

# The Mennonite Brethren Church of Manitoba

## Policy Regarding Adult Sexual Abuse

### Preamble

1. There is a need to ensure that our churches are a safe place for all who attend our ministries. This Policy is designed to deal with adult-adult situations. A Policy relating to children is dealt with in Children's Ministry Policy on Child Abuse and Safety. This Policy attempts to balance the need to permit the trial and errors of dating by our unmarried ministers and other young people to occur without attracting sanctions, while at the same time this Policy attempts to protect those vulnerable persons who come to the church for the healing of emotional and spiritual wounds.

### The Policy

2.
  - Measures to prevent and minimize sexual abuse will be identified and pursued.
  - Church workers are to use their influence for those they serve rather than for personal advantage.
  - Abuse will not be tolerated.
  - Complaints of allegations of abuse will be investigated and appropriately dealt with.

### Scriptural Basis

3.
  - Galatians 5:13 "You, my brothers, were called to be free. But do not use your freedom to indulge the sinful nature; rather, serve one another in love." (NIV)
  - Ephesians 5:3 "But among you there must not be even a hint of sexual immorality, or any kind of impurity, or of greed, because these are improper for God's holy people." (NIV)
  - 1 Peter 2:12 "Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God on the day he visits us." (NIV)
  - Galatians 6:2 "Carry each other's burdens, and in this way you will fulfill the law of Christ." (NIV)

### General

4. In this Policy, where warranted, the masculine includes the feminine and the singular includes the plural and vice-versa. The use of masculine sounding words such as "Chairman" and "mankind" is meant to refer to both genders. This Policy is written as though the Complainant were a woman and the Respondent a man, given that realistically this is likely to be the most common occurrence. In fact both can be of either gender.
5. This Policy applies to all respondents 18 years of age and over.
6. Where civil or criminal proceedings are instituted against the Respondent in relation to matters covered by this Policy, the process pursuant to this Policy shall be halted until the civil or criminal proceedings have been concluded and shall be reactivated at the discretion of the Committee Responsible. Where the Respondent dies, the process shall be terminated.
7. In matters not covered by this Policy, local church or Conference agency disciplinary policies are applicable and should be applied.

### Definitions

8. "Adherent" means someone who regularly attends a local church but who is not a member. This person has indicated an acceptance of the Mennonite Brethren Confession of Faith.
9. "Allegation" means a claim of sexual abuse.
10. "Appellant" means the person who appeals a decision of the Hearing Panel.
11. "Approved Minister" means a person ordained and/or hired as a minister by the Mennonite Brethren Church of Manitoba; a church member hired as a minister by a local Mennonite Brethren church; or a person designated by a local Mennonite Brethren Church to serve in a pastoral or a spiritual leadership role.
12. "Church Member" means a person who is a member of a local church.
13. "Committee Responsible" is comprised of at least three people. The persons on this committee shall be members of, or appointed by the Conference Executive Committee, the local church leadership or Conference Agency Board, as the case may be. It is the body responsible for receiving complaints and naming all the officials involved in the process, including the three Interviewers, the Investigation Committee, the Hearing Panel and the Examiner.
14. "Complainant" means the person who makes an allegation, or on whose behalf an allegation is made.
15. "Complaint" means an allegation made in writing.
16. "Conference Agency" means an organization owned and operated by the Mennonite Brethren Church of Manitoba and includes Missions and Church Extension, Mennonite Brethren Collegiate Institute, Concord College, and Family Life Network.
17. "Examiner" means a person appointed to present the evidence against the Respondent at the Hearing or the Appeal.
18. "Fiduciary Relationship" is defined in Paragraph 78.
19. "Formal Procedure" as opposed to "Informal Procedure" means a procedure along the same lines as the Informal Procedure, but a procedure with an automatic suspension during time needed to complete the Investigation Hearing and the Appeal, if any; and a Procedure which has the option to impose the penalty of Excommunication, in addition to the other possible penalties when the procedure used is the Informal Procedure.
20. "Hearing Panel" is the panel of three persons, made up of both genders, appointed to hear the trial of the charge referred to them.
21. "Informal Procedure" means a procedure governed by this Policy, namely, the reception of a complaint, the investigation of a complaint, the laying of a charge, the hearing of the charge, the sentence where the Respondent is found guilty, and any appeal from the verdict reached at the hearing.
22. "Investigation Committee" means the committee of three persons, made up of both genders, constituted to further investigate any matter referred to them by the three Interviewers.

