

# **Policy 206 – FAITHFUL SERVANT, FAITHFUL EMPLOYER**

## **INTENT**

God has entrusted the building of His Kingdom to human beings, and he has endowed each one with particular gifts and abilities to be used in helping others. We believe that without each other, we are less than God intended us to be and that to reach our highest fulfilment, we need to nurture and build each other up.

When we enter into formal working relationships with each other we need to do so with faith in each other but also in a careful way to develop the gifts each of us has and in a way to allow the most effective building of the Kingdom.

## **UNDERSTANDING AND DEFINING THE RELATIONSHIP BETWEEN THE EMPLOYER AND THE EMPLOYEE**

To prevent grievances and misunderstandings, each employee should have the terms and conditions of employment set out in writing. This may be in the form of a policy statement given to the employee or it may be contained in the offer letter to the candidate for a position. We recommend that such statements contain reference to the following matters;

- 1. Hiring of Employees**
  - a. Job description containing major requirements of the position
  - b. Statement of fair opportunity for candidates
  - c. Selection and appointment procedures
  - d. Written letters of appointment
- 2. Terms of Employment**
  - a. Length of term if limited
  - b. Rate of pay and basis of setting rates (responsibility, experience, education, comparable rates of pay, CPI)
  - c. Hours of work
  - d. Process for review of performance
- 3. Benefits**
  - a. Statutory: OHIP, CPP, UIC, designated holidays
  - b. Pension plan
  - c. Insurance: life, long-term disability
  - d. Vacation: Entitlement and accumulation
  - e. Additional holidays
  - f. Sick leave
  - g. Study leave
  - h. Allowances: housing, moving, books, etc.
- 4. Conflict Intervention**
  - a. Intent (Matthew 18, etc.)
  - b. initial step: discussion
  - c. Second step: Written submissions
  - d. Third step: Mediation procedure
  - e. Fourth step: Arbitration

## 5. **Termination**

- a. Length of notice by either party (written notice preferable)
- b. Retirement age, if any
- c. Dismissal: procedures, reasons (theological position, incompetence, etc.)
- d. Non-renewal of contract (by mutual consent, notice required)

Approved October 1988

Revised by MCEC Executive Council

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## **Policy 207 – Suggestions for Conflict Intervention**

### **A. Rationale for Resolving Dispute**

Differences of opinion and disputes have been with the church since its early days. At the first gathering in Jerusalem there was ‘no small dissension and disputation’. This is a natural outcome of working together and can be a healthy experience if it is handled sensitively and with good will. It is the intent of this board (agency) to provide for the resolution of disagreements and grievances in the spirit of brotherhood, Christian love, and forgiveness as exemplified in Matthew 18.

### **B. Scope**

Situations involving unresolved conflict or incompatibility among staff members occur.

Situations in which a staff member sees himself/herself as having been treated in violation of policies or established practices, or as having been treated differently from others in his/her situation occur. This statement assumes, however, that institutions/boards’ policies and practices allow for some administrative discretion.

### **C. Procedure for Handling Interpersonal Conflicts**

#### **Step 1: Discussion**

Speak directly to the other person. We anticipate that this is the manner in which most disputes are adequately handled.

#### **Step 2: Mediation**

If the issue is not resolved satisfactorily through direct discussions with one another, the individuals may

#### **How Mediation Works**

Mediation is a method of communication which allows the parties who are experiencing conflict to settle their differences and mutual concerns. In mediation, the individuals meet in face-to-face discussion. With the assistance of a neutral mediator, each individual states his/her point of view. The mediator’s role is to clarify the issues and help negotiate a mutually acceptable agreement or understanding of the other parties’ position. The mediator does not side with either party nor necessarily assigns blame. The mediator does not look for the cause of the difficulty. The mediator does not give detailed legal advice (even if the mediator is a lawyer) and she or he does not make choices for the parties. The most important role of the mediator is to facilitate the communication between the parties in order to achieve an understanding of each parties’ position thus enabling the achievement of a practical solution of the conflict.

## **The Mediator**

Although the parties may invite any mutually agreeable person to act as mediator, the parties are strongly encouraged to choose a mediator who understands and is familiar with the Mennonite Church, its history, its theology, and its approach to conflict resolution. By choosing such a mediator, the mediation process may be expedited because the mediator may have a better understanding of the intent of the parties in the resolution of the conflict.

## **The Contract of Mediation**

We encourage the parties to enter into a mediation contract. A sample contract is attached as Schedule "A". It shall be necessary for the parties to complete the contract and most importantly to define the parameters of the mediation process.

## **Step 3: Action to be Taken if Agreement Cannot be Achieved by Mediation**

If an issue cannot be resolved to the satisfaction of both parties through mediation, or if one or both parties decline(s) to participate in mediation, and if the unresolved issues are negatively affecting the work of the organization, the Executive Director or Board may take such action as may be necessary to deal with the situation.

