



ANGLICAN DIOCESE MONTREAL



Safe Church **Harassment Policy**

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Diocese of Montreal
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HARASSMENT POLICY

“Faithful Christian living is all of a piece... The essential call of God is constant throughout the many different biblical periods. The people of God are to worship only God, to love God, and to experience holiness in reflecting God’s righteousness and mercy in their own just living and compassion. All human relationships are meant to find their deepest value in the context of this response to God’s love. ‘We love because God first loved us’ (I John 4:9).”

(The Right Reverend Frederick H. Borsch, Christian Discipleship and Sexuality, Forward Movement Publications, 412 Sycamore Street, Cincinnati, Ohio 45202, 1993, p.1)

i. INTRODUCTION

Harassment, whether sexual, racial, based on a personal characteristic, or through abuse of authority, is more prevalent in our society. Christ has taught us that we are all created equal; we are all to treat others as we would like to be treated. But harassment is also against the Quebec and Canadian laws. It has a negative impact on employees, Parishioners and volunteers.

The Church occupies a unique position in society as a place for sanctuary and spirituality. The Church bases its principles on the Gospels. In order to live out the Gospels, it is necessary to ensure that people feel safe, respected and cared for while on our Church property or participating in Church events or dealing with those who represent the Church.

Therefore, harassment will not be tolerated in the Diocese of Montreal – in individual Parishes/Congregations, Parish events on Church property or off, nor at non-Church programs being held on Church property. Immediate steps will be taken to end any instances of harassment of which the Church becomes aware.

The Harassment Policy and Procedures of the Diocese of Montreal, approved by Diocesan Council on April 8, 2014 are as follows:

PRINCIPLES

- a) The Diocese shall provide a safe environment for its clergy and lay persons.
- b) The Diocese shall protect the safety and well-being of a complainant, respondent and other affected persons.
- c) A complaint shall be taken seriously and shall be investigated as quickly as is reasonably possible.
- d) The Diocese shall provide pastoral care to all affected by an allegation of misconduct under this Policy.
- e) Confidentiality shall be respected.
- f) A complainant shall prove that she/he has been subject to misconduct, and a respondent shall be presumed innocent until proven guilty.

- g) A respondent and a complainant have the right to be represented by legal counsel, or another representative of their own choice.
- h) No person shall interfere with a criminal, civil or administrative investigation.
- i) The Diocese, a Parish or a Church Leader shall immediately report an incident of sexual assault or abuse of a child, youth or vulnerable adult to the responsible policing authority.
- j) No person shall knowingly make a false or vexatious complaint.
- k) A person whose role is identified within this policy, and who fails to implement this policy appropriate to his/her responsibility, shall be subject to disciplinary action(s) as established by the General Synod, the Provincial Synod and/or Diocesan Synod, as appropriate.

PURPOSE

The purposes of this policy are:

- to be educational, in that its existence will increase awareness of, and sensitivity to, the negative impact of harassment and an understanding of how it contravenes Jesus' teachings;
- to prevent harassment by indicating the seriousness with which the Diocese of Montreal views this issue;
- to provide fair procedures for handling complaints when they do occur.

ii. **DEFINITIONS**

- a) "Abuse" means misconduct involving physical or sexual assault, or economic, emotional, physical, or sexual misconduct of a child, youth or vulnerable adult; generally defined as "bringing harm to another;"
- b) "Assault" means physical assault or sexual assault; shall refer to any use of force, or threat of use of force, or perceived threat of use of force against another person without his or her consent as defined in the Criminal Code of Canada;
- c) "Child" means a person who is thirteen (13) years of age or younger;
- d) "Complainant" means a person who alleges s/he is the subject of misconduct by a respondent;
- e) "Bullying" means unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. In order to be considered bullying, the behavior must be aggressive and include:

- i. An imbalance of power: The bullies use their power – such as physical strength, access to embarrassing information, or popularity – to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.
 - ii. Repetition: Bullying behaviors happen more than once or have the potential to happen more than once.
- f) “Church Worker” means any person other than clergy who works in any facet of Church life, whether as a volunteer or as paid staff, including work with organizations or groups that may be affiliated or associated with the Church or Parish;
- g) “Diocese” means the Diocese of Montreal as constituted by Letters Patent issued by His late Majesty, King George the Third, dated June 28, 1793; and, for the purposes of this Policy, includes the Synod, the Diocesan Council, or any Diocesan body;
- h) “Economic misconduct” means the breach of a position of trust wherein one person takes control of, or materially affects, another person or persons’ economic resources without their prior consent;
- i) “Emotional misconduct” means an abuse of authority wherein one person behaves unacceptably in a manner which diminishes another person’s identity, personal dignity and/or self-worth and may negatively impact their mental health;
- j) “Employee” means a person who performs certain duties in return for remuneration by an employer;
- k) “Leader position” or “Leader” means a leadership role in an activity, event or program by a lay person or Cleric in which s/he has authority for the delivery of the activity, event, or program and who is expected to have direct interaction with, or oversight of, children, youth or vulnerable adults;
- l) “Misconduct” means unacceptable behavior, abuse or maltreatment that includes physical or sexual assault, bullying, harassment and/or economic, emotional, physical or sexual misconduct, and for the purposes of this Policy includes any discriminatory practices described in the *Quebec Charter of Human Rights and Freedoms* and the *Act respecting labor standards*;
- m) “Parish” means a geographical area or a community of Church members committed to the pastoral care of a Cleric; and/or a corporation comprising the Rector, Churchwardens and Vestry of a Parish continued or created under the Anglican Church Act 2003;

- n) "Pastoral Care Provider" means a clergy or Church worker who, in the course of their specified ministry may be consulted, or who provides support, advice or guidance in pastoral matters, issues of spirituality or religion;
- o) "Psychological harassment" means a vexatious behavior in the form of repeated conduct, verbal comments, actions or gestures:
 - i) that are hostile or unwanted
 - ii) that affect the employee's dignity or psychological or physical integrity
 - iii) that make the work environment unhealthy.