23. "Local Church" means a local congregation that is part of the Mennonite Brethren Church of Manitoba.
24. "Local Church Leadership" means the Church Council, the Board of Elders, or the designated leadership body of the local church, as the case may be.
25. "Process" means any of the various stages or steps set in motion to implement this Policy in order to respond to and deal with an allegation.
26. "Respondent" means the person against whom an allegation has been made. For purposes of this policy, a Respondent is restricted to being any of the following persons: an approved Minister, a church worker, a staff member, or simply a church member or adherent. In the case of an appeal, "Respondent" means the party responding to the Appellant's appeal.
27. "Restorative Justice" means the balancing of the concerns of the Complainant and the community with the need to reintegrate the Respondent into society. It seeks to assist the recovery of the Complainant and enable all parties with a stake in the process to participate fruitfully in it.
28. "Sexual Abuse" means any of the following:
  - a) any sexual act deemed a sexual offence according to the Criminal Code of Canada or the laws of the Province of Manitoba.
  - b) any sexual act by a Respondent occurring within a fiduciary relationship involving the Complainant and the Respondent.
  - c) any persistent and repeated sexual advances which are clearly unacceptable to the Complainant and which the Respondent knows or should know are unacceptable to the Complainant.
  - d) any sexual language, excluding language which is nothing more than profanity, which the Complainant finds offensive and which the Respondent knows or should know is offensive to the Complainant.
29. "Staff Member" is defined under "worker" and means an employee or volunteer, working for the Mennonite Brethren Church of Manitoba. This would include all employees of Missions and Church Extension, Mennonite Brethren Collegiate Institute, Concord College, Family Life Network, and the Manitoba Conference Office.
30. "Task Force" means the Church/Conference Agency Task Force referred to in paragraph G.2.b. of the Mennonite Brethren Church of Manitoba Children's Ministry Policy on Child Abuse and Safety.
31. "Three Interviewers" means the three persons appointed by the Committee Responsible to do the initial interview of the Complainant.
32. "Worker" means any employee or volunteer working for the Mennonite Brethren Church of Manitoba.

#### **Conflict of Interest**

33. a) Personal friends and/or relatives of either the Complainant or the Respondent and others with any conflict of interest are not eligible to hold any office in relation to any process outlined in this policy including Committee Responsible, Three Interviewers, Investigation Committee, Examiner, Hearing Panel and Appeal Panel.

- b) No appointee shall hold more than one position in this process in relation to one particular complaint.

### **Receiving a Complaint**

34. Complaints can be made to and be received by the Conference Executive Committee, the local church leadership, or a Conference agency. Complaints to a Conference Agency shall only be received where the Respondent is a staff member of that Conference agency.
35. If a complaint is made against an adherent, it shall be dealt with by the local church leadership, unless the Conference Executive Committee, in their discretion, decides to investigate the complaint and to hear the case.
36. Where the local church leadership or Conference agency decides to deal with the complaint internally, the local church leadership or the Conference Agency Board shall set up the Committee Responsible.
37. Subject to paragraph 35 complaints made to either the local church leadership or that Conference agency may be referred to the Conference Executive Committee by the local church leadership or by the Conference agency, because of concerns about conflict of interest, lack of experience in handling these types of matters, because of a fear of polarization and divisions within the local church or the Conference agency, or because of any other concern. The Conference Executive Committee shall accept such referral and become or appoint the Committee Responsible for dealing with the complaint.
38. Prior to making a formal complaint, if at all possible, the Complainant shall speak to the Respondent, to let him know that his conduct is unacceptable and that she is considering lodging a complaint. This step is particularly urged upon the Complainant when the nature of the complaint relates only to the use of inappropriate sexual language. It is also requested in the case of a single unwelcome sexual advance, where the power imbalance between the parties is not such as to make this an unrealistic request.
39. Upon receiving a complaint, the Committee Responsible shall appoint three Interviewers, made up of both genders, to interview the Complainant.
40. The three Interviewers are ineligible to hold any other position in this process in relation to the implementation of the Policy responding to that complainant's complaint.
41. The three Interviewers shall be members of or appointed by the Committee Responsible.
42. As soon as practicable after being informed of the desire to lodge a complaint, the three Interviewers shall interview the Complainant.
43. Subject to paragraph 129 the Complainant may bring a support person to this interview or to any subsequent interview.
44. At the interview, the Complainant shall be provided with a copy of this Policy and, in a general way, the Policy shall be explained to her.
45. At the interview, the three Interviewers shall take a written statement from the Complainant, unless the Complainant has previously provided them with one. No complaint shall be received unless it is in

