

Dispute Resolution Policy Handbook

October 2008

The United Church of Canada



L'Église Unie du Canada

Dispute Resolution Policy Handbook



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Background to the Policy

1. Introduction

In 1997, the Dispute Resolution Policy was adopted by the 36th General Council. The policy had been developed by the working group known as the Dispute Resolution Task Group, which was established by the General Secretary, General Council.

The policy has been amended twice since 1997: by the Executive of the General Council in November 1998 and by the 37th General Council in August 2000.

2. The issue of conflict

Conflict is an unavoidable part of life. In our diverse society, the goals of individuals or groups vary widely, as do the methods of achieving those goals. As individuals or groups attempt to meet their goals, they will inevitably come into conflict with others. Conflict within the church may occur between individuals, between Courts, committees, or other bodies, or between a combination of individuals and other bodies. Within the church, we are challenged by the broad range of issues that may become the subject matter of disputes, ranging from pastoral relations to property, from theological to jurisdictional (different areas of authority of different Courts).

Conflict is not inherently bad. It can be the agent of constructive change. Through conflict, problems are exposed and misunderstandings are brought into the open. The resolution of the conflict brings with it the potential for greater understanding and growth for all participants in the conflict. The key to realizing this potential lies in how we deal with conflict, in both the process we use for resolving the conflict and the spirit in which we work through the process.

3. Formal dispute resolution processes: a critique

Under the United Church *Manual*, there is a formal hearing process for resolving disputes. The formal hearing is sometimes viewed as a superior process for dispute resolution, in comparison to the informal processes laid out in *The Manual*. But a formal hearing is a costly process for all concerned—the parties and the Court holding the hearing. In addition to the financial cost of legal representation and other formalities of the process (transcript of the hearing, hearing facilities), a great deal of time and human energy is diverted away from other things, including the work of the church.

A formal hearing is an adversarial process which, by definition, results in a “winner” and a “loser” in the dispute. It also means that a solution to the conflict will be imposed on the parties, instead of having been developed, negotiated, and mutually agreed to by them. Where conflict is dealt with through lengthy adversarial processes, none of the parties may be satisfied with the outcome, and they may remain alienated through anger or mistrust. Healing from the conflict may be slower, or even impossible.

A formal hearing is a legalistic process, like a hearing in the civil courts. The legal rules of evidence apply to the formal hearing process. In the church, people without legal training may be called upon to serve as members of formal hearing committees or advocates. This may create inconsistency and uncertainty in the way in which formal hearings are conducted across the church. It also brings with it the risk of legal error, that an individual may be deprived of procedural fairness or natural justice.

All of these factors have contributed to a lack of credibility in the church's conflict resolution process. People often resort to the civil courts to resolve a church dispute, because they do not believe that they will obtain justice through the church's dispute resolution process. A civil court proceeding, however, will likely be even more costly to the church than a formal hearing, and also results in the church losing governance over its own processes.

The alternative dispute resolution procedures outlined in the Dispute Resolution Policy are a positive alternative within the church Courts to civil court process.

4. Alternative models of conflict resolution

In North American society, various processes for conflict resolution have gained some popularity as alternatives to the formal judicial-type model. The generic description for these processes is "alternative dispute resolution," but they offer a wide range of different approaches to conflict resolution. The following is a description of a few of the more common processes:

Mediation—Mediation is a process for resolving disputes where a neutral third party assists the parties in coming to a mutually acceptable resolution. The mediator does not have the authority to impose a resolution. The mediator helps each of the parties to identify their needs, wants, and concerns, and to explore a range of solutions that will meet these interests. Even if the process does not result in a mutually satisfactory solution, it can assist the parties by identifying and narrowing the issues that are really in dispute, which may help expedite any other conflict resolution process that may be attempted. Because any resolution must be mutually acceptable to the parties, neither party emerges as the "loser" from the process.

Mediation is generally conducted on the basis that the information shared by the parties in the process is confidential and cannot be used outside of the mediation process against any of the parties. The mediator provides a written report at the end of the process indicating whether or not the mediation resulted in any agreement between the parties, and if so, the specific points of agreement. The mediator does not make any assessment of the merits of the dispute.

Mediation is considered appropriate only where both parties are participating voluntarily. There is divided opinion on whether mediation is appropriate in cases where there is a significant power imbalance between the parties for any reason.

Arbitration—Arbitration is a quasi-judicial procedure for resolving disputes, which means that it has some of the features of a formal hearing. The arbitrator is a neutral third party, usually with expertise in the subject matter of the conflict. There may be a single arbitrator or a panel of arbitrators hearing the matter. The arbitrator's role is to hear the parties, their evidence, and their arguments. Unlike a mediator, the arbitrator makes a decision on the issue in conflict, which may be binding or non-binding. If it is binding, it imposes a solution on the parties in the same way as in a formal hearing process. If it is non-binding, the arbitrator makes only an advisory decision.

Arbitration can be a quicker, more streamlined process than a formal judicial hearing.

Mediation/Arbitration—This process is a combination of mediation and arbitration. The parties start out by trying to resolve the conflict through mediation, but they agree in advance that if they are unable to resolve the conflict this way then the mediator will continue to deal with the matter as an arbitrator. At the end of the process the mediator/arbitrator will present a binding decision on all the issues that have not been resolved by the mediation process. The outcome will be the settled points, if any, reached in the mediation phase, plus a binding decision for any outstanding points on which mediation was not successful.

Ombuds—If a party who has made a complaint feels that it is not possible to obtain a fair hearing through official channels in an organization, a representative is appointed for the party to work within the organization toward resolution of the dispute. The ombuds does not have authority to impose a decision, but attempts to achieve a creative resolution of the dispute within existing policies of the organization. This concept has been adopted in some large organizations where the existence of bureaucracy may in large part be responsible for the conflict.

Community Conferencing: community-based resolution initiatives—This type of process is being used in cases where an "offence" has been committed by one party, but it also has potential for application to other forms of conflict. The focus of the process is a gathering of the offender and the community that has been affected by the offence. The gathering provides an opportunity for the victim and community members to tell their own stories of how the offence has affected them. The offender hears these stories and also has an opportunity to speak about the offence. The process will be facilitated by an individual or a small group of neutral outsiders, who assist the group in working toward some common resolution.

The outcome of the process will be decided by the group. It may be an agreement by the offender to perform specific acts of restitution and/or to obtain professional help. There will also be a plan for monitoring compliance with this agreement.

In addition to facilitating the gathering, the facilitators meet with the key participants in the event (offender, victim, witnesses) to prepare them for it. The facilitators also help to define the "community" affected by the offence and to ensure that all appropriate members are included in the process.