To establish that a case actually involves psychological harassment, it is necessary to prove the presence of all elements of the definition:

Psychological harassment makes the work environment harmful for the victim. The harassed person may, for example, be isolated from his colleagues due to hostile verbal comments, gestures or behaviors towards her/him or concerning her/him.

The definition of harassment found in the *Act Respecting Labor Standards* includes sexual harassment at work. and psychological harassment based on any one of the grounds listed in section 10 of the *Charter of Human Rights and Freedoms*: race, color, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, handicap or the use of a means to palliate this handicap.

Disrespectful behavior, commonly known as "personal" harassment is not covered by human rights legislation. While it also involves unwelcome behavior that demeans or embarrasses an employee, the behavior is not based on one of the protected grounds named above. Nevertheless, as followers of Christ, we choose to include personal harassment in our harassment policy.

- p) "Physical assault" means an assault of a physical nature, other than a sexual assault, that violates the physical integrity of the person who is assaulted. An "assault" occurs when the following four conditions are met:
 - i) One person applies force to another person, or threatens to apply force;
 - ii) It is intentional;
 - iii) It may or may not result in physical harm;
 - iv) The physical contact is without consent.
- q) "Physical misconduct" means unacceptable behavior by one person, including physical assault, that affects the bodily integrity and/or security of another person, other than sexual misconduct;
- r) "Program (ministry)" means a structured series of similar activities or events governed and run by the Diocesan Synod or a Parish which spans a period of weeks or months and in which the level of risk is expected to remain constant; e.g., weekly worship

services, weekly Church School, visitations, weekly youth meetings, operation of the Sunday morning nursery, an out-of-the-cold program;

- s) "Public" as an adjective means open, transparent and available to all;
- t) "Respondent" means a person against whom a complaint of misconduct is made;
- u) "Safe Church Coordinator" means the person(s) responsible in each Parish of the Diocese for the Safe Church Program; the Churchwarden might be the Safe Church Coordinator for her/his Church.
- v) "Sexual assault" means an assault of a sexual nature that violates the sexual integrity of the person who is assaulted. The following shall be considered when applying this definition and this Policy:
 - i) An "assault" happens when:
 - a) one person applies force to another person or threatens to apply force;
 - b) intentionally, and/or
 - c) without consent.
 - ii) The assault will be deemed "aggravated" if the person who is assaulted is wounded, maimed or disfigured or his or her life is endangered;
 - iii) In deciding if an assault is sexual, many factors may be considered including the part of the body touched or threatened to be touched, the situation in which it occurred, the words and gestures of the person alleged to have committed the assault, and any words and gestures of the person alleged to have been assaulted;
 - iv) Gender is not relevant to a determination of whether a sexual assault has occurred;
 - v) Sexual offences are described in Part V and Part VIII of the Criminal Code of Canada and some but not all of those offences are:
 - a) Aggravated sexual assault
 - b) Bestiality
 - c) Incest
 - d) Inviting a person under the age of fourteen (14) to touch for a sexual purpose
 - e) Sexual assault
 - f) Sexual assault with a weapon or sexual assault causing bodily harm;
 - g) Sexual exploitation, which is sexual interference or invitation by a person in a position of trust or authority towards:

- 1) A young person
 - 2) A person in a relationship of dependency
 - 3) A person with a mental or physical disability; and
- h) Sexual interference which is sexual touching of a person under the age of fourteen (14).

Note: Consent is understood as non-coercive. If a victim agrees to any assault under threat, or if consent is obtained by fraud or by the influence of a person in authority over the victim (e.g. counselor, Cleric, guardian), it will be deemed to be no consent. An accused may show "honest belief" of consent and may not be convicted. However, it is always the case that no consent exists for children under age twelve (12), under specific circumstances with peers for children age twelve and thirteen (12-13), and with young persons aged fourteen to eighteen (14 - 18); consent is not valid if the accused was in a position of authority over them. Also there are further provisions for mentally or otherwise incapacitated or vulnerable children, adolescents and adults. (Criminal Code of Canada, R.S.C. 1985, c. C-46)

- w) "Sexual behavior" means sexual or gender-based harassment, and includes offensive or humiliating behavior that is related to a person's sex, as well as behavior of a sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities.

A few examples are: questions and discussions about a person's sexual life, touching a person in a sexual way, commenting on someone's sexual attractiveness or sexual unattractiveness, persisting in asking for a date after having been refused, telling a woman she belongs at home or is not suited for a particular job, eyeing someone in a suggestive way, displaying cartoons or posters of a sexual nature, writing sexually suggestive letters or notes.

Sexual or gender-based harassment is frequently more about power than about sex. It occurs in situations where there is unequal power between the people involved, and is an attempt by one person to assert power over the other. Sexual or gender-based harassment can also occur when an individual is in a vulnerable position because he or she is in the minority - the only woman or man, member of a visible minority, aboriginal person or person with a disability - and is, for example, ostracized by colleagues. For the detailed diocesan policy on Sexual Misconduct, please see Canon 34.

- x) "Sexual harassment" means behavior of a sexual nature that is known, or ought reasonably to be known, to be unwanted or unwelcome, including:
- i) Any coercion or attempt to coerce an unwilling person into a sexual relationship, or to subject a person to persistent unwanted sexual attention, or to punish a refusal to comply, or to reward compliance.

