

REFERRALS FROM GENERAL SYNOD 2021

Response to *MGS 2021*, RF 21-1, p. 94

To direct the General Synod Council to appoint a team of at least 10 but no more than 15 people tasked with the specific work of developing a restructuring plan for the denomination with a view to optimizing the RCA's sustained spiritual and organizational health, in consultation with the Commission on Church Order and any other bodies it finds necessary. This team should be composed of several executive RCA staff members, and of representatives from around the RCA drawn from regional or local assemblies that have expressed an intention to remain in the Reformed Church in America, and should be representative of the racial, ethnic, gender, age, socio-economic, geographic, and other forms of diversity present in the RCA. This team should consider the four principles stated above as it does its work and should bring any recommendations for restructuring that require General Synod approval, including any proposed changes to the *Book of Church Order*, to General Synod 2024; and further,

To approve the \$0.29 per member assessment to fund the work of this team.

Because the final report of the restructuring team is extensive, its report and recommendations can be found in a separate sub-report on pages 104-146 of this workbook.

REFERRALS FROM GENERAL SYNOD 2022

Response to *MGS 2022*, RE 22-3, p. 238

To direct the General Synod Council to reinstate and recognize a fourth racial/ethnic council for Native American and First Nations Ministries as a council in the Reformed Church in America with all rights and privileges hereto according to the *Book of Church Order*, Chapter 3, Part I, Article 3, Section 2b (2021 edition, p. 109).

The General Synod Council (GSC) reported to General Synod 2023 that GSC staff had consulted with the Commission on Church Order (CCO) for guidance regarding the steps needed to “reinstate and recognize” the Native American Indigenous Ministries Council (NAIM) as directed in RE 22-3. The CCO advised staff and the GSC that it believed that three things needed to take place in order to consider the council “officially reconstituted”:

1. Writing of bylaws by NAIM and approval of those bylaws by the GSC
2. Designation of the initial members of the council or its executive board
3. A declaration by the GSC that the council is reconstituted

Because the GSC wanted to ensure that NAIM itself would be the primary drafter of its own bylaws (though final bylaws will need to be approved by the GSC, as is the

case for all racial and ethnic council bylaws), at its March 2023 meeting, the GSC appointed a small group of five NAIM leaders—Jeffrey Botella, Nancy Gillis, Nathan Gullion, George Montanari, and Vinea Nez—to draft initial bylaws for the council. They did this over the course of the next year, presenting draft bylaws to the March 2024 meeting of the GSC for approval.

The GSC noted two areas of concern with the originally proposed bylaws. It asked NAIM to revisit the draft to address the concerns noted (GSC 24-40) at NAIM's late-April gathering so that as many of its constituents as possible could be consulted, and then send an updated draft back to the GSC as soon as possible so that the GSC could hold a special meeting to approve the revised bylaws and take action to officially reconstitute NAIM prior to General Synod 2024. The GSC has a special Zoom meeting scheduled for May 8, 2024, shortly after this workbook will be published, at which it hopes to be able to take these actions.

REFERRALS FROM GENERAL SYNOD 2023

Response to *MGS 2023*, OG 23-1, p. 95

To instruct the Commission on Church Order to consider the revision to the *Book of Church Order* requested in Overture 1, and report back to General Synod 2024.

See the report of the Commission on Church Order on pp. 239-240 in this workbook.

Response to *MGS 2023*, BBS 23-1, pp. 151-152

To commend “An Equitable Future” to all RCA assemblies in the United States; and further,

To direct the Commission on Race and Ethnicity, in its role as advisor to the church on policies and initiatives that address issues of institutional racism, to study the paper, to partner with the racial and ethnic councils and the Board of Benefits Services to seek ways to address a more equitable future, and to report back to General Synod 2024.

See the report of the Commission on Race and Ethnicity (CORE) in this workbook, pp. 299-300, for information on CORE's work with the Board of Benefits Services (BOBS) toward this end. This work is also referenced in the report of the Board of Benefits Services on pp. 193-194.