writing. To be received, a complaint shall be signed and dated and shall set out the alleged conduct or behaviour that is complained of, including the name of the Respondent, and as far as possible, the time, date, location and circumstances of the alleged conduct or behaviour.

46. The Complainant shall provide to the three Interviewers, and where such becomes available at a later time to the Investigation Committee and to the Examiner, the names of any witnesses and a copy of any relevant documentation in her possession or within her control.
47. Where a complaint is received by the local church leadership or a Conference agency, the local church leadership or Conference agency, as the case may be, shall provide a copy of that complaint to the Conference Moderator.
48. Upon receiving a complaint, the Moderator shall notify all the members of the Conference Executive Committee as well as the Chairman of the Board of Congregational Ministries that a complaint has been made.
49. Upon receiving a complaint, the Moderator shall also ensure that the appropriate insurers are notified of a possible claim.
50. If it becomes apparent that the complaint arises out of a prior or existing relationship between the Complainant and the Respondent, the three Interviewers shall see if it is feasible to find some other way to resolve the matter without resorting to the use of the Policy. Especially in the case of people who are dating, or who once dated, it should be remembered that the often intensely emotional experience of dating can result in individuals doing things which they might not otherwise do.
51. After interviewing the Complainant, the three Interviewers shall decide whether there is enough credible evidence to proceed with an investigation of the complaint.
52. If the three Interviewers determine that a further investigation is warranted, the matter shall be referred back to the Committee Responsible and an Investigation Committee shall be appointed.

### **Investigation Committee**

53. Upon reception of a complaint from the three Interviewers, the Committee Responsible shall appoint an Investigation Committee.
54. The Investigation Committee shall as soon as practicable notify the Respondent in writing that a complaint has been made against him and provide him with a copy of this Policy. The notice should be sent by registered mail to the Respondent's last known address. In this notice, the Investigation Committee shall clearly inform the Respondent of his right to counsel and clearly state that any oral or written statements made by him can be admitted in evidence and used against him in subsequent proceedings.
55. The Respondent shall have 30 days from the date he is so notified to obtain counsel he may choose to have, at his own expense, before any attempt is made to interview him. The Respondent may waive the right to counsel, but such waiver to be valid must be in writing and not be made until at least 7 days have elapsed from the date the notice of the investigation was provided or sent to him by the Investigation Committee.
56. The Investigation Committee shall as soon as practicable notify the Complainant in writing that an investigation of her complaint is being undertaken.

