant also requires support once the process is concluded. In the words of one complainant in their comments to the task group, “The policy [was] written and undertaken as if all responsibility to the complainant ends with the report.” It has never been the church’s intention to abandon anyone, as we hope the new language of “restoration of relationship” makes more clear.

At the same time, however, it is challenging to contemplate how to provide support in each and every circumstance in order to achieve the goal of restoring relationship. The suggestions that follow offer different ways that support and assistance can be provided in an effort to meet this goal. It is important that wounds that have been experienced as a result of the event can be tended to in an intentional way. This is not meant to be an exhaustive list.

Communication

- Clear and transparent information should be provided to the church community as much as possible throughout the process and when the process has concluded. It is expected that information shared will be held in confidence by all who are part of the process. If all interested parties—complainant, respondent, and pastoral charge or ministry site—have the same information, it will make it easier once the formal complaint procedures are concluded to resume a relationship that may have been interrupted by administrative leave or time away from work for directed programming ordered by the court of accountability.
- Meet with the complainant after the process is concluded: Reflect with them on their experience of the process. Did they feel heard throughout the process? Were they supported through the process? How can they be further supported as they continue to participate in the life of the church?
- Meet with the respondent after the process is concluded: Reflect with them on their experience of the process. If they are returning to the position they held when the complaint was brought, can they identify any place where assistance can be provided for their return to the position?

- Counselling for the respondent may be ordered as part of a directed program or the decision of a formal hearing panel. Counselling may also be recommended for the complainant. Please talk to your Office of Vocation or regional council minister for details about what is available through the church.
- For a respondent returning to work within the church, a meeting with their Ministry and Personnel Committee representative and then the Ministry and Personnel Committee as a whole may be helpful. Again, the goal is to be sure that the committee has all the information it needs in order to work with the respondent to ensure that their return to the pastoral charge goes as smoothly as it can.
- For a respondent who is not returning to the position they previously held, it is important for the Office of Vocation or regional council minister to ensure that clear information is provided and received from the ministry personnel in order that their status within the church is understood by all parties.
- A service of worship may be held with church leaders participating where the focus could be on beginning the process of healing over the loss of a minister, leader, staff, or member.

Debrief

- Contact the parties following the conclusion of the formal process (this could be done by their pastoral care provider or their consultant) and find out if they would like to be part of a debriefing conversation.
- In the regions where intentional debriefing is conducted after each complaint with all of the people who worked on the complaint, that process is well received. Those who have participated in the complaint procedure have a place to discuss their experience, and all can share in learning from the experience.

Trauma Team

- Your Office of Vocation or regional council ministers can provide information about a trauma team that may be available to come in and work with you and the affected group to hear them out, hear concerns, and find a way to move forward together.

Procedural Checklists

Checklist for Consultants Working with Complainants

Prior to working with a complaint of sexual misconduct:

- Read the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Attend a training event on the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Become familiar with regional resources related to the issue of sexual misconduct (e.g., secular resource people, educational material, women's centres, counsellors, legal and medical advisors).
- Be clear about the role of consultants when working with a complainant:
 - to work in a consultative capacity to determine if the complaint applies to the United Church policy
 - to ensure that all allegations of sexual misconduct are investigated
 - if the complainant is not prepared to provide a written statement, to provide notes of the conversation with the complainant that will serve as the written record of the complaint to be given to the Conference personnel minister

When you are contacted by a potential complainant:

- In the initial conversation, identify that your role as consultant is to work in a consultative capacity to determine if their complaint falls within to the United Church policy.
 - Inform the potential complainant that you are obligated to forward any complaint that falls within the United Church Sexual Misconduct Prevention and Response Policy, regardless of the wish of the complainant to pursue it, once you have any information that allows you to identify the respondent.
- When meeting with the complainant
 - ensure that the complainant has a copy of the Sexual Misconduct Prevention and Response Policy
 - review the policy and procedures with the complainant
 - advise the complainant that if you hear the complaint, and the policy does apply, then once the parties are identified there must be an investigation whether they provide a written complaint or not
 - determine if the complaint is one to which the policy applies
 - identify and seek out pastoral care and/or counselling support and resources for the complainant and family