Response to *MGS 2023*, CA 23-2, p. 157

REPORT OF THE AD-HOC COMMITTEE REGARDING CA 23-2

In its report to the 2023 General Synod, the General Synod's Commission on Christian Action (CCA) said:

Related to these employment practices [a reference to the characterization of people doing work for the GSC as independent contractors rather than employees] is the common use of non-disclosure agreements (NDAs) and non-disparagement clauses in circumstances of employee terminations. It has come to our attention that in many cases of termination of employees who are not protected by unemployment insurance, any severance package given is contingent on the signing of such NDAs. NDAs have received much bad publicity in recent years. In the well-publicized cases of Mars Hill Church and Hillsong, NDAs were used as a means of controlling employees and keeping secrets within the institutions in question. Such documents, at worst, give the distinct impression that the Reformed Church in America may have something to hide. We are not privy to the internal Human Resources and personnel discussions that have made these documents a prominent part of General Synod Council (GSC) staff terminations, but we seek to understand their intention and use so that misunderstanding may be washed away (*MGS 2023*, p. 154).

The CCA included in its report a recommendation, labeled CA 23-2. The General Synod's Advisory Committee on Overtures and New Business advised the General Synod to amend CA 23-2 (which the General Synod did), and prior to its adoption the recommendation was further amended on the floor. The final version of CA 23-2 as amended and adopted reads as follows:

CA 23-2

To form an *ad hoc* committee, meeting remotely via Zoom or other technology, to seek further transparency and understanding around the use of non-disclosure agreements (NDAs) and unemployment insurance for denominational (GSC) staff. The membership will be made up of at least one person from each of the following groups or GSC staff departments: GSC legal counsel, GSC human resources, GSC financial offices, General Synod Council, the Commission on Christian Action, and the Commission on Theology, along with others who may be deemed appropriate at the discretion of the committee's membership. The committee shall choose a chairperson from its membership who is not a staff member. This committee's purpose will be to understand the current practices affecting GSC staff and seek to bring a legally, financially, and theologically sound recommendation to the General Synod of 2024 (*MGS 2023*, p. 157).

The committee met on several occasions but chose a convener and a notetaker instead of a chairperson. The committee discussed this topic with the GSC's human resources and executive consultant director, and one of the committee's members discussed it with GSC payroll staff. The committee also reviewed materials available from the United States (U.S.) Internal Revenue Service (IRS) and Social Security Administration.

The committee determined the following:

Regarding Unemployment Insurance

As a matter of U.S. federal law, *it appears that churches and other religious organizations cannot participate in unemployment insurance programs.* Relevant sections of the IRS website indicate that tax exempt organizations with employees **generally** are responsible for employment taxes such as federal income tax, social security and medicare taxes, and federal unemployment taxes (www.irs.gov/charities-non-profits/exempt-organizations-what-are-employment-taxes). However, “[p]ayments for services performed by an employee of a religious, charitable, educational or other organization described in section 501(c)(3) that are generally subject to FICA (Social Security and Medicare) taxes if the payments are \$100 or more for the year, are not subject to FUTA (unemployment) taxes” (www.irs.gov/charities-non-profits/charitable-organizations/section-501c3-organizations-futa-exemption). The initially cited page also says the exemption from FUTA cannot be waived. What *is* done in most (perhaps all) states is that a former employee of a 501(c)(3) tax exempt organization may apply to the state for unemployment compensation. The state determines whether the individual is eligible for unemployment compensation, and the amount they would be due. The state then seeks reimbursement from the employer for whatever amount is paid to the former employee. Organizations may be exempt from contributing into a fund, but they are not exempt from paying for unemployment claims approved by the state.