## **D. Procedure for Dealing with Concerns Arising from Implementation of Policies or Procedures**

### **Step 1: Discussion**

If an employee has a grievance, problem, or suggestion, she/he should discuss it first with the person to whom she/he is accountable with the aim of resolving the particular difficulty. This should be done as soon as possible after the circumstances which give rise to the grievance or problem become apparent.

### **Step 2: Appeal to the Head Administration Office of the Organization**

If no agreement can be reached or the employee feels the problem is not resolved, she/he should state the grievance in writing and include the specific remedy sought. This should be given to the Director or head of the board (agency) within ten days of the discussion which was held (see Step 1 above). The Director or head shall meet with the employee within ten days of receiving the written grievance and give a decision within a further ten days. These time limits may be extended by mutual agreement.

### **Step 3: Mediation**

When the same procedures are followed and the grievance remains, the griefer may call for mediation by a disinterested party. This may be a single person agreeable to the griefer and the board (agency) or it may be a three-member board with one member selected by the griefer, one selected by the board (agency) and these two persons selecting a third person who shall act as chairperson.

The mediation party shall review the case, interview either or both parties and other persons it deems necessary, and make every reasonable attempt to resolve the issue to the satisfaction of the griefer and the board (agency). The griefer shall be allowed to bring one other person to such meetings for assistance.

The process of mediation shall be the same as the process set out above under the heading, "**Procedure for Handling Interpersonal Conflicts**".

If the parties enter into a contract of mediation, the parties shall set out the scope of the mediation and the issue to be resolved.

If resolution is found, it shall be put in writing and signed by both parties.

#### **Step 4: Arbitration Process if Agreement Cannot be Achieved by Mediation**

If mediation cannot resolve the issue, either party may call for arbitration.

##### **What is Arbitration?**

Arbitration is similar to mediation in that it is the reference of a dispute to an impartial person(s) chosen by the parties to the dispute who agree in advance to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard. Arbitration is different than mediation in that in the mediation process, the parties may withdraw from mediation provided adequate notice is provided, whereas in the arbitration process, the parties contractually agree to complete the process. Furthermore the parties may contractually agree to be bound by the decision of the arbitrator which shall be final and binding without appeal to a Court of competent jurisdiction.

##### **The Process**

One person shall be selected by the griever, one by the board (agency), and these two persons appointing a third person as chairperson (collectively referred to as the "arbitration board"). The arbitration board shall hear submissions by both parties and by other persons they call upon to help them in their decision. An additional representative for a party at an arbitration hearing should be at the discretion of the arbitration board and not be allowed in all circumstances. The arbitration board shall strive for consensus in a decision, but if this is not possible the decision of the majority shall be final and binding on both parties. The arbitration board shall make its decision within a reasonable time having regard to the circumstances and the issues.

##### **Contract of Arbitration**

If arbitration is agreed upon, the parties shall enter into an arbitration contract which clearly sets out the issue which shall be the subject of the arbitration. Further, the contract shall clearly state that the finding of the arbitration board shall be final and binding and there shall not be any appeal to any court whatsoever from such decision.

## **Schedule “A”**

THIS IS AN AGREEMENT to enter mediation, made on the     day of     , 20  .

BETWEEN:

(the “Employer”)

-and-

(the “Employee”)

-and-

(the “Mediator”)

### **1. BACKGROUND**

- (1) The Employer and Employee are experiencing some difficulties in their relationship
- (2) They desire to settle through mediation, all of the issues arising out of their relationship which might otherwise by the subject of litigation, including but not limited to:

### **TO BE COMPLETED BY THE PARTIES**

- (3) They Employer and Employee have requested the Mediator to assist them in resolving their disputes.

### **2. AGREEMENT**

Each of the Employer and the Employee and the Mediator, hereby agrees to be bound by the terms of this agreement.

### **3. IMPARTIALITY OF MEDIATOR**

The Employer and Employee acknowledge that the Mediator is an impartial third party who does not represent either the Employer or Employee. The role of the Mediator is to assist the Employer and Employee to negotiate a voluntary settlement of the issues arising out of their relationship, based on full and frank disclosure between them. The Employer and Employee acknowledge that the primary responsibility for resolving their disputes rests with them and not with the Mediator, who is a facilitator only.

### **4. INDEPENDENT LEGAL ADVICE**

- (1) The Employer and Employee acknowledge that the Mediator will not give them legal advice or a legal opinion with respect to their individual rights, obligations and entitlements under the laws of Ontario or any other jurisdiction.

- (2) The Employer and Employee further acknowledge that each has been advised by the Mediator that they may want to obtain independent legal advice before concluding any settlement.

(3) The Employer and Employee further acknowledge that if one or both of them choose to conclude a settlement without independent legal advice, they risk making decisions without being fully informed of their legal rights and obligations, and without full knowledge of the possible legal implications and consequences thereof.

(4) In the event that either party 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 any mediated agreement.