5. Underlying principles for the Dispute Resolution Policy

The different models of alternative dispute resolution described above may be more or less suitable to resolve a particular dispute, depending on the particular combination of the parties involved and the nature of the dispute. A “one size fits all” approach is unrealistic, and flexibility is an important characteristic of the policy.

At the same time, there are a number of fundamental principles that represent a basic common thread in the resolution of all types of disputes within the church. The development and ongoing administration of the policy has guided by these principles:

- (i) *Holistic*—There must be emphasis on responding to all of the needs of the whole person for each of the parties in the conflict.
- (ii) *Inclusive*—The interests of the community affected by the conflict must be accommodated in the resolution of the conflict.
- (iii) *Focus on healing*—There must be emphasis on re-establishing right relationship and balance in the community affected by the conflict. The focus is not on punishment.
- (iv) *Fairness*—The empowerment, dignity, respect, and care of all parties in the dispute must be ensured. There should be no “losers.”
- (v) *Problem-solving*—The focus should be resolution of the conflict, not blaming and scapegoating of participants in the conflict.
- (vi) *Accountability*—There must be accountability for harm that has been done.
- (vii) *Justice*—There must be determination to address the needs of all those affected by the conflict.
- (viii) *Love*—Overwhelming evil with good.

6. The Dispute Resolution Policy

The Dispute Resolution Policy for conflict resolution is mandatory in all cases where a written complaint has been made, except in the case of a charge of sexual abuse (sexual harassment, sexual exploitation, pastoral sexual misconduct, or sexual assault). Those types of complaints continue to be dealt with through the approved policies and procedures for sexual abuse (sexual harassment, sexual exploitation, pastoral sexual misconduct, or sexual assault).

The Dispute Resolution Policy may also be used as a resource for the resolution of conflicts within the church that do not involve the making of a complaint. The parties to any kind of dispute may voluntarily agree to resolve their dispute by following the Dispute Resolution Policy or by incorporating some of the steps of the Dispute Resolution Policy in their own process. A major focus of the Dispute Resolution Policy is to allow the parties involved in a dispute to have the greatest participation possible in the resolution of their dispute.

The Dispute Resolution Policy attempts to strike a balance between precise procedural detail and more flexible general directions. It offers a wide degree of latitude for the Conflict Resolution Facilitator to determine the appropriate techniques for resolving a dispute, based on the circumstances of the particular dispute. At the same time, the Dispute Resolution Policy includes enough structural outline of fair process to help ensure that no party is deprived of natural justice in the resolution process.

7. Normalizing the alternatives in dispute resolution

In many cases, the interests of the church and of all of the parties to a conflict can best be served through an “alternative” form of dispute resolution. The Dispute Resolution Policy represents a shift away from viewing mediation and other forms of conflict resolution as “alternative” processes. These processes become the *norm* in conflict resolution, while the formal hearing process becomes an alternative to be used in a limited number of cases where circumstances may result in an “alternative” collaborative process being unsuccessful or inappropriate.

8. Conflict Resolution Facilitators

There is a pool of trained individuals available to take on the role of the Conflict Resolution Facilitator under the Dispute Resolution Policy. The purpose in having trained individuals serve as Conflict Resolution Facilitators is to help ensure that all disputes are handled with a consistent degree of skill. It also helps increase confidence in the church’s ability to resolve disputes internally in a fair and (comparatively) economical way.

A Conflict Resolution Facilitator must have sufficient familiarity with the different types of conflict resolution to determine the appropriate method of resolution for a particular conflict. If a Conflict Resolution Facilitator determines that the appropriate method of resolution is one that he/she is not skilled to provide, the Conflict Resolution Facilitator must be able to make a suitable referral. Because Conflict Resolution Facilitators use mediation and community conferencing as primary methods of conflict resolution, they are required to have specific training in at least these methods of conflict resolution.

Each Conference maintains a pool of at least three trained individuals to serve as Conflict Resolution Facilitators. It is up to each Conference to determine the suitability of an individual who applies to have his or her name added to the pool for that Conference.

As minimum qualifications, individual applicants have to have completed the following:

- (i) *a basic course in alternative dispute resolution approved by the General Council Office.* There are many courses currently available throughout North America that are offered by universities, other institutions, or private individuals that meet this “basic course” requirement.
- (ii) *a course offered through the General Council Office that addresses multi-party dispute resolution and United Church polity issues.* This course has been designed with the assistance of an outside consultant. It is offered by church staff and volunteers who have experience or expertise in these areas (including individuals appointed as Conflict Resolution Facilitators by the Conferences). This course is mandatory for those seeking to have their names added to a Conference pool of conflict resolution facilitators. There is a fee payable by each course participant, in order to recover the costs associated with offering the course. In some cases, Conferences have chosen to assist with the payment of part or all of this fee.

The completion of the required courses does not guarantee that an individual will be included in the pool of conflict resolution facilitators. As noted above, an individual applicant must still be approved by the Conference.

Theological Affirmations

As Christians, we believe that all people are created in the image of God, are of intrinsic value, and are worthy of respect and love.

We believe that we are called to a common vision. The biblical vision of shalom as God's intention for creation is characterized by right relationships with God and with one another that result in harmony, wholeness, peace, well-being, joy, and justice. Injustice and oppression on either the personal or social level are contrary to the vision of shalom.

We believe that diversity in creation and in humankind is a gift from God to challenge and enrich us. Celebrating our common vision and our diversity, we are called into community. Community is the crucible in which we learn to dialogue, to embrace diversity, and to seek to define the ethic of an active love.

We believe that conflict is a normal part of life and is, in fact, necessary for personal and social development. Conflict is a spiritual issue. When it is addressed constructively, conflict can provide opportunities for growth, new understanding, and transformation.

We believe that conflict becomes destructive when, through attitudes, words, and actions, it leads to exclusion, wounded self-esteem, broken relationships, loss of a sense of well-being, alienation, distrust, undue stress, misunderstanding, abuse, and violation.

We believe that harm and violation are contrary to God's will.

We believe that the biblical concept of justice (*sedeqah*) and the teachings of Jesus are primarily concerned with the restoration of right relationships between God and people, and between people and each other, enabling the movement toward shalom. Often this means not a return to the status quo but an improvement that addresses existing injustices and promotes growth, new understanding, and transformation.

We believe that we are called to look to God's action in Christ as normative. Through covenantal renewal and grace, God moves beyond wrath to the restoration of relationships. God's love for us continues even when our behaviour must be denounced.