- ii) Sexual harassment shall be understood as an exploitation of a power relationship, rather than as an exclusively sexual issue.
 - iii) Sexual harassment may involve a wide range of behaviors from verbal innuendo and subtle suggestions to overt demands and unwanted inappropriate physical contacts of a sexual nature. It may be one incident or a series of incidents.
 - iv) Sexual harassment includes actions that contribute to an environment that is "poisoned" by suggestive pictures or cartoons, and/or other offensive acts. Federal and provincial law prohibits sexual harassment.
- y) "Sexual misconduct" means any act of sexual harassment, sexual assault, sexual exploitation, sexual abuse or any other sexual activity or conduct (including but not limited to sexual intercourse) in which the Church worker takes advantage of the vulnerability of a person under her or his pastoral care or other guidance or leadership. Such behavior, whether it appears to be initiated by the Church worker or by the person under care or leadership, shall be deemed to be sexual misconduct. This definition is applicable to all Church workers: lay or ordained, paid or volunteer.
- z) "Vexatious behavior" means this behavior is humiliating, offensive or abusive for the person on the receiving end. It injures the person's self-esteem and causes her/him anguish. It exceeds what a reasonable person considers appropriate within the context of his work. For example, it is:
- i) Repetitive in nature:
Considered on its own, a verbal comment, a gesture or behavior may seem innocent. It is the accumulation or all of these behaviors which may become harassment.
 - ii) Verbal comments, hostile or unwanted gestures or behaviors.
 - iii) The comments, gestures or behaviors in question must be considered hostile or unwanted. If they are sexual in nature, they could be considered harassment even if the victim did not clearly express his refusal.
 - iv) Affect the person's dignity or integrity
- aa) "Volunteer" or "Volunteer Helper" means a lay person who is involved in a program with children, youth or vulnerable adults but who is not a leader;
- bb) "Vulnerable adult" means a person who is eighteen (18) years of age or older, and because of his or her age, disability or other circumstances, whether temporary or

permanent, is in a position of dependence on others or is otherwise at a greater risk than those in the general population of being harmed by a person in a position of authority or trust relative to him or her;

- cc) “Youth” means a person who is between fourteen (14) and eighteen (18) years of age, exclusive.

iii. **GENERAL PROVISIONS**

SUPPORT AND ASSISTANCE FOR PARTIES

The complainant and the respondent are, at all times during any stage of these procedures, entitled to support and assistance. The Safe Church Coordinator is available to provide or arrange assistance and support to complainants and respondents, but no Coordinator shall assist or support more than one party to a complaint.

RETALIATION

No person shall retaliate against another for bringing forward a complaint of harassment or for providing information in respect of a complaint. The Church considers retaliation or the threat of retaliation at any stage to be a serious offense because it prevents potential complainants, witnesses and administrators from acting on their concerns. Any person should report threats, acts of retaliation and other safety concerns to the diocesan Human Resources and Program department and/or the relevant diocesan Leaders. Retaliation may include, but is not limited to, unfair evaluation, unfair work or assignments, having information withheld or made difficult to obtain in a timely matter, name-calling or ridicule (public or private), oral or written threats or bribes, or further harassment of any nature. Acts of retaliation may be subject to disciplinary action.

CONFIDENTIALITY

- a) All persons involved in a case are expected to maintain confidentiality, particularly within the ministry in question.
- b) Terms of confidentiality, including the need to disclose information that restores a Parish to effective functioning, may be agreed on during informal action or mediation between the complainant and respondent, or, in the case of the formal procedure, as determined by the Diocesan Bishop.
- c) For educational purposes, the Human Resources and Program department or Bishop may discuss specific cases and their resolutions without identifying information.
- d) Confidentiality may not apply to persons subject to extra-Church judicial processes or where disclosure is required by law.

INTERIM MEASURES

The Church may, at any time during the processing of a complaint, take necessary steps to ensure the health, safety and security of any member of the Church community. For example, a temporary restriction of duties might be applied.

DOCUMENTS

Normally, documents created in the course of the procedures under this policy shall be treated as confidential and are retained by the Human Resources and Program department. However, reports and other documents used during the formal procedure under this policy may be used by the Church for other purposes such as appointments, reappointments, discipline, or in the case of Parishioners - lay leadership opportunities, where appropriate and where permitted by the procedures governing such processes. In addition, documents might be required by law to be released to third parties.

MULTIPLE PROCEEDINGS

Where there are two or more complaints arising out of the same incident against the same respondent, these may be dealt with at the same time. Where there are two or more complaints against the same respondent arising out of different incidents, these may be dealt with at the same time with the consent of the complainants and respondent.

ROLES AND RESPONSIBILITIES

Employees / Parishioners:

All Employees are responsible for contributing to maintaining a safe environment by refraining from behavior that constitutes harassment. This will include;

- a) Completing risk assessment as required;
- b) Participating in education and training sessions when requested;
- c) Reporting any incidents of harassment or any other violation of this policy;
- d) Cooperating with and providing input into investigations regarding any alleged violation of this policy.

Person in a supervisory role (Supervisors):

Supervisors are responsible for taking steps to ensure that the workplace is free from harassment, and for intervening if any violations of this policy occur. This will include;

- a) Complying with reporting, investigation and documenting procedures
- b) Promoting and encourage reporting of workplace harassment or other violations of this policy

- c) Seeking advice and assistance from the Churchwardens in dealing with and resolving the situation

Churchwardens / Safe Church Coordinator:

Churchwardens and Safe Church Coordinator are responsible for providing guidance and support to all employees in interpreting and understanding this policy. This will include:

- a) Ensuring that employees are trained in recognizing and responding to situations involving workplace harassment;
- b) Ensuring that every incident of workplace harassment is reported, investigated, and documented;
- c) Ensuring confidentiality is maintained at all time, unless legislation dictates otherwise or imminent danger exists.

iv. SCOPE

All members of the Diocese of Montreal have a responsibility as Christians to ensure that Parishes are free from harassment. Wardens and rectors bear the primary responsibility for encouraging and maintaining a safe and healthy environment. They are free to act, and should act, on this responsibility whether or not they are in receipt of individual complaints. It is the obligation of the Wardens, Rectors and all persons in leadership positions to be familiar with this policy and, where appropriate, to undertake training in order to ensure that they are able to fulfill these responsibilities.

v. STATEMENT

THE DIOCESE

Harassment is a form of misconduct that undermines the integrity of the relationship of those to whom we minister. All persons have the right to be free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive, including sexual harassment.

Anyone engaging in harassing conduct will be subject to discipline, ranging from a warning to termination or inhibition. *For further details on discipline, please refer to Canon 25.*

Please note that this policy deals with harassment that is not of a sexual nature. For the Sexual Misconduct Policy, please refer to Canon 34. If, at any point in the investigative process contained herein, it is determined that it is a sexual misconduct situation, this process will be stopped and the process described for investigations of sexual misconduct will be instituted.

THE LAW

Both the *Quebec Charter of Human Rights and Freedoms* and the *Act Respecting Labor Standards* protect employees from psychological harassment related to work. The *Criminal Code* protects people from physical or sexual assault.