57. The Investigation Committee shall, as a whole, further interview the Complainant and review her written statement and any supporting documentation provided by her or any of her witnesses. This interview shall not happen until the 30 day period allotted to the Respondent to obtain counsel has elapsed.
58. Upon the expiration of the 30 day period provided to the Respondent to enable him to obtain counsel, and within 14 days of interviewing the Complainant, the Investigation Committee shall meet with the Respondent and his counsel, if the latter are agreeable. Prior to this meeting, the Respondent shall be provided with a copy of the Complainant's written statement. At this meeting, the Respondent is entitled to speak through his counsel.
59. After interviewing the Complainant and the Respondent, the Investigation Committee shall decide whether to invoke the Formal or the Informal Procedure.
60. Where the Investigation Committee suspends the Respondent, the procedure governing the matter from this point forward shall be known as the Formal Procedure.
61. Where the Investigation Committee chooses not to suspend the Respondent, the procedure governing the matter from this point forward shall be known as the Informal Procedure. The only other difference between the two procedures is that in the case of the Formal Procedure, the Respondent is, amongst other penalties, subject to the penalty of Excommunication.
62. Where the Respondent and his counsel have not met with the Investigation Committee within the allotted period of time, the Investigation Committee shall automatically suspend the Respondent, where the Respondent is an approved Minister, a worker or a staff member, unless health reasons or other totally excusable circumstances have made it impossible to interview the Respondent and his counsel within the allotted period of time.
63. Where the Respondent and his counsel have met with the Investigation Committee, the Investigation Committee shall decide whether to suspend the Respondent from further ministry, from his office and duties, or from his place of employment, as the case may be, until the case is resolved. In coming to a determination on this very important matter, the Investigation Committee shall attempt to strike a balance between protecting the public on the one hand and remembering that a man is entitled to his good name on the other. In determining this matter, the Investigation Committee shall take into account the nature of the allegation or allegations being made, any explanation provided by the Respondent, whether there was a prior relationship between the parties, the weight of the evidence as it presently stands and any other relevant factor.
64. Where it is felt that a suspension of duties should take place at any time prior to the Investigation Committee consideration of this question, pursuant to this policy (e.g. immediately after an incident is reported), the decision of whether to suspend or not shall be made by the Conference Executive Committee within 24 hours, or as soon as is practicable, after the request for suspension is received. The Respondent shall be notified of his right to appear before the Conference Executive Committee prior to this decision.
65. Where the complaint consists only of inappropriate sexual language, the Investigation Committee shall invoke the Informal Procedure and shall not suspend the Respondent.
66. When the Respondent is suspended, he is suspended with pay until a decision is reached by the Hearing Panel.

67. The Committee Responsible shall notify the Conference Executive Committee of any suspension meted out.
68. If at any stage of the process the Respondent admits the substance of the allegations made against him, the Committee Responsible may, in addition to any other reasonable course of action it may choose to take, suspend the Respondent if this has not already occurred. The Committee Responsible may refer the Respondent for a medical and/or a psychological assessment. And if the assessment results in a recommendation of treatment for the Respondent, the Committee Responsible may take the appropriate steps to implement this recommendation. At the conclusion of any treatment ordered, the Committee Responsible shall exercise due discretion in determining whether the Respondent shall be returned to active ministry, to his office and duties, or to his place of employment, as the case may be.
69. Where the Respondent suspended is an approved Minister, and where the Committee Responsible is either the Conference Executive Committee or a Conference agency, the Committee Responsible shall notify the local church leadership that a complaint has been received against the approved minister. Unless the Committee Responsible decides otherwise, the complainant shall not be identified nor shall specific details of her story be disclosed.
70. In investigating the matter, the Investigation Committee shall keep notes and records of all interviews undertaken.
71. The Investigating Committee may engage such experts as may be required from time to time to assist in the investigation.
72. After completing their investigation, the Investigation Committee shall make a written report to the Committee Responsible. In this report, the Investigation Committee shall set out whether, on the balance of probabilities, it believes that the Complainant was sexually abused by the Respondent. If it believes that the case for sexual abuse has not been made out on the balance of probabilities, then the Investigation Committee shall recommend that no further proceedings be taken. If it believes that the case should go further, it shall recommend that a charge or charges be laid.
73. Upon reception of the report of the Investigation Committee, the Committee Responsible shall meet to consider the report. The Committee Responsible shall decide whether to adopt the report, reject the report or adopt the report but alter its recommendations.
74. If the Committee Responsible decides not to pursue the matter further, they shall so advise both the Complainant and the Respondent in writing.
75. Where the matter is not further pursued, the case file shall be sealed and retained in confidence in a secure place in the Manitoba Conference office. Because the complaint is unsubstantiated, the Manitoba Conference shall maintain a file for the complaint separately from the Respondent's personnel file. The file may only be opened by a duly appointed member of another Investigation Committee which is actively investigating further complaints against the Respondent.
76. Where the matter is not further pursued, the Respondent shall be deemed to be exonerated and restored back to any office or duties from which he was suspended. The Committee Responsible shall ensure that all parties involved in the case are notified, including the local church, if they are not already aware, of their decision in the matter. The Committee Responsible or the Conference Executive Committee may make any statement it feels appropriate, in an attempt to repair the

damage unavoidably done to the Respondent's reputation by the process. All persons notified of the complaint pursuant to paragraphs 47, 48 and 49 shall be notified of the exoneration and restoration.