- If the policy applies, encourage the complainant to put the complaint in written form.
 - Complaints based on observations by a person other than the subject of the behaviour alleged to violate the policy must be provided in writing or the matter will not be pursued.
 - If the complainant is the person who was the recipient of the misconduct and that person is not prepared to provide a written complaint, the consultant's notes will serve as the written record instead.
- Prepare a written account of your meeting with the complainant.
 - Provide a copy of your account and the written complaint to the Response Committee—Office of Vocation.
- Keep a written record of all meetings and other forms of contact with the complainant (including dates, times, and locations of meetings or contacts, and a brief description of matters discussed during them).
- Provide information to the complainant as required, including the name of the investigator and the investigator's report.
- Maintain confidentiality throughout, except as provided for in the policy and procedures and as required by law.

Checklist for Consultants Working with Respondents

Prior to working with a complaint of sexual misconduct:

- Read the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Attend a training event on the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Become familiar with regional resources related to the issue of sexual misconduct (e.g., secular resource people, educational material, women's centres, counsellors, legal and medical advisors).
- Be clear about the role of consultants when working with a respondent:
 - to inform the respondent that a complaint has been made
 - to provide the respondent with a copy of the complaint
 - to discuss pastoral care/support issues for the respondent and their family
 - to review the Sexual Misconduct Prevention and Response Policy and Procedures with the respondent
 - but not to act as an advocate for the respondent or for the complainant

When you are assigned to work with a respondent:

- You will be provided with a copy of the complaint.
- When you have received a copy of the complaint, contact the respondent to inform them that a complaint has been made.
- When informing the respondent that a complaint has been made
 - advise the respondent that you have been assigned as a consultant for them
 - advise the respondent that your role of consultant is not as an advocate, but for information-sharing
 - provide the respondent with a copy of the complaint
 - ensure that the respondent has a copy of the Sexual Misconduct Prevention and Response Policy and Procedures
 - review the policy and procedures with the respondent
 - inform the respondent that they are to have no contact with the complainant, the immediate family of the complainant, or individuals who may have an influence on the complainant
 - advise the respondent that they may choose to have an advocate and/or legal counsel to assist with the process
 - identify and seek out pastoral care and/or counselling support and resources for the respondent and family

- Keep a written record of all meetings and other forms of contact with the respondent (including dates, times, and locations of meetings or contacts, and a brief description of matters discussed during them).
- Provide information to the respondent as required, including the name of the investigator and the investigator's report.
- Maintain confidentiality throughout, except as provided for in the policy and procedures and as required by law.

Checklist for Office of Vocation Ministers Working with a Complaint of Sexual Misconduct

Prior to working with a complaint of sexual misconduct:

- Read the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Attend a training event on the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Assist in the training and education of church and ministry personnel in relation to the United Church Sexual Misconduct Prevention and Response Policy and Procedures.
- Become familiar with regional resources related to the issue of sexual misconduct (e.g., secular resource people, educational material, women's centres, counsellors, legal and medical advisors).
- Be clear about the role of the Office of Vocation minister (or equivalent position) when working with a complaint of sexual misconduct:
 - to be responsible for the administration of the Sexual Misconduct Prevention and Response Policy for the Office of Vocation
 - to ensure that the process moves forward as provided for in the policy
 - to act as a resource person during the policy's implementation

Working with a complaint of sexual misconduct:

- When a complaint has been received, you will be notified by the Response Committee—Office of Vocation.
- You will be notified of the name and contact information of the assigned investigator.
- Provide the investigator with any information relevant to the investigation.
- Consult with the regional council and Office of Vocation officers and the regional council minister with respect to whether or not the respondent should be placed on administrative leave until the matter is resolved.
 - If the decision is to place the respondent on administrative leave, the period of administrative leave shall be with pay and benefits until the matter is resolved.
 - The decision to place the respondent on administrative leave is to be made in the best interests of the community served by the church court and has no bearing whatsoever on the guilt or innocence of the respondent.
 - Consider the criteria in Appendix II of this resource.

- Be available for consultation with the consultants, the investigator, and the Response Committee—Office of Vocation as required.
- In consultation with the regional council minister, you may also assist the respondent's pastoral charge in identifying and responding to its pastoral needs when a complaint has been made.
- Consider the applicability of the Personnel Emergency Fund.
- Maintain confidentiality throughout, except as provided for in the policy and procedures and as required by law.



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