The Corporations of our Parishes are also responsible for ensuring that those who are not employees, i.e., volunteers, Parishioners, contracted workers, employees of other employers serving the Parish, are also in compliance with this policy.

APPLICATION

This policy prohibits harassment by any member of the Diocese. Any Parishioner or employee can make a complaint of harassment against another Parishioner or employee.

It applies to incidents of harassment that occur in the course of ministry or participation in Church-sponsored organizations, activities and programs, whether they occur on-site or off-site. Examples of off-site settings include, but are not limited to, field trips, pastoral visits, conferences or training events, and Church-sponsored social functions.

It will not be applied or interpreted in such a way as to detract from the right of those in supervisory roles to manage and discipline employees and volunteers in accordance with normal Church practice, or from any existing rights or obligations contained within any existing code of conduct or legislation.

It is to be interpreted and administered in a way that is consistent with the principles of religious freedom. Neither this policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right of staff, volunteers and Parishioners to respectfully engage in the frank discussion of potentially controversial matters, such as age, race, politics, religion, sex and sexual orientation.

Notwithstanding the existence of this policy, every person continues to have the right to seek assistance from the Human Rights Commission or, where a criminal act is involved, the police, even when actions are being taken under this policy.

COMPLAINT PROCEDURES

Anyone may anonymously seek the advice and assistance of a Safe Church Coordinator (hereafter called the "Coordinator"). That Coordinator shall assist the individual in identifying concerns, in considering the applicability of various options. The Coordinator shall provide individuals seeking advice with a copy of this policy and shall make them aware of the availability of counseling services, as appropriate, and how to lodge a formal complaint.

Complaints of harassment may be made by any member of the Church community who has been directly affected by harassment, or who has reasonable cause to believe that harassment has taken place. A complaint may also be made on behalf of the Church by the appropriate Wardens or Rector of any Parish against any member of the Church community where there is reasonable cause to believe that harassment exists.

Individuals are encouraged to bring forward complaints as soon as possible after the incident or incidents giving rise to the complaint, in order that the most thorough and fairest consideration of the matter may occur. In general, it is recommended that complaints be

initiated within one calendar year of the alleged incident, (it is encouraged that incidents be reported, and the investigation process started, ideally within 72 hours of the incident) or in the case of a series of incidents, the last incident in a series.

TYPE OF COMPLAINTS

Alleged incidents of harassment can be resolved by using any of the following procedures:

- A. Direct action
- B. Informal procedure
- C. Mediation procedure
- D. Formal procedure.

In order to use the mediation or formal procedures, the identity of the person making the complaint, (hereafter called the "complainant") and the details of the complaint, must be disclosed to the other party (hereafter called the "respondent"). Disclosure of the identity of the complainant may or may not be required under the informal procedure, depending on the nature of the action pursued.

At any time, complainants may choose to withdraw from these complaint proceedings. Nevertheless the Church's legal commitment to provide an environment free from harassment may obligate the Church, through the appropriate Parish or Diocesan Leaders, to proceed even in the absence of a complaint from the person directly affected. In deciding whether to proceed in such cases, the Church will take into account all relevant circumstances including, but not limited to, the availability of evidence, the accessibility of witnesses, the need for protection against retaliation on the part of witnesses and the need for due process on the part of respondents.

In responding to complaints of psychological harassment, persons involved in the application of these procedures should consult with the Bishop or his/her designate.

A) DIRECT ACTION

Sometimes it is possible to stop harassment just by **speaking up** or by **writing to the harasser**. If the person being harassed is unwilling or unable to do so, other steps must be taken. Differences in power (age, sex, religion, race, and so on) or status (such as a subordinate job) may make this impossible. Even if a person does speak up, the harassment may not always stop.

B) INFORMAL PROCEDURE

- Informal procedures **do not involve an investigation, a report, or an official decision**.
- A person who complains informally is enlisting the help of the rector, another Priest or Archdeacon, a warden, the diocesan Human Resources and Program department, or someone else appointed by the Bishop to act as an intervener.

- This person can give advice as to how to proceed, may help the employee write a letter or initiate a conversation, or may be able to approach the person accused of harassment to let them know their behavior is causing discomfort, or is not appropriate.
- If, after discussion of a concern with a Safe Church Coordinator, with the Bishop or the Diocesan Human Resources and Program department, an individual wishes to proceed with the informal procedure, she or he may request that the Coordinator assist in attempting to resolve the matter. No written complaint is required to commence the informal procedure. The options available under the informal procedures are numerous, and will vary depending on the nature of the complaint. However, the informal procedure does not include adjudication as to whether harassment has or has not occurred.
 - Examples of informal actions may include, but are not limited to:
 - advice to the complainant (including advice that the complaint is not valid or does not fall within the scope of this policy)
 - referral of either party for counseling
 - investigation
 - letter to the respondent
 - meeting with the respondent
 - voluntary relocation of the complainant and/or the respondent
 - apology from the respondent.
- The informal procedure can occur without the knowledge of anyone other than the complainant and the Coordinator from whom the complainant seeks assistance. Normally however, before the Coordinator proceeds with any informal action other than providing information about self-help options, counseling or referring the complainant to other resources or services, the Coordinator shall consult with the Bishop or his designate to discuss the proposed informal action. When a matter is concluded or closed, records of any informal actions taken shall be forwarded by the Coordinator to the Bishop or his designate for entry in the confidential files. Further:
- The complainant may, at any time prior to the matter being concluded or closed, choose to pursue alternative procedures provided under this policy.
- No informal action, that adversely affects the interests of the respondent, shall proceed under the informal procedure without the knowledge and consent of the respondent.
- In the case of employees, no record of an informal procedure shall be entered into the personnel file of the complainant or the respondent without the knowledge and consent of that person.
- If the Coordinator, after discussion with the complainant, concludes that in the Coordinator's opinion the concern raised by the complainant is unsubstantiated. or does not fall under this policy, the Coordinator shall advise the complainant as to other Church policies or procedures that may be relevant, and may if the complainant wishes,

refer the complainant to the appropriate person or office with responsibility . The complainant shall also be advised of their right to proceed under the section on Mediation or Formal Procedure.