We believe that we are called to restore broken relationships wherever they occur, and to practice ministries of healing and reconciliation. We believe that conflict can and should, whenever possible, be resolved in ways that are non-adversarial, and that emphasize accountability, inclusivity, understanding, reparation, tolerance, safety, respect for human dignity, and forgiveness. Healing may not mean agreement.

We believe that conflict resolution through "winning" reflects an ethic of domination and control rather than the Christian ideal of love. To love one another is the ultimate challenge for Christians and for humankind, particularly in the midst of conflict. The church is called to be a transforming presence, to promote right relationships within its midst and in the world.

We believe in the movement of the Holy Spirit in our midst, reminding us that we can trust that the conflict and pain need not be the end, but part of the spiritual journey, which can lead to places of wholeness and health for the people and congregations involved.

We believe that our response to conflict is a theological statement.

Annotated Dispute Resolution Policy

Note: The Dispute Resolution Policy was adopted by the United Church's General Council in August 1997, and was amended by the Executive of the General Council in November 1998 and the General Council in August 2000. The policy is presented in regular typeface below. The commentaries do not form part of the policy itself but are intended to provide useful guidance to all parties involved as they follow the process outlined in the policy.

1. Starting the Process

1.1 The complaint is made, in writing, to the appropriate Court of the Church.

Commentary: The request for conflict resolution assistance comes to the officer of the Court. There is a "two-track" system for conflict resolution under the Dispute Resolution Policy:

"Track one": if the request is in the form of a written complaint made under Section 072 of *The Manual*, the process under the Dispute Resolution Policy is mandatory.

"Track two": if a complaint has not (yet) been made under Section 072 of *The Manual*, the process under the Dispute Resolution Policy is not mandatory. Where, however, there is any issue or dispute between individuals or church bodies that might benefit from the assistance that a Conflict Resolution Facilitator could provide, the Court with oversight of those individuals or church bodies is encouraged to use a Conflict Resolution Facilitator as a resource.

To determine what Court is the "appropriate Court," see Section 067 of *The Manual* for the primary Court of accountability and discipline.

1.2 The appropriate Court for the complaint shall be one of the following, and the complaint shall be sent to the officer or committee of that Court as indicated below:

- (a) if the appropriate Court is the Session or Church Board or Church Council, or the Presbytery, the complaint shall be sent to the Chair or Secretary of that body;

Commentary: If the appropriate Court is the Session or Church Board or Church Council or the Presbytery, and the complaint is about the Chair of that body, then the complaint should be sent to the Secretary of that body. If the complaint is about the Secretary of that body, it should be sent to the Chair of that body. If the complaint is about someone other than the Chair or the Secretary of that body, it should be sent to either the Chair or the Secretary.

- (b) if the appropriate Court is the Conference, the complaint shall be sent to the Executive Secretary of the Conference; and

Commentary: If the complaint is about the Conference Executive Secretary, the complaint should be sent to the body to whom that person is accountable. If that person is a member of the Order of Ministry, they would be accountable to a presbytery, and the complaint should be sent to the Chair or Secretary of that presbytery. If that person is a lay member, they would be accountable to a Session or Church Board or Church Council, and the complaint should be sent to the Chair or Secretary of that body.

- (c) if the appropriate Court is the General Council, the complaint shall be sent to the General Secretary of the General Council, except that if the complaint is made about the General Secretary of the General Council, the complaint shall be sent to the Supervision and Oversight Committee for the General Secretary of the General Council.

Commentary: If the complaint is sent in error to the wrong officer or wrong Court, that officer should forward the complaint to the correct officer, respecting confidentiality around the complaint.

- 1.3 The complaint must name the party against whom it is made, give brief details of the conflict, the names of persons involved in it, and the date or dates on which it occurred. The complaint must be signed by the party making the complaint. For ease of reference only, the party making the complaint is referred to in this policy as “the complainant” and the party responding to the complaint as “the respondent.”

Commentary: A person or church body who complains in writing about another person or a church body may not be making a complaint under Section 072 of *The Manual* that would have the effect of triggering the dispute resolution process. They may be seeking informal assistance with a conflict or they may simply wish to have their complaint received by an officer of the Court. In cases where the intent of the person or church body is unclear, it would be helpful for the officer to contact the person or church body and verify whether a complaint is being made under Section 072 of *The Manual*, or whether some kind of assistance is being requested.

Where the person or church body does not intend to make a complaint under Section 072 of *The Manual*, the matter falls under “track two” of this policy. The Court may consider appointing a Conflict Resolution Facilitator to attempt to resolve the dispute. The officer should also consider what alternative ways of responding to the complaint might be appropriate. For example, the Presbytery Pastoral Relations Committee is available to members of a pastoral charge and to ministry personnel for consultation and advice regarding the pastoral relationship. The Ministry and Personnel Committee of the pastoral charge provides a consultative and supportive agency for staff of a pastoral charge and for members and adherents of the congregation(s). There may be other committees and/or persons within the church structure whom it would be appropriate for the person or church body making a complaint to approach. The officer should assist by informing or reminding the person or church body who made raised the matter of these possible alternatives.

If the complaint is being made under Section 072 of *The Manual*, it falls under “track one” of this policy and the process under the policy is mandatory. The officer of the Court should provide the complainant with a standard information package about the process.

There is a need to have a minimum amount of standard information with each complaint. If the complainant has not already sent a Dispute Resolution Policy Complaint Form to the appropriate Court, the officer of the Court should ask for a completed complaint form. The officer should assign an identification number to the case for identification purposes.

The officer should consider the pastoral needs of the parties during the interim period prior to the meeting of the Executive of the Court to deal with the complaint, and should arrange for those pastoral needs to be met on an interim basis.

- 1.4 The Court officer who receives the complaint from the complainant shall provide the respondent with a copy of the complaint as soon as possible.
- 1.5 The complainant shall be entitled to withdraw the complaint at any stage of the process upon written notice to the Court to which the complaint was made. The notice shall be sent to the officer or committee of the Court as indicated below:
- (a) if the complaint was made to the Session or Church Board or Church Council, or the Presbytery, notice shall be sent to the Chair or Secretary of that body;
 - (b) if the complaint was made to the Conference, notice shall be sent to the Executive Secretary of the Conference; and
 - (c) if the complaint was made to the General Council, notice shall be sent to the General Secretary of the General Council, except that if the complaint was made about the General Secretary of the General Council, the complaint shall be sent to the Supervision and Oversight Committee for the General Secretary of the General Council.

As soon as possible, the Court officer who receives the written notice shall notify the respondent that the complaint has been withdrawn.