77. If the Committee Responsible decides to lay a charge, it shall cause the charge to be filed with the Mennonite Brethren Church of Manitoba. The charge shall include the name of the Complainant; the name of the Respondent; the nature and circumstances of the charge; the time, date and location of any hearing; and the signature of the Chairman of the Committee Responsible.
78. In reaching a decision whether or not to lay a charge, the Committee Responsible, in considering the definition of "sexual abuse" shall use the definition of "fiduciary relationship" as it has evolved and is still evolving in Canadian jurisprudence. This term involves sexual contact under circumstances where there is a power imbalance between the Complainant and the Respondent. The concept of "fiduciary relationship" is an open and fluid concept. Examples of relationships, which should be considered fiduciary in nature, are counseling relationships, teacher and student relationships and parent and child relationships.
79. The Committee Responsible shall cause the charge to be served on the Respondent. Service may be either personal or, where the Respondent is not able to be served personally, by way of registered mail to his last known address.
80. The Committee Responsible shall notify the Complainant in writing that a charge has been laid against the Respondent.
81. The Committee Responsible shall appoint an Examiner, and an assistant to the Examiner should the complexity of the case warrant it, to present the evidence against the Respondent at the hearing. The Examiner and any assistant shall be persons of integrity and good repute. They shall preferably be persons familiar with the process.
82. The Committee Responsible shall direct the Investigation Committee to deliver their file to the Examiner with a copy to the Respondent.
83. The Committee Responsible shall appoint a Hearing Panel to hear the case. This panel shall consist of three persons, including each gender. They shall be persons of high integrity and good repute. Such appointees shall have had no prior connection to the case and, on the case being considered, shall have served in no official capacity in the implementation of the Policy.
84. The Committee Responsible shall give written notice to all parties stating the date, time and place of the hearing, at least 14 working days in advance of the hearing date.

#### **Hearing or Trial**

85. The Hearing Panel shall appoint a Chairman and convene at the time, date and place set out in the notice for the hearing or trial.
86. Subject to paragraph 129 the Respondent is entitled, as he is at every step of the process, to be represented by counsel at the hearing.
87. The Respondent is also entitled, prior to the hearing, to receive a copy of the anticipated evidence of any witness which the Examiner will call as part of his case, as well as the identity and anticipated evidence of any witness located by the Examiner but not intended to be called. This paragraph does not apply to any evidence which will be called from a witness by the Examiner by way of clarification after that witness has been cross-examined.

88. The Hearing Panel shall read the charge and receive the response to the charge from the Respondent.
89. The Hearing Panel shall hear procedural motions, if any, brought by either of the parties, relating to how the hearing should be conducted. A procedural motion is a request or a suggestion, by one of the parties, to the Hearing Panel, as to how the hearing should be conducted.
90. The Examiner shall present his case in a fair minded manner, recognizing that treating both the Complainant and the Respondent in a fair minded way will, in the long run, advance the integrity of the process and ultimately its support within the community. Winning and losing shall not be a concern of the Examiner.
91. The Examiner shall present the case and make submissions on behalf of the Complainant. It shall not be necessary for the Complainant to have her own counsel.
92. The Hearing Panel shall conduct the hearing according to the principles of natural justice. More specifically, the Respondent shall have the right to have his counsel cross examine the Complainant in the presence of the Hearing Panel.
93. The Hearing Panel shall hear whatever relevant witnesses the Examiner and the Respondent choose to call. An order for exclusion of witnesses shall normally be made. The Respondent is entitled to be present throughout. All testimony is taken under oath or by way of solemn affirmation.
94. The Hearing Panel shall hear submissions from the Examiner and from the Respondent at the appropriate time or times.
95. The Hearing Panel, after hearing all the evidence and submissions, shall deliberate in private. A guilty verdict shall only be reached if the Hearing Panel is convinced beyond a reasonable doubt that the allegation has been proven. Their decision shall be based on a unanimous vote. The Hearing Panel shall reach a verdict of guilty or not guilty on each charge.
96. The Hearing Panel shall, upon reaching a decision, reconvene and pronounce judgment in the presence of the Respondent, the Examiner and the Complainant, each of whom shall be given the option to attend, but whose presence is not mandatory. Where a Respondent found guilty fails to attend, he shall still file any appeal within 14 days from the date the decision is announced.
97. If the matter has proceeded using the Informal Procedure, where the Respondent is found guilty, there are three sentences open to the Hearing Panel. They are Rebuke, Suspension and Dismissal. In determining which sentence is appropriate, the Hearing Panel shall consider the serious nature of the proven facts, the danger to the public presented by those facts, whether the Respondent has shown remorse, whether the Respondent has had some insight into the nature of his problem, whether the problem can be successfully remedied through counseling and/or education, and any other relevant consideration.