- No person involved in the informal procedure shall give evidence or introduce documents from that process unless all parties involved in the informal procedure consent to that disclosure.
- Where no action has been or will be taken, or where the Coordinator and the complainant agree that there are insufficient grounds to substantiate the concern, or if the concern does not fall under this policy, the Coordinator shall make a notation to this effect and shall forward the file to the Bishop or his designate for entry in the confidential files.

C) MEDIATION PROCEDURE

Mediation is a **voluntary process** whereby the people involved in a complaint meet with a neutral third party (mediator) who is trained to help them agree to a solution with which both are comfortable. Mediation can work well when the people feel that they have equal power. Mediation is not appropriate when:

- one of the people feels at a disadvantage, or feels vulnerable (perhaps because of a difference in age, sex, religion, race, level of authority, or other characteristic).
- there is a case of severe harassment for which strong corrective action such as termination is likely to be required.

If the circumstances warrant it, mediation can come before a formal investigation. At the request of one of the parties and with the consent of the other, an appropriate person may be appointed by the Bishop. Either party has the right to refuse mediation. Each should also have the right to be accompanied and assisted by someone of their choosing during mediation.

Procedure

At any time after the initial contact with a Coordinator, the Bishop, or his designate a complainant may request to have the matter mediated. See [Mediation Agreement](#) of the present policy for the detailed mediation procedure.

The Diocese shall be responsible for the cost of mediation, including the Mediator, with the exception that the complainant and the respondent shall be responsible for their own legal expenses.

D) FORMAL PROCEDURE (COMPLAINT)

Informal procedures and mediation are not necessary first steps before filing a complaint. Persons in the Church may file a formal complaint (see [Diocesan Anti-Harassment Complaint Form](#) of the Appendices of this Handbook). The formal process includes filing the complaint,

investigating, reporting the findings, decision-making, and providing remedies for the victim, and corrective action for the harasser. Appeals may be made to the Bishop if either party feels that further action is needed.

The Safe Church Coordinator shall make the necessary follow up by completing the [Tracking the Diocesan Anti-Harassment Complaint Form](#), the [Respondent's Response Form](#) and the [Investigation Report](#) of the present policy. The [Investigative Interviewing Tips](#) sheet is also available, and provides helpful tips and best practices.

COMPLAINT INVESTIGATION &REPORT

- i. The Safe Church Coordinator shall complete the complaint investigation, and submit an Investigation Report with recommendations to the Bishop or his designate within sixty (60) days of receipt of the complaint.
- ii. The Safe Church Coordinator may delegate to an Investigator the tasks of completing the complaint investigation and preparing a draft Investigation Report.
- iii. The Investigation Report shall address the following minimum requirements:
 - a) The names of the parties and persons interviewed
 - b) The written complaint, including the date the complaint allegedly arose
 - c) The respondent's response to the complaint
 - d) Confirmed findings of fact
 - e) Alleged but unconfirmed statements
 - f) A factual conclusion, if possible
 - g) Deductions from the findings of fact
 - h) Recommendations from the Investigator
 - i) Name(s) of the person(s) who prepared the report
 - j) The date of the report.

DECISION & APPEAL

- i. Within twenty-one (21) days of the reception of the Investigation Report, the Bishop or his designate shall make a finding on whether the complaint is substantiated or not, or if appropriate refer it to mediation.
- ii. If the Bishop or his designate determines a complaint has been substantiated, she/he may recommend a penalty on the respondent, or may refer the matter to the responsible policing authority or another external authority.
- iii. Following receipt of the Investigation Report, or the failure of mediation, the Bishop or his designate may dismiss the complaint or impose a penalty, including:
 - a) Oral reprimand
 - b) Written reprimand
 - c) Suspension with or without terms

- d) Dismissal from a Clerical position, lay employment, or a volunteer position.
- iv. The Bishop or his designate shall give a written decision, with reasons on the discipline to be invoked, and shall provide a copy to the complainant, respondent and the Safe Church Coordinator.
- v. If a complaint is found to be false or malicious, discipline under this Policy may be imposed on the complainant.
- vi. A party may appeal the decision of the Bishop or his designate as per section (iv), in a written submission to the Bishop within thirty (30) days.
- vii. The Bishop shall make a decision on the appeal (as per section (vi) above) within sixty days (60).
- viii. The Bishop shall revoke the license of a Cleric found guilty of the sexual assault of a child, youth, or vulnerable adult in a criminal proceeding.
- ix. The Bishop shall dismiss from employment, and/or remove as a volunteer with the Church any layperson, employee or volunteer found guilty of sexual assault of a child, youth, or vulnerable adult in a criminal proceeding.
- x. If a Respondent is found to be in violation of the Sexual Misconduct Policy specifically, or the Safe Church Regulation in general, then the Respondent shall complete full-scope training on both the Sexual Misconduct Policy and the Safe Church Regulation.
- xi. A Respondent subject to section (x) may not participate or work in any capacity in another Church activity, event or program anywhere within the Diocese of Montreal until the training specified in section (xi) has been completed to the satisfaction of the Bishop.
- xii. The Bishop, in co-operation with the Safe Church Coordinator, the Diocese and the Parish, shall decide if a guilty Respondent, who has completed the training to a satisfactory level pursuant to section (xi), may again participate or work in any capacity in a Church activity, event or program that involves either a child, youth and/or vulnerable adult in any Parish and/or the Diocese.
- xiii. The Bishop shall issue a written decision on the eligibility of a guilty Respondent (as per section (xii) within sixty (60) days of receiving a request for Reinstatement of Privilege from the Respondent, a Parish or the Diocese.
- xiv. The decision of the Bishop as per section (xiii) shall be final and not appealable.

vi. **OTHER OPTIONS**

Any complainant who is not satisfied with the result of a harassment complaint can consult the *Commission des normes du travail* or seek legal counsel. If the harassment involves physical or sexual assault, which are criminal offences, the police should be contacted and Canon 34 (Safe Church—Sexual Misconduct Policy) should be implemented.

vii. **POLICY REVIEW & AUDIT**

- a) The Bishop or his designate shall present a report at each regular meeting of the Synod, which shall include:
 - a) Statistics on the number of complaints made under this Policy since the last report
 - b) The number of complaints resolved and in what manner they were resolved, and
 - c) Recommendations, if any, for changes to this Policy.
- b) The Diocesan Council, through the Diocesan Human Resources Standing Committee, shall review this Policy at least once every three (3) years.
- c) The Diocesan Council shall conduct an audit of the processes under this Policy at least once every five years.

i. **DIOCESAN ANTI-HARASSMENT COMPLAINT FORM**

Printable form available on the diocesan website under the section "Resources".