2. Appointment of Conflict Resolution Facilitator

- 2.1 The officer of the Court who receives the complaint shall report to the Executive of the Court the fact that a complaint has been made. The Executive shall keep the matter in complete confidence.

Commentary: The officer of the Court receiving the complaint should inform the Executive only that a complaint has been received and not of the names of the parties to the complaint nor the subject matter of the complaint.

- 2.2 The minutes of the Executive meeting shall record only the fact that a complaint has been laid and the appointment of a named Conflict Resolution Facilitator, and the date by which the Conflict Resolution Facilitator is to report to the Executive, without disclosing any names or other information about the complaint.

- 2.3 The Executive of the Court shall:

- (a) ensure that appropriate pastoral care is immediately made available to the complainant and to the respondent, including arranging an appropriate support person for the complainant, and an appropriate support person for the respondent;

Commentary: This action is to be taken on behalf of the Executive by the officer of the Court, since no one else on the Executive would or should know the names of the parties. It is the responsibility of the Executive of the Court to “ensure” that pastoral care is provided: that would be accomplished by the Executive checking that the same officer who received the complaint had also arranged for pastoral care for both parties. It does not have to be an onerous task for the officer. The officer could approach it by asking each party these questions: Do you have pastoral care? Do you want the names of some persons who could provide you with pastoral care? Do you want me to find someone to provide pastoral care for you? The officer would then follow up as required, based on the responses to these questions.

- (b) appoint a Conflict Resolution Facilitator, after ascertaining that neither of the parties has any objections to the appointment of that particular Conflict Resolution Facilitator; and

Commentary: The Conflict Resolution Facilitator would be contacted by the officer first to ascertain that person's availability and whether that person is aware of any potential conflict of interest that would preclude that person serving as Conflict Resolution Facilitator. Once this has been done, it does not matter who is contacted next and asked whether there are any conflict of interest issues that would preclude the Conflict Resolution Facilitator acting in a particular case; either the party making the complaint or the party responding to the complaint could be contacted next. It will be left to the Court officer to make these contacts in whatever order is helpful and reasonable in the circumstances.

Once a Conflict Resolution Facilitator has been located to whom neither party has any objection based on conflict of interest, and once that person has been appointed by the Court as Conflict Resolution Facilitator for the complaint, the officer forwards to the Conflict Resolution Facilitator a completed appointment form, a copy of the complaint, and information about the pastoral care that has been arranged for each party. The officer should also ensure that the Conflict Resolution Facilitator has a blank Participation Agreement and a Preliminary Diagnosis form. The officer should also provide the Conflict Resolution Facilitator with any information from the minutes of the Court that may be relevant to the complaint.

- (c) specify a date by which the Conflict Resolution Facilitator is to report to the Executive of the Court. Normally, that date shall be no later than thirty (30) days after the Conflict Resolution Facilitator is appointed.

Commentary: The report referred to here is the report referred to in Section 3.2 of the policy. That report is the conclusion of a diagnostic process in which the Conflict Resolution Facilitator provides information to and gathers information from the parties, decides whether there should be some form of alternative dispute resolution process with respect to the complaint and, if so, specifies the appropriate form of dispute resolution.

- 2.4 In selecting the Conflict Resolution Facilitator, care shall be taken not to have any person selected whose judgment or objectivity might be impaired because of a relationship with or knowledge of any of the parties or witnesses to the conflict. If the Court to which the complaint was made is a Session or Church Board or Church Council of a Congregation, a Presbytery, or a Conference, the Conflict Resolution Facilitator shall (where practicable) be from a Court other than the one to which the complaint was made.

Commentary: It is quite acceptable where, for reasons of cost, the Conflict Resolution Facilitator is from the same presbytery as long as conflict of interest concerns that would affect the ability of the Conflict Resolution Facilitator to be neutral are not present.

- 2.5 In some cases, there may be multiple complaints pending: more than one complaint against the same respondent or more than one complaint by the same complainant against different respondents. Where there are multiple complaints pending and it appears to the Court officer that the complaints relate to the same subject matter, the Court officer should ensure that there is appropriate coordination of the dispute resolution processes for all of the complaints and that, wherever possible, the same Conflict Resolution Facilitator is appointed.

3. Conflict Resolution Facilitator—Preliminary Role: Determining whether there should be an alternative dispute resolution process for the complaint

- 3.1 The Conflict Resolution Facilitator shall:

- (a) ensure that pastoral care is being continued for both the complainant and respondent, and that the care is appropriate in the circumstances, and make recommendations to the Executive of the Court for other appropriate pastoral care, if advisable in the opinion of the Conflict Resolution Facilitator;
- (b) explain the conflict resolution process to the parties;
- (c) arrange to have the parties sign an agreement acknowledging the terms of the conflict resolution process, including confidentiality of information given and received by the parties in the process; and

Commentary: The concept of confidentiality extends to the actual conflict resolution process. There is no prohibition against the respondent contacting the complainant under the Dispute Resolution Policy, as there is in the case of complaints under the church's Sexual Abuse Policy. Under the Dispute Resolution Policy, the parties should be encouraged to resolve conflicts themselves, and contact between them may facilitate a resolution.

The agreement mentioned in paragraph (c) is the Participation Agreement—see page 27.

Although sexual abuse complaints are excluded from the Dispute Resolution Policy, concerns about safety, power imbalance, and so on should still be considered. When conducting the initial interviews of the parties, it is suggested that the Conflict Resolution Facilitator check if either party has these concerns and what might be required to address them. Any mutually agreed upon conditions (i.e., agreed upon by both the party making the complaint and the party responding to the complaint) around contact may be included in the parties' Participation Agreement in the conflict resolution process, for example, that there is to be no communication between them regarding the subject matter of the complaint except with the Conflict Resolution Facilitator present.

- (d) conduct a preliminary meeting with each of the parties individually.

Commentary: The meeting may take place in person or by telephone.

3.2 After completing the steps in Section 3.1 above, the Conflict Resolution Facilitator shall report to the Executive of the Court and to the parties that, in the opinion of the Conflict Resolution Facilitator, either:

(a) there should be some form of alternative dispute resolution process with respect to the complaint, in which case the Conflict Resolution Facilitator shall specify the form of alternative dispute resolution, specify a date to report to the Executive of the Court and shall continue as outlined in Section 4.1 and on;

or

(b) there should not be some form of alternative dispute resolution process with respect to the complaint. In such case:

(i) before reporting to the Executive of the Court, the Conflict Resolution Facilitator shall advise the parties of further possibilities for action on the complaint as outlined in Section 5.4; and

(ii) the Executive of the Court shall deal with the complaint as outlined in Section 5.5.