#### **Sentence or Disposition**

98. If the matter has proceeded using the Informal Procedure, where the Respondent is found guilty, and where the Respondent is a church member, and is not an approved minister, a worker or a staff member, the only penalty which can be imposed upon him is Rebuke.
99. The Hearing Panel may rebuke the Respondent by setting forth the character of the offence, warning

him of his guilt and the danger to others, and exhorting him to be more watchful in the future.

100. Where the Respondent is an approved minister, a worker or a staff member, the Hearing Panel may further suspend the Respondent, or suspend him in the first instance if he is not already under suspension, for whatever period and under whatever terms it considers just. Such suspension shall be suspension without pay, except that should the decision be appealed, pay would continue until the appeal process has run its course.
101. The Hearing Panel may dismiss the Respondent from office or from his duties, and terminate his employment where the Respondent is an employee, notwithstanding the fact that discretion has previously been used to invoke the Informal Procedure, and up until the time of sentencing, the Respondent has yet to be suspended.
102. If the matter has proceeded using the Formal Procedure, there is, in addition to the sentences just mentioned, a further sentence open to the Hearing Panel: Excommunication. A church member, as is the case with any other Respondent who is found guilty, is subject to the penalty of excommunication. Where a person is excommunicated, he loses the rights, privileges, and fellowship of offices within the Church.
103. The Hearing Panel may, where all proper measures have failed to reclaim the offender, excommunicate the Respondent for violations of the Word of God which are grossly inconsistent with the policies, principles and practices of the Church; or for obstinate persistence in grave offences.
104. Where the Respondent is found not guilty, he shall be reinstated to any office, duty or employment from which he had previously been suspended.
105. Where the Respondent is found not guilty, the Conference Executive Committee shall so inform those who need to be informed, including the local church. The Conference Executive Committee may make whatever statement and take whatever action it feels appropriate, in an effort to restore the damaged reputation suffered by the Respondent. All persons notified of the complaint pursuant to paragraphs 47, 48 and 49 shall be notified of the exoneration and restoration.
106. Upon reaching a decision, the Hearing Panel shall report their findings to the Committee Responsible and to the Conference Executive Committee.
107. In the case of a suspension or termination of employment, the Conference Executive Committee shall report the results of the hearing to the Annual General meeting of the Mennonite Brethren Church of Manitoba.

### **Appeal**

108. An appeal may be made against a decision of the Hearing Panel by either the Respondent, where he is found guilty, or by the Examiner on behalf of the Complainant, where the Respondent is found not guilty.
109. To launch an appeal, the Appellant shall draft, sign and file a Notice of Appeal and shall send it by registered mail to the Manitoba Conference of Mennonite Brethren Churches.
110. The Notice of Appeal shall be mailed within 14 working days following the day upon which the Hearing Panel reconvened and pronounced judgment.