Instructions:

- Use a pen.
- Complete all sections of this form.
- Contact your Safe Church Coordinator if you need any assistance to complete the form.
- Please sign and date each page of the form, and each additional page that you may attach.
- Submit the completed form to your Safe Church Coordinator.

Timeline to Submit Your Complaint

The Safe Church Coordinator must receive your complaint within twelve (12) months after the alleged misconduct event took place.

Today's Date (MM/DD/YYYY):

SECTION A - Identification of the Complainant

Surname, First Name, Initial

Age (Years)

**If you are complaining on behalf of someone else, then identify the name and age of that person; otherwise, insert 'Not/Applicable', sign and date the bottom of the page, and skip to Section B.*

Surname, First Name, Initial

Age (Years)

Complainant's Signature

Date (MM/DD/YYYY)

SECTION B - Who are your complaining about? (This is the Respondent)

Name of person (Please print)			
Street or Mailing Address			
Town/City and Province	Postal Code	Email Address (if known)	Phone Number

Additional Respondent(s)

Name of person (Please print)			
Street or Mailing Address			
Town/City and Province	Postal Code	Email Address (if known)	Phone Number

Complainant's Signature

Date (MM/DD/YYYY)

SECTION C - Identify the Leader(s) and the Church Activity, Event or Program where the misconduct took place.

“Leader position” or “Leader” means a leadership role in an activity, event or program by a lay person or Cleric in which s/he has authority for the delivery of the activity, event or program, and who is expected to have direct interaction with, or oversight of, children, youth or vulnerable adults.

Name of Leader (1), (Please print)

Telephone or Cellular Number (Include area code)

Email Address

Name of Co-Leader (2), (Please print)

Telephone or Cellular Number (Include area code)

Email Address

Name of Co-Leader (3), (Please print)

Telephone or Cellular Number (include area code)

Email Address

Name of the Church Event, Activity or Program where the misconduct took place.

Location of the Church Event, Activity or Program where the misconduct took place.

Street Address (Please Print)			
Town/City	Province	Postal Code	Telephone or Cellular Phone Number (include area code)

Complainant's Signature

Date (yyyy/mm/dd)

SECTION D - Identify the Type of Alleged Misconduct

Definition of Misconduct:

“Misconduct” means unacceptable behavior, abuse or maltreatment that includes physical or sexual assault, bullying, harassment and/or economic, emotional, physical or sexual misconduct, and for the purposes of this Policy includes any discriminatory practices described in the *Quebec Charter of Human Rights and Freedoms* and the *Act Respecting Labor Standards*.

Burden of Proof and Presumed Innocence

In accordance with section - Principles (vi) of the Diocesan Harassment Policy, a complainant shall prove that she/he has been subject to misconduct, and a respondent shall be presumed innocent until proven guilty.

Check off one or more boxes that you believe represents a true and accurate account of the type of misconduct:

- | | |
|--|---|
| <input type="checkbox"/> Physical assault | <input type="checkbox"/> Economic misconduct |
| <input type="checkbox"/> Sexual assault | <input type="checkbox"/> Emotional misconduct |
| <input type="checkbox"/> Bullying (Physical, Emotional, Psychological) | <input type="checkbox"/> Physical misconduct |
| <input type="checkbox"/> Harassment (Physical or Sexual) | <input type="checkbox"/> Sexual misconduct |

Discriminatory practice (Check off one or more boxes that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Race | <input type="checkbox"/> Marital Status | <input type="checkbox"/> Political |
| <input type="checkbox"/> Ancestry | <input type="checkbox"/> Mental Disability | <input type="checkbox"/> Social |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Age | <input type="checkbox"/> Employment Status |
| <input type="checkbox"/> Place of Origin | <input type="checkbox"/> Sex | <input type="checkbox"/> Voluntary Status |
| <input type="checkbox"/> Color | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Belief |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Physical Disability | <input type="checkbox"/> Condition |

Complainant's Signature

Date (yyyy/mm/dd)

SECTION E - When did the misconduct occur?

If more than one occurrence, identify the dates of the first and most recent occurrence. If there were more than three occurrences of misconduct, please state in Section E4 below the date of each additional occurrence to the best of your knowledge. Attach another page if more space is required; please remember to sign, date and number each additional page.

E1: Misconduct Event #1 Date: _____ (First Occurrence)
(yyyy/mm/dd)

E2: Misconduct Event #2 Date: _____
(yyyy/mm/dd)

E3: Misconduct Event #3 Date: _____ (Most Recent Occurrence)
(yyyy/mm/dd)

E4: Additional comments:

Complainant's Signature

Date (yyyy/mm/dd)

Complainant's Signature

Date (yyyy/mm/dd)

Complainant's Parent or Guardian Signature

Date (yyyy/mm/dd)

(If the Complainant is a child)

4. I have signed, dated and numbered each page, including each additional page attached, of this complaint form.

Complainant's Signature

Date (yyyy/mm/dd)

Complainant's Parent or Guardian Signature

Date (yyyy/mm/dd)

(If the Complainant is a child)

REMEMBER TO PROVIDE THE SAFE CHURCH COORDINATOR WITH ANY CHANGES TO YOUR CONTACT INFORMATION, AS THE DIOCESE MAY CLOSE YOUR COMPLAINT AS HAVING BEEN ABANDONED IF WE ARE UNABLE TO CONTACT YOU.

End of Diocesan Anti-Harassment Complaint Form

ii. **TRACKING THE DIOCESAN ANTI-HARASSMENT COMPLAINT FORM**

Printable form available on the diocesan website under the section "Resources".