In either case, the Conflict Resolution Facilitator shall include with the report any recommendations for further pastoral care, if appropriate. The Executive shall ensure that appropriate pastoral care is arranged or continued.

Commentary: It is expected that the Conflict Resolution Facilitator would decide that there should be some form of alternative dispute resolution process with respect to the complaint in most cases. In some cases, however, the Conflict Resolution Facilitator may be of the opinion that an alternative dispute resolution process is inappropriate with respect to the complaint. In such cases, the Conflict Resolution Facilitator would respond using the Preliminary Diagnosis form. No reasons are to be given by the Conflict Resolution Facilitator. Appropriate pastoral care should be arranged or continued.

That report shall be the Decision of the Court that appointed the Conflict Resolution Facilitator, and is not subject to debate or appeal.

4. Conflict Resolution Facilitator—Continuing Role

4.1 The continuing role of the Conflict Resolution Facilitator is to act as facilitator of the alternative dispute resolution process and to report to the Executive of the Court by the specified date as to the status of that process.

Commentary: This does not mean that the appointed Conflict Resolution Facilitator must facilitate the dispute resolution process personally, but that the Conflict Resolution Facilitator should ensure that the facilitation is done, perhaps by another facilitator with more appropriate skill or experience, or through co-facilitation with another facilitator. If the dispute involves more than two parties, the Conflict Resolution Facilitator facilitating the process must be capable of facilitating an appropriate multi-party dispute resolution process.

4.2 All parties are required to participate in good faith in the alternative dispute resolution process.

Commentary: To act in good faith includes appreciating the potential of the dispute resolution process for resolving the dispute, putting forth an honest effort to co-operate with all the parties involved, and not frustrating the process.

5. Possible Outcomes of the Alternative Dispute Resolution Process

- 5.1 At any time prior to the specified report date, if the Conflict Resolution Facilitator is of the opinion that either of the parties is not participating in the dispute resolution process in good faith, the Conflict Resolution Facilitator shall terminate the process and report to the Executive of the Court that there has not been resolution of the complaint through the alternative dispute resolution process. In that case, the Executive shall deal with the complaint as outlined in Section 5.5.

Commentary: In all cases where the parties do not resolve the matter, the Conflict Resolution Facilitator reports to the Executive simply the fact that the matter has not been resolved through the conflict resolution process. No reasons or details are provided, in the interests of preserving the confidentiality around the content of the dispute resolution process.

- 5.2 If, by the specified report date, the alternative dispute resolution process results in a written memorandum of understanding agreed to by all parties, or other resolution agreed to by all parties, then:

- (a) the Conflict Resolution Facilitator shall report this fact to the Executive of the Court;
- (b) the Executive of the Court shall arrange for appropriate monitoring of the parties' agreement other than by the Conflict Resolution Facilitator; and

Commentary: If there are portions of the parties' memorandum of understanding that need to be monitored, the Conflict Resolution Facilitator should ensure that the parties have also included directions as to how those portions are to be monitored. In the memorandum of understanding, the parties should also address the cost of monitoring the agreement, and they should not assume that the Court will fund that cost. The person doing the monitoring does not need to be given a copy of the entire memorandum of understanding, only the portions that need monitoring.

- (c) the parties' agreement shall remain confidential unless the parties all agree otherwise.

Commentary: The parties may agree that their memorandum of understanding is to be public; they may agree that certain options are to be public; they may agree that the agreement or certain portions of it may be disclosed to certain individuals in order to have portions of the agreement monitored, or because the parties wish to share the agreement with their family members or other specific individuals.

- 5.3 If, by the specified report date, the alternative dispute resolution process does not result in a written memorandum of understanding or other resolution agreed to by all parties, and the Conflict Resolution Facilitator is of the opinion that the process should be continued for an additional specified period of time, the Conflict Resolution Facilitator shall make this recommendation to the Executive of the Court. Based on the Conflict Resolution Facilitator's recommendation, the Executive of the Court may direct that the Conflict Resolution Facilitator continue the alternative dispute resolution process for the additional period of time as recommended by the Conflict Resolution Facilitator.

- 5.4 If, by the specified report date, the alternative dispute resolution process does not result in a written memorandum of understanding or other resolution agreed to by all parties and the Conflict Resolution Facilitator is not of the opinion that the process should be continued for an additional period of time, before reporting to the Executive of the Court, the Conflict Resolution Facilitator shall advise the parties of further possibilities for action on the complaint as follows:

- (a) either party may request a Formal Hearing, which will be held if the Formal Hearing Committee makes a decision to proceed with a Formal Hearing under Section 075 of *The Manual*;

Commentary: If the Session or Church Board or Church Council is the appropriate Court of accountability, it may hold a Formal Hearing.

- (b) the complainant may withdraw the complaint as provided in Section 1.5; or
- (c) upon receipt of the report of the Conflict Resolution Facilitator, the Executive of the Court shall take such other action as it considers appropriate.

5.5 If, by the specified report date, the alternative dispute resolution process does not result in a written memorandum of understanding or other resolution agreed to by all parties:

- (a) the Conflict Resolution Facilitator shall report this fact to the Executive of the Court;
- (b) the Court officer who received the complaint shall provide a copy of it to the Executive of the Court; and
- (c) the Executive of the Court shall take such action as it considers appropriate with respect to the complaint.

Commentary: The action that an Executive of the Court “considers appropriate” could be any action that is within the power of that Court. Here are some examples:

- The Executive could order a Formal Hearing of the complaint.
- The Executive could refer the complaint for further consideration/action to a committee of that Court or of another Court that had expertise or a mandate over the subject matter of the complaint.
- The Executive could decide that a dispute resolution process should be attempted again between the parties after a “cooling off” period of some specified weeks or months.
- The Executive could decide that the complaint between two individuals signalled concern about the health of an entire church body (e.g., a congregation) that needed to be addressed through a resolution process involving a larger circle of participants.
- If the Court is the presbytery and one of the parties to the complaint is ministry personnel, the Executive could decide that the complaint raised a question about the effectiveness of the ministry personnel. In that case, the Executive could order a review under Section 363 of *The Manual*.
- The Executive could take no further action on the complaint, except for ensuring that pastoral care remains available to the parties.

The Executive could also consider any other option within its power.

6. Fee

The Conflict Resolution Facilitator shall be entitled to a fee for the services performed under this policy. For situations where a complaint has been made, the fee shall be as set from time to time by the Executive of the General Council. For situations where a complaint has not been made, the fee shall be as negotiated between the Conflict Resolution Facilitator and the appointing Court. In either case, in addition, the Conflict Resolution Facilitator is entitled to be reimbursed for out-of-pocket expenses (i.e., travel, photocopying, etc.) in accordance with church policy.

