

# Confidentiality

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In all matters regarding the life of a priest or parish the expectation is that he/she will first approach his/her area bishop.

If a cleric seeks to confide in a bishop other than his/her area bishop, then the cleric should know that that bishop may, at his/her own discretion, share any or all of that conversation with the cleric's area bishop.

If a cleric confides to his/her own area bishop, it is up to the discretion of the bishop to decide whether to share with one or more of the other members of the College of Bishops information from the discussion which he/she believes to affect significantly the life and ministry of the diocese. Such information is never shared beyond the College of Bishops by a member without the explicit approval of the College of Bishops and the cleric. If the cleric, himself or herself, chooses to divulge confidential information beyond these agreed parameters making it more public, the bishops cannot be held as strictly bound by the previous commitment to confidentiality.

## A. Statement of the Issue of Confidential Information Imparted to Clergy

*"The secrecy of a confession of sin is morally absolute for the confessor, and must under no circumstances be broken."*  
(*Book of Alternative Services*, p. 166.)

The following statement was issued in 1986 by the National Executive Council of the Anglican Church of Canada. The College of Bishops feels it is important and would draw attention especially to items 5 and 6.

1. It is the historic obligation of members of the clergy of the Anglican Church of Canada to regard as a sacred trust all confidential information imparted to them either under the seal of the confessional or revealed to them in their capacity as pastors.
2. However, in certain circumstances, this historic obligation of confidentiality is subject to specific legislation in many jurisdictions.
3. It is also subject to the obligation to give evidence under compulsion of a court of law or other legally authorized body.
4. The priest/penitent relationship enjoys no privilege under the various federal and provincial Evidence Acts except for Newfoundland and Quebec. The general rule of law is that a person testifying in a court or other tribunal is required to answer all questions relating to confidential information. A person who refuses to testify is in contempt and could be penalized accordingly.
5. A priest compelled to testify must always have in mind the historic obligation of confidentiality and should declare that obligation to the tribunal. If the priest is requested to break this obligation, the judge should decide whether compelling disclosure of the communication would be a greater benefit in the administration of justice than excusing the priest from testifying.



6. If the judge requires that the priest so testify, the priest should seek permission to consult the diocesan chancellor and to be represented by legal counsel.
7. There are a number of other circumstances where the sacred obligation of confidentiality imposes a serious moral dilemma for the priest concerned. On these occasions the priest ought to consult with his or her area bishop and chancellor.

## **B. Confidentiality and the Obligation of Reporting Abuse of Children to a Children's Aid Society**

Under Section 49 of the Child Welfare Act of Ontario, every person who has information with respect to the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child must forthwith report such information to the appropriate Children's Aid Society.

Clergy should be advised that, apart from the question of whether or not they are bound to answer questions in court, there is a positive obligation in the Act which cannot be ignored.

Section 49 of the Child Welfare Act is as follows:

### **1. Reporting abuse of child**

Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society.

### **2. Duty of Professional to report**

Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society.

### **3. Privilege abolished**

This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection (1) or (2) unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true.

#### 4. Solicitor and Client privilege

Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client.

This Section was considered when a doctor was charged with failure to report suspected child abuse. In acquitting the doctor on the particular facts, the court asked whether there had been reasonable grounds to suspect abuse, and whether, under the circumstances, it was reasonable to refrain from reporting it. It must be pointed out that while the decision is helpful in understanding the statutory duty, it may not be the final answer to the question.

**It is suggested that members of the clergy, whether acting in the capacity of pastor or under the seal of the confessional, clearly inform any person who might be discussing this type of matter of the duty upon the clergy under the Child Welfare Act.**