The Safe Church Coordinator shall complete the following information upon receipt of this complaint form, and update this section from time to time throughout the complaint resolution process.

1. **Date the Misconduct Complaint Form Was Received:** _____
(by the Leader or the Safe Church Coordinator) (yyyy/mm/dd)

2. **Date of the Most Recent Misconduct Event:** _____
(yyyy/mm/dd)

3. **Assessment of the Elapsed Period Since The Misconduct Event**

Have twelve (12) months elapsed between the misconduct event (s. 2) and the receipt of the Diocesan Anti-Harassment Complaint Form (s. 1)?

- Yes
- No

If Yes, The Safe Church Coordinator shall inform the Complainant that the statute of limitation of 12 months has elapsed in accordance with Section "Procedures" of The Diocesan Harassment Policy, and pastorally advise that there will be no investigation or further action concerning this complaint.

4. **Assessment of the Type of Complaint:**

- Direct action
- Informal procedure
- Mediation procedure
- Formal procedure

Name of Person making this assessment: _____

5. **Date of this assessment:** _____
yyyy/mm/dd

6. **Date this assessment was reviewed by Safe Church Coordinator:**

yyyy/mm/dd

iii. **RESPONDENT'S RESPONSE FORM**

Printable form available on the diocesan website under the section "Resources".

The Synod Office requires confirmation that the respondent of a complaint has received the complaint, and understands their rights and responsibilities. Any respondent named in an alleged case of harassment will be required to complete this form upon receipt of the complaint in writing, and return the completed form to the Safe Church Coordinator.

I, _____, have received a copy of the complaint of harassment registered against me by _____.

I agree not to communicate with the complainant about this complaint except through the appropriate diocesan procedures and/or courts.

I have been advised of my right, and the possible need, to secure legal counsel if further action is taken on this complaint.

I am aware that retaliation and/or threats of retaliation will not be tolerated and that further complaints/charges may be brought forward should there be any indication of retaliation.

I understand that in keeping with the tenets of the 'Code of Ethics and Professional Conduct', I will be treated with pastoral sensitivity, and will be considered innocent until such time as the alleged charges are found to be true.

Please indicate :	<input type="checkbox"/> I have reviewed <input type="checkbox"/> I will review <input type="checkbox"/> I request a copy
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According to the Diocese of Montreal's Anti-Harassment Policy which delineates the policies and procedures of the Anglican Diocese of Montreal related to harassment, I now hereby request that an investigation into this complaint be undertaken.

Signature of Respondent

Date

iv. **INVESTIGATION REPORT**

Printable form available on the diocesan website under the section "Resources".

Name of Complainant		Date of Follow up
Name of Respondent		Date Complaint First Received
1.	Has the Bishop or his designate been informed of this case?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	Did the Complainant: a) Write a letter to the respondent? b) Send a signed complaint to the respondent? c) Make any other attempts at communication with the respondent since the alleged misconduct event? d) Make any other attempts to stop the alleged misconduct? <i>Please Describe:</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
4.	Were these attempts at resolution successful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	Was an investigation carried out?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	Was there Third Party Intervention involvement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.	Was the complaint resolved?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8.	Did the complainant request an investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9.	Did the investigation involve a criminal investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No

10.	Did the investigation result in criminal charges?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11.	If there were no criminal charges, describe the outcome of the investigation.	
12.	Did the alleged misconduct have any further impact on the Church community in which the complainant was/is associated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
13.	Did the alleged misconduct have any further impact on the Church community in which the respondent was/is associated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
14.	Was an Appeal requested by the complainant?	<input type="checkbox"/> Yes <input type="checkbox"/> No
15.	Was an Appeal requested by the respondent?	<input type="checkbox"/> Yes <input type="checkbox"/> No
16.	What was the outcome of the Appeal Hearing, if held: <hr/> <hr/> <hr/> <hr/> <hr/>	
17.	Is there a possibility of a law suit?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Other Notes:

Safe Church Coordinator's Signature

Date

v. **INVESTIGATIVE INTERVIEW - HARASSMENT**

Printable form available on the diocesan website under the section "Resources".

Best Practices

- The conversation with the employee should be held by a member of the Human Resources and Program department a person in charge that the individual is comfortable with, or the Safe Church Coordinator.
- The conversation should be held in a private area to maintain confidentiality, and to respect the employee's privacy.
- Take a supportive approach.
- Assure the individual that you are available to talk anytime, and that support is available.
- Refer the person to the Employee Assistance Program; be sure to discuss the benefits they offer, and provide the information to the employee so that they can contact your provider if they choose to do so.
- In the event the employee discloses that there has been an incident of harassment, be sure to fully investigate the claims.

Interviewing the Complainant

- Obtain a full account of the incident, and document all details provided in the Diocesan Anti-Harassment Complaint form.
- Determine any potential pattern involved, or if the incident was a singular occurrence.
- Determine if the incident was influenced by any contextual factors.
- Identify any reporting relationships, or hierarchical structures that may have influenced the incident(s).
- Determine a timeline of events associated with the incident, what the job duties of each party were at the time of the incident, and what their locations were.
- Examine the potential of a charge made under false pretenses, and any motivating factors that may be involved. Work to rule out these potential elements.
- Inform the complainant that a thorough investigation will take place.
- Obtain the written, signed and dated form from the claimant.
- Ensure that the employee is free from retaliation as a result of their coming forward.

Interviewing the Accused

- Obtain the written, signed and dated form from the claimant.
- Describe the details of the accusation, and ask for clarification on any discrepancies between the two stories.
- Identify any reporting relationships, or hierarchical structures that exist between

the parties.

- Determine a timeline of events associated with the incident, what the duties of each party were at the time of the incident, and what their locations were.
- Determine any potential for retaliation or reprisal, and inform the accused that this would be unacceptable.
- Document all pertinent details of the interview, including observations of behavior displayed and their account of the incident.