7. Advocates and Lawyers

If a party is accompanied or represented by an advocate or legal counsel at any stage of the resolution process, that party shall be responsible for the cost of the advocate or legal counsel. It is intended that participants will, under usual circumstances, participate in the conflict resolution process on their own behalf without representation by advocates or lawyers.

8. Alternative Dispute Resolution for Situations Other Than a Complaint

In circumstances where a complaint has not been made but there has been a written or oral request to a Court for conflict resolution assistance, the Court may appoint a Conflict Resolution Facilitator to assist the parties involved in the conflict through facilitation of an alternative resolution process. Participation in this process does not prevent a party to the conflict from making a complaint in relation to the conflict if the process does not result in resolution of the conflict.

Commentary: This is “track two” of the two-track process under the Dispute Resolution Policy. There is an important benefit to the parties and to the church in resolving conflict at the lowest level of escalation possible, before a complaint is made under Section 072 of *The Manual*. The use of Conflict Resolution Facilitators—and other resources in the church—should be encouraged in all conflict situations.

Questions and Answers

**a) Could there be a single point of contact for those making a complaint—
i.e., one Conference officer?**

The policy clearly provides that a specific officer of the relevant Court is to receive and deal with the complaint. Under the existing policy, it would not be permissible to have all complaints within a Conference (congregation, presbytery, and Conference) dealt with by a single officer.

It is preferable for the “Court of accountability” to handle a particular complaint, and for the complaint to be dealt with only on a “needs to know basis.” In this respect, the policy operates in the same way as the Sexual Abuse Policy has been operating for a number of years.

It is hoped that involvement of the officers of different Courts of the church will help to familiarize these officers (and the Executives of the various Courts of the church) with the policy, since they will have specific administrative tasks under it.

b) Who will answer questions regarding the interpretation of the policy?

Questions on interpretation of the policy should be directed to the General Council Office, to the attention of the General Secretary, General Council. Information about the proper procedure under the policy may also be obtained from one of the General Council staff lawyers. If the question involves another policy, the question should be directed to the appropriate place, for example, questions regarding the Sexual Abuse Policy or ministry personnel policy would be directed to the Conference Personnel Minister or to Ministry and Employment Policies and Services (MEPS), as appropriate.

c) How should Conflict Resolution Facilitators prioritize requests to handle complaints under the policy, and conflict resolution work in the church outside the policy?

It is inevitable that Conflict Resolution Facilitators will be approached to handle situations in which there is no complaint made under Section 072 of *The Manual*. In fact, this is in keeping with the overall intention to have conflict resolved within the church at the earliest possible opportunity. Conflict Resolution Facilitators should treat both types of requests (i.e., where complaint has been made, and where a Court requests their involvement in a situation without a complaint) equally. Neither should be given preference in terms of priority simply on the basis of there being—or not being—a complaint made.

d) What records should be kept by Conflict Resolution Facilitators?

After the Conflict Resolution Facilitator has made a final report to the appointing Court, the Conflict Resolution Facilitator should retain only the following documents:

- Conflict Resolution Facilitator Appointment (Preliminary Diagnosis)
- Conflict Resolution Facilitator Preliminary Diagnosis Report
- Conflict Resolution Facilitator Appointment (Delivery of Facilitation)
- Conflict Resolution Facilitator Final Report
- Participation Agreement

In addition, if there has been a resolution of the complaint, the Conflict Resolution Facilitator may retain a copy of any written agreement with details of the resolution.

In either case, no other records or papers or materials from either of the parties should be retained, and should be destroyed at the following times, as applicable:

- when the Conflict Resolution Facilitator has reported back to the Court that an alternative dispute resolution process is not appropriate for the complaint;
- when the Conflict Resolution Facilitator has reported back to the Court that an alternative dispute resolution process is appropriate for the complaint, but the Conflict Resolution Facilitator will not be the facilitator of that process; or
- when the Conflict Resolution Facilitator has reported back to the Court that an alternative dispute resolution process is appropriate for the complaint, that the Conflict Resolution Facilitator has facilitated the dispute resolution process, and the process has been concluded.

If the Conflict Resolution Facilitator wishes to keep any other information, the Conflict Resolution Facilitator may do so only with the written consent of the parties.

e) If arbitration is the appropriate dispute resolution process, who finds the arbitrator?

In cases where a Conflict Resolution Facilitator specifies arbitration as the appropriate form of dispute resolution, the Conflict Resolution Facilitator has no obligation to recommend an arbitrator. It is up to the Executive of the Court that appointed the Conflict Resolution Facilitator to retain an arbitrator in any particular situation. The Executive of the Court may consult with the Conflict Resolution Facilitator or outside sources to locate an arbitrator.

Forms

Standardized forms for Conflict Resolution Facilitators

Dispute Resolution Policy Complaint Form

This form may be used by a complainant in order to make a complain in writing under Section 1.0 of the Dispute Resolution Policy. It identifies all of the information required for a complaint under Section 1.3 of the Dispute Resolution Policy.

Conflict Resolution Facilitator Appointment Form (Preliminary Diagnosis)

This form deals with the appointment of the Conflict Resolution Facilitator to do the preliminary diagnosis work required under Sections 3.1 and 3.2 of the Dispute Resolution Policy, including deciding whether or not an alternative dispute resolution process is appropriate for the complaint.

Conflict Resolution Facilitator Preliminary Diagnosis Report

With this form, the Conflict Resolution Facilitator reports his/her opinion as to whether an alternative dispute resolution process is appropriate for the complaint with recommendations for further pastoral care, if appropriate. No other information is required from the Conflict Resolution Facilitator as part of this report.

Conflict Resolution Facilitator Appointment Form (Delivery of Facilitation)

This form documents the appointment of the Conflict Resolution Facilitator to do the conflict resolution facilitation work required under Section 4.1 of the Dispute Resolution Policy.

Conflict Resolution Facilitator Final Report Form

With this form, the Conflict Resolution Facilitator makes a final report on the Conflict Resolution process to the appointing Court. No other information is required from the Conflict Resolution Facilitator as part of this report.

Participation Agreement

This document records the parties' agreement to engage in the conflict resolution process.

Dispute Resolution Policy Complaint Form

The United Church has a Dispute Resolution Policy. It involves a process guided by a Conflict Resolution Facilitator that provides the opportunity for parties in conflict to discuss their differences openly and clearly with the hope of achieving a greater understanding of one another's interests.

A Conflict Resolution Facilitator will be appointed when the officer of the appropriate church Court has received a signed Complaint Form.