## **5. CONFIDENTIALITY**

The Mediator will not voluntarily disclose to anyone who is not a party to the mediation any written or oral communications that have taken place during the mediation process except:

- a) the mediator may discuss the mediation and any information disclosed in the mediation with the lawyer(s) for each of the Employer and Employee;
- b) the Mediator may disclose information with the written consent of both the Employer and Employee;
- c) the Mediator will make disclosure where ordered to do so by any appropriate judicial authority or where required to do so by law; and
- d) the Mediator may make disclosure where the information disclosed suggests an actual or potential threat to human life or safety.

## **6. MEDIATION SESSIONS**

- (1) The Mediator will schedule the time and place for the mediation sessions in conference with the Employer and Employee. Sessions may be cancelled by any of the participants on twenty-four (24) hours notice.
- (2) Generally, the Mediator will meet with both the Employer and Employee in joint sessions. However, occasionally the Mediator may meet with one or the other of the Employer and Employee in individual sessions. In such a case, the mediator reserves the right to disclose the content of the individual session(s) to the other if, in the Mediator's opinion, it is significant for the mediation process.

## **7. COST OF MEDIATION**

(1) The Employer and Employee will share the costs of the mediation in proportion to their respective abilities to pay for same, or as they otherwise may agree. In this case, the Employer will pay \_\_\_\_ percent and the Employee will pay \_\_\_\_ percent of the costs of mediation.

(2) The Mediator's fee will be charged at a rate of \$\_\_\_\_ per hour for all time spent in connection with the mediation, including but not limited to the mediation sessions, preparing for mediation sessions, perusing financial disclosure and other material provided in the mediation process, travelling to and attending meetings with lawyers and other collateral sources; telephone conversations; perusing and drafting and revision correspondence; considering, drafting and revising mediated agreements and preparing reports. This hourly rate is subject to change on written notice by the Mediator. Disbursements and other out-of-pocket expenses incurred by the mediator such as for messenger services, photocopying, long distance telephone and travel charges, will be billed additionally.

- (3) The Mediator's fees will be due and payable by the Employer and Employee at the end of each mediation session. Interim accounts covering the charges outlined in paragraph 7(2) above will be rendered by the Mediator on a regular basis. These are due and payable upon receipt. Interest will be charged on all amounts outstanding after 30 days at the rate of 18% per annum. The Mediator reserves the right to cancel mediation sessions and/or suspend the mediation process if accounts are not paid. The Employer and Employee will be jointly and severally liable for unpaid accounts.
- (4) A retainer is/is not required in the amount of \$\_\_\_\_\_. Refreshers on this retainer may be requested from time to time to cover the anticipated costs of the mediation. If, for any reason, the mediation does not proceed, any excess over and above the Mediator's fees and disbursements will be returned to the Employer and Employee in proportion to their contributions to the costs of mediation.
- (5) Where the Mediator is required to testify in any subsequent litigation between the Employer and Employee (see paragraph 9(4) below), the Mediator's fees will be charged at the rate of \$\_\_\_\_ for each half-day or portion thereof.

## **8. CONCLUSION OF MEDIATION**

- (1) When the Employer and Employee have agreed as to the resolution of the issues arising out of their relationship, the Mediator will record their agreement in writing.
- (2) Each of the Employer and Employee has the right to withdraw from the mediation process at any time prior to agreement on notice to the Mediator and the other of them.
- (3) The Mediator has the right to suspend or terminate the mediation process at any time where in her/his opinion continuation of the process would result in harm or prejudice to one or more of the participants.

## **9. REPORT BY MEDIATOR**

- (1) In the event that no agreement is reached on the issues between the Employer and Employee, the Mediator will not prepare a report on the mediation.
- (2) In the event that an agreement is reached on the issues between the Employer and Employee, the Mediator will prepare a report on the mediation.
- (3) The Mediator's report will not contain recommendations by the Mediator.
- (4) Each of the Employer and Employee waives the right to require the Mediator by subpoena or otherwise, to testify as a witness in any subsequent litigation between them.

## **10. UNDERTAKINGS AND KNOWLEDGEMENT**

- (1) The Employer and Employee hereby undertake to make full disclosure of all relevant information reasonably required by the Mediator to understand the issues presented by them, including full and complete disclosure of all of their financial circumstances.
- (2) Each of the employer and Employee acknowledges that such disclosure may subsequently be used against him or her if the issues between them become the subject of litigation.

(3) Neither the Employer nor the Employee, nor anyone acting on their behalf, will initiate or take any fresh steps in any legal proceedings between them while the mediation is in progress.

## **11. GOVERNING LAW**

This agreement will be governed by and construed according to the laws of the Province of Ontario, Canada.

## **12. SEVERABILITY**

The invalidity or unenforceability of any provision of this agreement will not affect the validity or enforceability of any other provision and any invalid provision will be severable.

Each of the Employer and Employee and the Mediator acknowledges that he or she has read this agreement and agrees to proceed with mediation on the terms as set out above.

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Date

Employer

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Date

Employee

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Date

Mediator

Approved May 1992