111. The grounds of appeal may be on any ground that involves an alleged error in the implementation of the process in this Policy, an alleged error in dealing with the evidence, or an alleged error which is a combination of both.
112. In setting out the grounds, the Appellant shall attempt to be as specific as possible so that the Respondent knows what the appeal is all about. Where the Appellant fails to be specific under circumstances where he should have been more specific, the Appeal Panel can either strike out the ground or adjourn the hearing at the Appellant's expense to afford the Respondent an opportunity to properly respond to the ground. Vague Grounds such as "the verdict was contrary to the process in this Policy and the evidence" or "on such other grounds as counsel shall advise" shall be struck out by the Appeal Panel with the result that no argument can be made on the basis of vague grounds at the hearing of the appeal.
113. Upon reception of the Notice of Appeal, the Executive Committee of the Mennonite Brethren Conference shall review the Notice of Appeal and determine whether the appeal is frivolous or whether it may possibly have substance.
114. Where the Conference Executive Committee determines that there may possibly be substance to the appeal, the Executive Committee shall appoint an Appeal Panel.
115. The Appeal Panel shall consist of either three or five persons, including each gender, depending upon the complexity of the appeal. Such appointees shall be persons of high integrity and good repute and shall preferably be experienced with the process.
116. The Appeal Panel shall give written notice to the Appellant and Respondent and to any other party with an interest in the outcome of the appeal of the date, time, and location of the Appeal hearing, at least 14 working days prior to the hearing date.
117. The Appeal Panel shall appoint a Chairman. Subject to paragraph 129, the Appellant is entitled to be represented by Counsel.
118. The Appeal Panel shall convene at the time, date and location set out in the notice.
119. The Appeal Panel shall only receive additional evidence if such evidence could not, with reasonable diligence, have been called or produced at the original hearing and if such evidence might have significantly altered the decision of the Hearing Panel.
120. The Appeal Panel, after hearing the submissions of the Appellant and the Respondent shall deliberate in private and vote on the matter.
121. The Appeal Panel's decision shall be by majority vote.
122. The Appeal Panel shall reconvene in the presence of the Appellant and the Respondent, each of whom have the option to be present, and announce its decision. If one of the parties is not present, he shall be notified in writing of the decision reached.
123. The Appeal Panel may confirm, reverse or vary the decision of the Hearing Panel. The Appeal Panel may, in the interests of justice, order a new hearing in front of a differently constituted Hearing Panel.
124. In the case of an error made by the Hearing Panel, an order varying or reversing the decision of the

Hearing Panel shall only be made

- when there has been an important and obvious departure from the implementation of this Policy, where the error according to the Appeal Panel is one of process;
- when the evidence misconstrued might have had an impact on the decision reached by the Hearing Panel, where the error according to the Appeal Panel is one of fact.

125. The Appeal Panel shall give notice to the Conference Executive Committee of its decision.

### **Records**

126. Upon the process being concluded by the rendering of a judgment or decision, including appeals if any, the complaint file shall continue to be kept separate and apart from all other files and shall remain confidential when the accused Respondent is found not guilty. In the event the accused Respondent is found guilty, despite any appeal, the complaint file shall be included in and form part of the accused Respondent's personnel file, as shall the charge, evidence, and judgment of the Hearing Panel and/or the Appeal Panel.

### **Costs**

127. In general, the division of costs shall be as follows: Disbursements, such as mileage meals and telephone calls, relating to the implementation of this Policy shall be borne by the local church or Conference agency where the complaint is initiated.

128. Where the local Church Leadership or the Conference Agency wishes to retain control over the implementation of this Policy in a given case, the local Church or the Conference Agency, as the case may be, shall bear the cost of the implementation of this Policy.

129. The cost of the Respondent's lawyer shall be borne by the Respondent. The cost of the Complainant's lawyer or support person, if any, shall be borne by the Complainant.

130. The Conference Board of Management, in conjunction with the Committee Responsible and in consultation with the Respondent, shall determine the matter of who shall bear the cost of any medical or psychological assessment and/or prescribed treatment of the Respondent.

131. Where the Respondent is deemed to be exonerated or where the Respondent is found not guilty by the Hearing Panel or his conviction is quashed by the Appeal Panel, the Conference Board of Management in conjunction with the Committee Responsible shall determine if the Conference, the local church or the Agency Board should pay his legal fees and expenses.