A copy of the Complaint Form will be provided to the Conflict Resolution Facilitator and to the other person(s) or church body identified below as being involved in the conflict.

Otherwise, the Complaint Form will be kept in confidence by the limited number of church personnel who must know of the conflict in order to ensure that the process under the Dispute Resolution Policy is followed.

Complainant's name: _____

Address: _____

Telephone number: (day) _____ (evening) _____

Fax number: (if available) _____

If complainant is United Church member, indicate name of congregation: _____

If complainant is ministry personnel, indicate name of presbytery: _____

Please provide a very brief description of the nature of the conflict. This information will be used to assist in appointing the most appropriate Conflict Resolution Facilitator. Please also indicate the (approximate) dates when these events occurred.

Forms

Name of other person(s) or church body involved in the conflict (the “respondent”):

Address(es) of respondent(s)

Telephone number(s) of respondent(s):

What steps have you (the complainant) already taken to try and resolve this conflict?

Is your complaint, or any matter related to your complaint, already being dealt with or has it been dealt with by the United Church in another place (at Church Board, Council, Session, formal hearing process, presbytery review, etc.)? If so, please describe briefly.

Do you have any special needs that are to be considered? For example, wheelchair access, interpreter, child care (indicate times), visual/hearing disability, etc.

Signed: _____

Date: _____

For church Court officer to complete:

Received by the officer of the church Court on: _____

Referred by the officer of the church Court to a CRF on: _____

Signed: _____

Church Court Officer

Conflict Resolution Facilitator Appointment Form (Preliminary Diagnosis)

You (*insert name*) have been appointed by (*insert name of appointing Court*) to fulfill the preliminary “diagnostic” duties of a Conflict Resolution Facilitator, under Sections 3.1 and 3.2 of the Dispute Resolution Policy of The United Church of Canada, in the matter of the conflict set out in the Request for Conflict Resolution Assistance file X (*insert the File # assigned the case*).

In accepting this appointment, you are volunteering your services in the Conflict Resolution Facilitator role. An honorarium in the amount of _____ [not to exceed \$200.00] will be paid to you on completion of your functions. Reasonable and necessary expenses incurred by you in performing this role will be reimbursed.

In accepting this appointment you declare that, in good faith, you are not aware of any conflict of interest, real or perceived, between you and any of the parties in this matter. Should you become aware of such a conflict during the course of performing your functions as a Conflict Resolution Facilitator in this matter you will immediately report this development to the Executive of the appointing Court.

As required by Section 2.3(c) of the Dispute Resolution Policy, you will report your opinion in the matter to (*insert name of Executive of the appointing Court*) by (*insert date*).

Signed this _____ day of _____ 20_____

Officer on behalf of
Executive of the Appointing Court

Conflict Resolution Facilitator

Conflict Resolution Facilitator Preliminary Diagnosis Report

File # _____ Date: _____

Conflict Resolution Facilitator Preliminary Diagnosis Report submitted by

I was appointed Conflict Resolution Facilitator in this matter on _____

After conducting preliminary meetings and discussions with the parties it is my opinion that: (check one)

- There should be some form of alternative dispute resolution with respect to the complaint.

I propose that the type of alternative dispute resolution be:

- consensus building
- mediation
- community conferencing
- other: _____

I propose that the facilitation be delivered by:

- myself
- myself and another Conflict Resolution Facilitator
(namely _____)

- the following type of facilitation: _____

In my view, the proposed facilitation will require _____ (amount of time)

- There should not be some form of alternative dispute resolution process with respect to the complaint.

I further recommend that the pastoral care being provided be:

- continued adjusted as follows: _____

I understand that this report has the effect of a decision of the appointing Court and is not subject to debate or appeal.

Conflict Resolution Facilitator

Conflict Resolution Facilitator Appointment Form (Delivery of Facilitation)

You (*insert name*) have been appointed by (*insert name of appointing Court*) to deliver the conflict resolution facilitation, under Sections 4.1 and 5 of the Dispute Resolution Policy as adopted by The United Church of Canada, and in the manner identified as appropriate by (*insert your name/name of other CRF completing preliminary diagnosis*) in the matter of the conflict set out in the Request for Conflict Resolution Assistance file X (*insert the ID# assigned to the case*). In performing the Conflict Resolution Facilitator functions in this matter you will be working by yourself/in a team with (*insert name of other Conflict Resolution Facilitator*) who is appointed separately to this matter).

In accepting this appointment you are volunteering your services in the Conflict Resolution Facilitator role. An honorarium in the amount of \$ _____ [not to exceed \$300.00] will be paid to you on the completion of your functions. Reasonable and necessary expenses incurred by you in performing this role will be reimbursed.

In accepting this appointment you declare that, in good faith, you are not aware of any conflict of interest, real or perceived, between you and any of the applicants and/or respondents in the matter. Should you become aware of such a conflict during the course of performing your functions as a Conflict Resolution Facilitator in this matter you will immediately report this development to the Executive of the appointing Court.

The "specified report date" in this matter is (*insert date*).

Signed this _____ day of _____ 20_____

Officer on behalf of
Executive of the Appointing Court

Conflict Resolution Facilitator

Conflict Resolution Facilitator Final Report Form

File # _____ Date: _____

Conflict Resolution Facilitator Report submitted by

_____ and _____
(Co-Conflict Resolution Facilitator)

I was appointed Conflict Resolution Facilitator in this matter on _____.

After meeting with the parties involved I have determined that : *(circle one)*

- A. A resolution to the conflict has been achieved and this matter can be closed.
Attached to this report are details of the resolution that the parties have agreed can be shared and that I am authorized by the parties to include with this report.
- B. I have reached the "specified report date" and have not been able to bring about a resolution to the conflict. I am requesting an extension of the report date to _____ because I am of the opinion that with this extra time a reasonable chance exists for a successful outcome. Please indicate to me in writing the concurrence of the Executive of the Court with this extension, which letter will constitute an amendment of the report date in the Conflict Resolution Facilitator appointment form.
- C. I have not been able to bring about a resolution to the conflict. Therefore, under Section 5.5 of the Dispute Resolution Policy:
- the Court officer who received the complaint shall provide a copy of it to the Executive of the Court; and
 - the Executive of the Court shall take such action as it considers appropriate with respect to the complaint.

Statistical information

Type of conflict resolution intervention used:

- mediation
- consensus building
- community conferencing
- other (describe: _____)

Number of hours spent with parties: _____ separately
_____ together

Other resources used by the CRF:

Process issues raised by this conflict that can be shared for learning and for development of the Dispute Resolution Policy:

Participation Agreement

We, the participants, aspire to resolve our conflict through a *dispute resolution process*. The Conflict Resolution Facilitator will guide this process. We agree with and promise to respect the conflict resolution guidelines set out in this agreement.

