

## APPENDIX C

### NEW BRUNSWICK THEOLOGICAL SEMINARY A POLICY CONCERNING SEXUAL MISCONDUCT

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#### PREFACE

*New Brunswick Theological Seminary serves the sovereign God who in Christ, by the power of the Spirit, is redeeming the creation, reconciling a divided humanity, and establishing righteousness on earth. God calls the church of Jesus Christ to discipleship: to proclaim the gospel, to provide ministries of compassion, and to pursue justice and peace. The Seminary's mission is to prepare men and women for educated and faithful leadership in the church, particularly in congregations, and also in specialized ministries serving church and society.*

-from the Seminary's Mission Statement

As Christians, we affirm and give thanks for the goodness of God's creation, including specifically the created goodness of our human sexuality. God has made us male and female, clothed us with bodies, and given us to one another to live in love even as God in Christ loves us. Our sexuality is as vital to our identities as human beings and Christians as is every other aspect of our personalities. We believe that God has created us to live in intimate relationships, and that our intimate relationships--as much as our professional lives--are contexts for proclamation of the gospel, ministries of compassion, and the pursuit of peace and justice.

We believe that healthy, creative, and responsible intimate relationships are marked by mutual nurture and tender regard for one another, respect for individual integrity, shared power, faithfulness, and interdependence. In theological terms, that interdependence is what the Apostle Paul describes as the willing restraint of freedom for the brother or sister for whom Christ died (see I Corinthians 8:1-11:1). In order for an intimate sexual relationship to seek and maintain these qualities, there must exist within it a relative balance of personal and social power that ensures each individual equal freedom to make choices and to maintain personal integrity.

Particular professional relationships of trust--between employers and employees, between teachers and students, between pastors and parishioners, between supervisors and seminarians, between therapists and clients, and so on--are by definition relationships in which such social and personal power is not in balance. In such relationships one person willingly relinquishes personal and social power to another for the sake of a particular goal: employment, education, spiritual nurture, healing. Because of this dynamic of unbalanced power, itself a potentially healthy and even life-giving dynamic, behaviors which normally belong in intimate sexual relationships cannot be healthy in such contexts and are rather potentially destructive in the extreme.

Even in relationships between peers--in the Seminary community, those between students, between faculty members, between administrators, and so on--in which social and personal power is theoretically balanced, individuals can also sometimes use sexuality and sexual behaviors to exert power, manipulate, or coerce one another, thus encroaching on one another's personal integrity. These, too, are situations which are potentially destructive.

This policy statement seeks to address both sorts of situations in the Seminary community and to create a context within which right relationships between individuals are nurtured and protected. Its goals are:

- (1) to delineate professional sexual ethics for members of the New Brunswick Theological Seminary community,
- (2) to describe the Seminary's institutional commitment to nurture development of those ethics in individuals, and
- (3) to provide for a just and compassionate process for addressing situations in which those ethics may have been transgressed.

This policy applies to behavior in relationships created by virtue of persons' participation in the life, work and programs of New Brunswick Theological Seminary.

## I. DEFINITIONS

Sexual misconduct includes the following:

1. Sexual transgression is defined as behavior which transgresses or crosses the proper boundaries established by professional relationships of trust. Thus, sexual transgression entails engagement, in the context of a ministerial or professional relationship of trust, in behaviors which normally belong in intimate sexual relationships, with the result that trust is broken.
2. Sexual harassment is defined as any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:
  - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, faculty or administrative status, or academic status;
  - b. submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment, faculty or administrative status, or academic status; and/or
  - c. such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an employee, administrator, faculty member, or student, or with an individual's educational experience; or creates an intimidating, hostile, or offensive work or educational environment.
3. Child sexual abuse is defined as any adult sexual contact whatsoever with any person under 18 years of age, where the difference in age is more than two years, and as provided for in the New Jersey Code of Criminal Justice 2C:24-4, Endangering the Welfare of Children; or 2C:24-7, Endangering the Welfare of an Incompetent Person, or in the New York Penal Code 130.55, 130.60, 130.65, Sexual Abuse of a Child; or 130.67, 130.70, Aggravated Sexual Abuse of a Child; or 260.10, 260.25, Endangering the Welfare of a Child or Incompetent Person.

4. Rape or sexual contact by force or coercion is defined as provided for in the New Jersey Code of Criminal Justice 2C:12-10 (Stalking) and 2C:14-2, 3, 4 (Sexual Assault, Criminal Sexual Contact, Lewdness), or in the New York Penal Code 130.20 (Sexual Misconduct); or 130.25, 130.30, 130.35 (Rape); or 240.25, 240.26, 240.30, 240.31, 120.13, 120.14, 120.15 (Harassment and Menacing ("stalking")); or 245.00, 245.01 (Public Lewdness and Exposure).