132. Where the Conference Board of Management determines that the complaint was malicious, the Conference Board of Management may seek to recover the Respondent's legal fees and expenses from the Complainant.

### **Supervision**

133. Where at the conclusion of the process, or after the period of suspension which formed part of the sentence meted out has ended, it is decided that the Respondent is fit to return to active ministry, to his office and duties, or to his place of employment, as the case may be, a program of supervision shall be put into place by the Committee Responsible.

134. The Task Force shall inform the Complainant and the Respondent of the concept and availability of Restorative Justice and of mediation. The Task Force shall inform the Complainant and the Respondent of the Task Force's willingness to facilitate such processes if they should wish to participate in Restorative Justice or in mediation. (See Appendix 1)

### **Limitation Period**

135. No complaint will be received or investigated where, in the case of sexual abuse involving physical contact, the most recent sexual act is more than 5 years prior to the date of the complaint, or, where, in the case of sexual language, the most recent language complained of occurred more than 90 days prior to the date of the complaint. In the case of a young complainant, where the limitation period would have otherwise expired, the complainant shall have 6 months from the date she turns 18 years of age to bring a complaint.

### **Conclusion**

136. In interpreting this Policy, excessively legal or literal interpretations should be avoided. The common meaning of the language used should be what guides those who have to interpret this document. Most of all, in the case of ambiguities, the interpretation applied should be an interpretation which is in accordance with the common experience of mankind rather than be one which is a slave to logic and other technical considerations.

## **Appendix 1**

"My friends, if anyone is detected in a transgression, you who have received the Spirit should restore such a one in a spirit of gentleness. Take care that you yourselves are not tempted. " Galatians 6:1

### **Restorative Justice - What It Is**

Restorative Justice is a peaceful way to restore relationships between Complainants and Respondents. The Mennonite Brethren Church of Manitoba (MBCM) agrees to work with Respondents who are prepared to accept guilt, responsibility, and consequences for their actions. The MBCM is prepared to work with Complainants who are willing to work at restoring severed relationships, and to provide a forgiving spirit toward Respondents.

### **Principles**

- a) The sexual abuse is recognized by the MBCM.
- b) Respondents are given opportunity to be restored to the faith community.
- c) Complainants are given a safe outlet to express feelings, concerns and fears.

- d) The families and faith communities of the Complainants and Respondents are given an outlet to express feelings, concerns, and fears.
- e) Both Complainants and Respondents are put in a safe environment, are empowered to be willing to cooperate with each other, and are expected to be respectful toward each other and with the facilitator.
- f) Every effort is made to make things as right as possible.
- g) Restorative Justice is an avenue to make the most of this opportunity to teach Respondents how to live responsibly in the community.
- h) Restorative Justice succeeds when Respondents and Complainants are held accountable while being supported by their families and faith communities.

### **Restorative Justice - The Process**

If both the Complainant and the Respondent indicate a desire for Restorative Justice,

- 1) The Task Force shall appoint a qualified facilitator to set the Restorative Justice Procedure in motion. The facilitator shall be someone who can be trusted by both parties.
- 2) The facilitator shall arrange and conduct a meeting between the Complainant, the Respondent, and any family and faith community members who have been impacted by the sexual abuse.
- 3) At the meeting,
  - a) the facilitator shall give each person present the opportunity to share the impact that the sexual abuse had on him or her as an individual.
  - b) the Respondent shall be invited to respond to each person's story by showing remorse and asking for forgiveness for his/her action.
  - c) the Complainant shall be invited to give the gift of forgiveness to the Respondent.
  - d) the Respondent shall be urged to make restitution to the Complainant by complying with any or all of the Complainant's reasonable requests of a restorative nature.

- e) a formal agreement shall be drafted by the facilitator with input from all parties concerned. The agreement shall state clearly the expected actions of restitution and restoration by all parties involved. The Complainant and Respondent shall sign the agreement.
- f) the Complainant and Respondent shall be invited by the facilitator to resume a respectful community-based relationship with the support of the family and church members present.