As participants, we enter into this conflict resolution process voluntarily and agree to respect the following rules:

- to participate in the process in good faith
- to provide willingly all information that will help the discussion to be open and productive
- to participate in the problem solving process by generating ideas and options
- to participate in the formulation of mutually acceptable solutions
- each participant and the Conflict Resolution Facilitator have the power to end the process at any time, but each participant agrees to make a genuine effort to make the process work
- each participant is responsible for obtaining their own legal advice or representation if they so wish during this conflict resolution process or in connection with a settlement reached as a result of this process
- no participant will ask the Conflict Resolution Facilitator to testify for any purpose with respect to any information disclosed during this process

We, the participants, understand and agree that

- our willingness to participate in this process will not bind us or prejudice us in any way in the future
- all written and oral communication exchanged in this process is considered confidential unless we, the participants, agree otherwise
- no information or other communication made by any participant during this process can be used in any way by anyone in any future proceedings
- any written resolution/understanding arising out of this process will remain confidential unless we, the participants, agree otherwise
- the Conflict Resolution Facilitator cannot disclose any written or oral communication except that which is required under the Dispute Resolution Policy of The United Church of Canada *or* as agreed to by the participants
- the notes and information recorded by the Conflict Resolution Facilitator cannot be subpoenaed for use in any future proceeding
- out of all the information recorded by the Conflict Resolution Facilitator during this process, only the information that is required to be reported under the Dispute Resolution Policy of The United Church of Canada will be disclosed to the Court of The United Church of Canada
- the Conflict Resolution Facilitator will have the same immunity from liability as a judge
- the Conflict Resolution Facilitator is neither a lawyer nor a representative for any of the participants in this process. The role of the facilitator is not to adjudicate (resolve) our conflict, but is instead to act as an impartial third party who will assist us in reaching our own solution

Each of us has read and understood the contents of this pact. We also acknowledge the receipt of a copy of the Dispute Resolution Policy of The United Church of Canada.

This agreement is made on _____

between _____

Conflict Resolution Process

Complaint is made

- Complainant has the right to withdraw the complaint at any stage

Officer of the Court

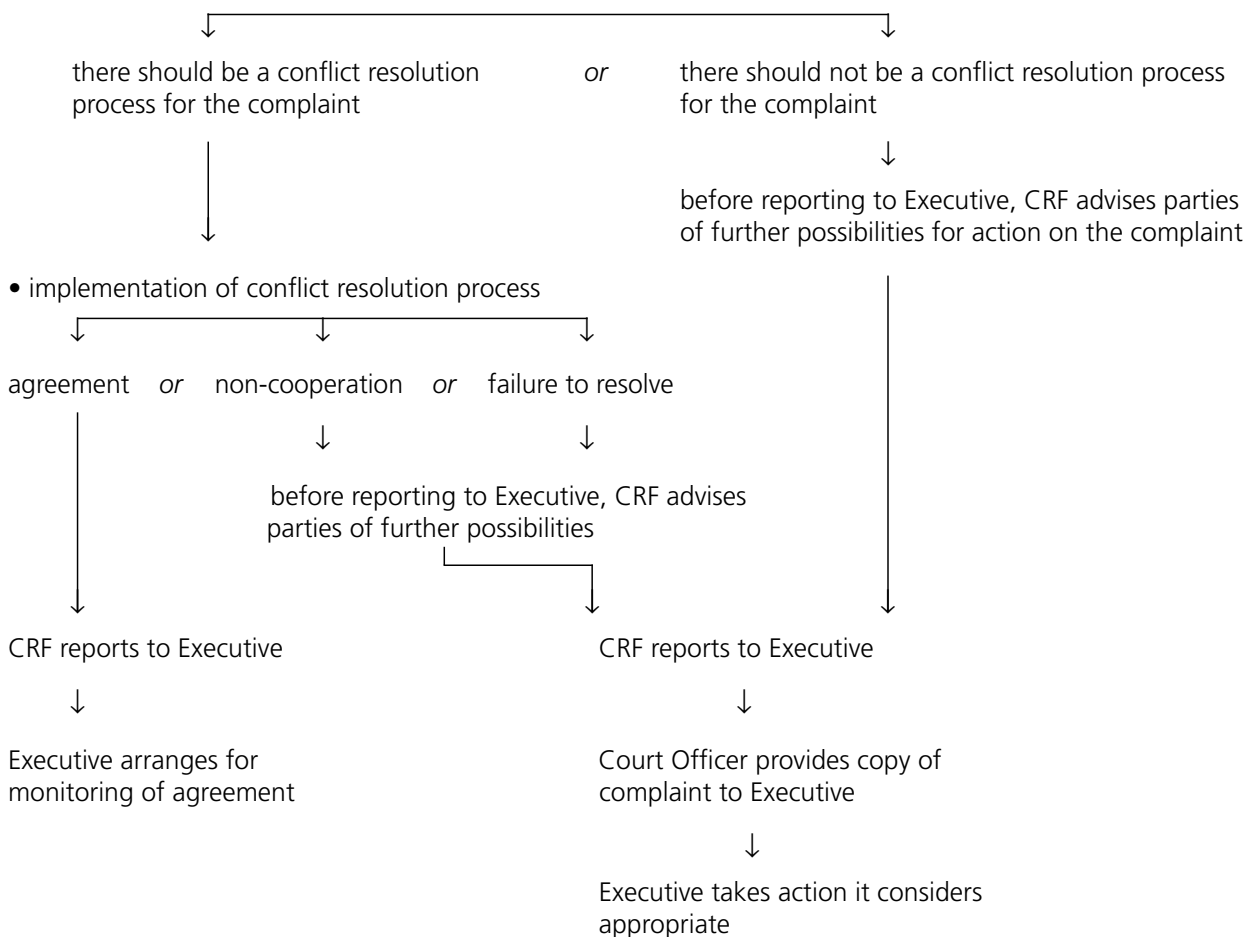
- informs respondent
- informs complainant of process
- explores need for and arranges pastoral care for parties

Executive of Court

- names a Conflict Resolution Facilitator (CRF)
- sets timeline and deadline for report back

Conflict Resolution Facilitator

- conducts preliminary meeting with each of the parties separately
- ensures appropriate pastoral care is being continued / makes recommendations to the Executive for other appropriate pastoral care
- explains conflict resolution process to parties
- makes decision:





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