Interviewing Witnesses

- Obtain the written, signed and dated form from the claimant.
- Describe the details of the accusation, and ask for clarification on any discrepancies between the two stories.
- Identify any reporting relationships, or hierarchical structures that exist between the parties.
- Determine a timeline of events associated with the incident, what the duties of each party were at the time of the incident, and what their locations were.
- Determine any potential for retaliation or reprisal, and inform the accused that this would be unacceptable.
- Document all pertinent details of the interview, including observations of behavior displayed and their account of the incident.

Interview hints

a) What are the date(s), time(s) and place(s) where the incident(s) occurred?

b) Who was involved in the incident?

c) What happened before the incident occurred?

d) What happened during the incident?

e) Did anyone else witness the incident? If so, please provide their names.

f) If the incident was witnessed by someone else, what was his/her respective role in the incident?

g) How did you react to the harassment?

h) If applicable, describe any incidents that took place previously.

vi. **MEDIATION AGREEMENT**

Printable form available on the diocesan website under the section "Resources".

THIS IS A MEDIATION AGREEMENT made this _____ day of _____
in the year of our Lord, 20 ____.

B E T W E E N: _____ OF THE
FIRST PART

- and -

_____ OF THE
SECOND PART

- and -

The Diocese of Montreal

_____ THE MEDIATOR

1. AGREEMENT

The parties agree:

- (1) To attempt to settle a controversy through the mediation process on the terms contained in this agreement.
- (2) That the parties will be present at mediation, or will have a representative present who will have authority to settle the case on the spot.
- (3) That the parties enter in this mediation with the intent to work towards a mutually acceptable settlement, and will conduct themselves in good faith at all times.
- (4) That the mediation will be closed, that all discussions between the parties will be confidential, and that no communication made by the parties or by the mediator will be admissible in evidence at any subsequent proceeding, except as mutually agreed upon.
- (5) This agreement will continue in force from the date of the signing until it either is replaced by another agreement, or the mediation process is terminated, or the mediation process is extended for a further period; each condition being subject to the mutual consent of both parties.

2. IMPARTIALITY OF THE MEDIATOR

- (1) The parties acknowledge that the mediator is an impartial third party, and that the mediator's role is to assist the parties to negotiate a voluntary settlement of issues arising between them. As such, the parties acknowledge that the primary responsibility for resolving their disputes rests with them, and not with the mediator who acts solely as a facilitator. It is understood by the parties that the mediator will not represent either of the parties in any subsequent legal proceedings.

3. ACKNOWLEDGEMENTS BY THE PARTIES

- (1) The parties acknowledge that the mediator will not give legal advice or a legal opinion with respect to individual rights, obligations and entitlements under the laws of the Province or any other jurisdiction.
- (2) The parties further acknowledge that they have been specifically advised by the mediator to obtain independent legal advice during the course of mediation.
- (3) If one of the parties refuses to obtain independent legal advice, he or she hereby agrees to indemnify and save the mediator harmless from any and all liabilities arising out of, or related to, any mediated settlement.

4. MEDIATOR'S CONFIDENTIALITY

- (1) During the mediation process the mediator may disclose to either or both parties any information provided by the other party, unless the disclosing party has specifically requested the mediator to keep the information confidential.
 - i. The mediator will not disclose to anyone who is not a party to the mediation except:
 - ii. with the consent of all parties
 - iii. where required by law
 - iv. where the information suggests an actual or potential threat to human life or safety.

5. NO SUMMONS OR SUBPOENA

- (1) It is agreed that none of the parties will call the mediator as a witness to testify as to the fact of mediation, or as to any oral or written communication made during mediation. Nor will the parties summon, subpoena, or seek access to any document prepared for, or in connection with, mediation including any records, notes or work product of the mediator.

6. MEDIATION SESSIONS

- (1) The mediator will schedule the time and place for the mediation sessions in consultation and with the consent of the parties.

7. COSTS OF MEDIATION

- (1) The Diocese shall be responsible for the costs of mediation, including the Mediator, with the exception that the complainant and the respondent shall each be responsible for their own legal expenses.

8. REPORT BY MEDIATOR

- (1) If an agreement has been mediated, the mediator will prepare interim minutes of settlement respecting agreements reached on issues of dispute.

- (2) If no agreement is reached on the issues, the mediator will prepare reports stating only whether or not mediation was successful, and outlining the process followed.

9. TERMINATION OF MEDIATION

- (1) All of the parties have the right to withdraw from the mediation process at any time during mediation on notice to the mediator and the other party.
- (2) The mediator has the right to suspend or terminate the mediation process at any time when, in his or her opinion, continuation of the process would result in harm or prejudice to one or both parties.
- (3) This agreement will continue in force from the date of the signing until an agreement is reached, or the mediation process is terminated or the mediation process is extended with the mutual consent of both parties for a further period.
- (4) The confidentiality, admissibility, compellability of the mediator or the mediator's notes, the liability of the mediator, and the WITHOUT PREJUDICE clauses of this agreement remain in effect indefinitely with regard to any information obtained through the mediation process.

10. UNDERTAKINGS

- (1) The parties hereby undertake to make full disclosure of all relevant information reasonably required by the mediator to understand the outstanding issues.
- (2) No party, or anyone acting on their behalf, will initiate or take any fresh steps in any legal proceeding between them while the mediation is in process.

11. GOVERNING LAW

- (1) This agreement will be governed by, and construed, according to the laws of the Province of Quebec, in the Country of Canada.

12. SEVERABILITY

- (1) The invalidity or enforceability of any provision of this agreement will not affect the validity or enforceability of the other provisions, and any invalid provision will be severable.

13. CLOSED MEDIATION

(1) The parties understand and acknowledge that their discussions are confidential, and on a "WITHOUT PREJUDICE" basis, and that neither party will use any disclosures or discussion against the other in any subsequent legal proceedings. Further, this paragraph may be pleaded as a complete bar to disclosure of any discussions, documents, interim agreements, notes or materials relating to this mediation, with the exception of a full and final agreement executed by the parties and confirmed by counsel for each of them, or a report stating only that no agreement was reached.

14. EXECUTION OF AGREEMENT

(1) The parties acknowledge that they have read this agreement, and agree to proceed with mediation in accordance with the terms, and voluntarily enter into the execution of this agreement.

Date

Date

Date

Mediator