CA 23-2 does not specifically reference either United States or Canadian law. When seeking information regarding unemployment insurance the *ad hoc* committee focused more of its attention on United States law. This was in large part due to the somewhat unique provisions in United States federal law regarding non-participation by churches and other religious organizations. Canadian law provides various benefits related to employment, unemployment, and temporary leaves from employment due to such things as sickness, caregiving, maternity, parenting, and other similar situations. Detailed information regarding such benefits is provided by the Canadian government online at www.canada.ca/en/services/benefits/ei.html. Regarding benefits for unemployed persons, it appears that there is no exception for churches and other religious organizations under Canadian law similar to what exists under United States law.

Regarding Non-disclosure Agreements

Non-disclosure agreements can be “stand alone” documents between an employer and employee during the time of employment, or during some period of time following the end of employment. When such agreements are used following the end of employment, they are commonly part of a broader severance agreement that covers multiple topics, including continuation of certain types of compensation for a limited period of time, non-disclosure of certain types of information (such as trade secrets), and refraining from certain types of communications (such as disparaging comments about the other party). This committee believes that references in CA 23-2 to non-disclosure agreements were intended for “post-employment” situations and has crafted this report accordingly.

Severance agreements and—by extension—non-disclosure agreements are not legally required, and employees are not legally entitled to them. Nevertheless, they are commonly used when employment is terminated. This is a common practice whether or not the termination is agreed to mutually, and regardless of who the employer is (a church or other religious or non-profit organization or some other type of entity).

Reasons for using non-disclosure agreements include the following:

1. If termination of employment has not been mutually agreed to, an employer may require such an agreement as a condition for its provision of post-employment benefits (e.g., continuation of monetary compensation or benefits for a specified time period). Absent such an arrangement, the employer may find itself in a “no win” situation—namely, being criticized by the employee while providing compensation or benefits to the employee (even though not required to do so), while at the same time being reluctant to respond to the employee’s criticism for reasons of public reputation, potential liability, or simply distractions from other things that are more worthy of its attention.
2. Even if the termination has been mutually agreed to, a person’s attitude can change as time goes on, and consequently many of the considerations noted in the preceding subsection may still apply.

While there are good reasons for employers to use non-disclosure agreements, it is also true (as the CCA has noted) that at times non-disclosure agreements may be used for improper purposes. That negative potential does not mean, however, that their use should be abandoned.

The GSC uses severance and non-disclosure agreements, but it appears that no policy regarding their use has been formally adopted by the GSC or incorporated into the GSC’s Employee Handbook.

This committee believes that each termination of employment involves unique circumstances and considerations. Consequently, it is reluctant to recommend that the General Synod instruct the GSC to develop a formal policy regarding the use of severance and/or non-disclosure agreements, or what they should include when used.

At the same time, however, this committee believes that it **is** important that those among the GSC staff who deal with terminations of employment be guided by and attentive to certain principles that should be obvious to all followers of Christ. They include principles of *agape* love, justice, and grace. Indeed, many of these are already put into practice. Examples include allowing for someone to get their full payment for vacation and unearned time even when the employee is not otherwise entitled and allowing benefits coverage to continue through the full month when a termination occurs.

Therefore, this committee offers the following recommendation:

RF 24-11

To instruct the General Synod Council to include in the GSC Employee Handbook a basic, general, simple explanation of the legal situation regarding how unemployment insurance relates to GSC staff and how non-disclosure agreements are used when the relationships to staff members are ended, and to make such information available in a publicly accessible location for such times when inquiries are made by RCA members or assemblies, for report to the General Synod of 2025.

Reasons:

1. While the *ad hoc* committee was able to retain this information with relative ease, it still required an effort. In the absence of readily available information, it is human nature to assume the worst and to imagine plots where none exist. Having this information, perhaps simply reprinted from this report, readily available for anyone who asks will increase transparency and decrease suspicion.
2. While most people would not know to search the *Acts and Proceedings of the General Synod* (commonly referred to as the *Minutes of the General Synod*) for this information, a link to this report, either made publicly available or handy for certain staff to share with inquirers, as the GSC sees fit, would answer the need at negligible cost.