## II. THE SEMINARY'S COMMITMENT

New Brunswick Theological Seminary through this policy of the Board of Trustees commits itself institutionally to provide an environment which nurtures and protects individuals and their right relationships with one another. To that end:

1. The Seminary will publish this policy in the Student, Faculty and Administration, Staff, and Supervised Ministry Handbooks.
2. The Seminary will provide biennial educational experiences for faculty, administrators, staff, and supervisors which raise the issues of sexual misconduct and offer constructive and theologically informed ways to discuss them.
3. The Seminary will make participation in an educational experience concerning professional sexual ethics a requirement of its degree programs, beginning with students admitted in the 1994-95 academic year.
4. Because language can either create an environment in which all persons are valued equally, or undermine such an environment, with important consequences for a climate that inhibits or supports sexual misconduct, the Seminary's inclusive language policy is an important part of this commitment. It is published regularly in the Seminary's Student, Faculty and Administration, Staff and Supervised Ministry Handbooks.

*New Brunswick Theological Seminary is a Christian community of men and women marked by racial, ethnic, and ecumenical diversity. The way we communicate in written and spoken language expresses our conviction that in Christ "there is neither Jew nor Greek ... slave nor free ... male nor female" (Galatians 3:28). It is, therefore, the policy of the Faculty of New Brunswick Theological Seminary that in our written and spoken language--in course work, worship leadership, and public and internal communication--the full diversity of the people of God be reflected. When speaking or writing about human being's, we do not use gender-specific, racist, or culturally exclusive language; when speaking or writing about God, we employ the full spectrum of biblical and theological imagery for God that includes and goes beyond gender-specific anthropomorphism (action #88-04, adopted February, 1988).*

5. The Seminary will provide procedures for resolving complaints of sexual misconduct as defined in section I., "Definitions."

### III. PROCEDURES FOR RESOLVING COMPLAINTS OF SEXUAL MISCONDUCT

#### A. APPLICABILITY

1. The following procedures and standards are to be followed in cases of complaints concerning behaviors defined as sexual misconduct in section I., "Definitions."
2. The following procedures and standards apply to the behavior of trustees, faculty (permanent and adjunct), supervisors and members of lay committees in seminary-affiliated supervised ministry settings, administration, staff and students of New Brunswick Theological Seminary.
3. The following persons have standing to bring a complaint under this policy: trustees, faculty (permanent and adjunct), supervisors in seminary-affiliated supervised ministry settings, administration, staff, and students of New Brunswick Theological Seminary for themselves and on behalf of their minor children, and the spouses and adult children of students, alumni/ae and other former members of the Seminary community, and members of congregations in which Seminary students are engaged in supervised ministry approved by the Seminary.
4. Where the Dean of the Seminary is the object of a complaint, the designated grievance officer (see below) shall take the Dean's role as provided in the policy.
5. Where the President is the object of a complaint, the President's role in these procedures shall be taken by the Moderator of the Board of Trustees.
6. Where a trustee or supervised ministry supervisor is the object of a complaint under this policy, the President shall appoint a trustee or supervisor (respectively) to the Hearing Board in addition to its regularly appointed members.

#### B. COMPLAINT RESOLUTION PROCEDURES

##### 1. *INFORMAL* RESOLUTION OF A COMPLAINT

The complainant may seek informal resolution of her/his complaint by confronting directly, and discussing with, the alleged harasser her/his feelings about the unacceptable behavior, with the object of ending the misconduct informally and privately. If the complainant finds it desirable, she/he can request the Dean of the Seminary, or the designated grievance officer (see Note below), to assist in the informal resolution of the complaint, by naming a competent advocate to accompany the complainant in confronting the alleged harasser. This advocate should be appointed within three working days of the complainant first notifying the Dean of the Seminary or grievance officer. At the time that the complainant requests this action of the Dean of the Seminary or grievance officer, that individual shall inform the complainant of his/her options under this policy. The fact that a complainant claims this option for informal resolution of the complaint in no way restricts his/her right to pursue the formal complaint process outlined in the rest of this policy.

[NOTE: The President, with the approval of the faculty, shall designate each academic Year from among the faculty, administrators, or staff members holding Administrator IV status a grievance officer who is of the other gender from the Dean.]

## 2. PROCESS FOR *FORMAL* RESOLUTION OF A COMPLAINT

### a. *Initiation of the Process*

The complainant may initiate a formal hearing process by submitting a signed complaint in writing to the Dean of the Seminary or the grievance officer. Ordinarily the complainant should present the complaint as promptly as possible after the alleged harassment or misconduct occurs; however, in cases when circumstances clearly prevented prompt action, the complaint will be received. Upon receipt of such a signed, written complaint the Dean of the Seminary or grievance officer is obliged without exception to forward the complaint to the Chairperson of the Hearing Board within three working days. At the same time the recipient of the formal complaint (whether Dean of the Seminary or grievance officer) shall inform the complainant of their options under this policy, and will provide a copy of the complaint to the charged party immediately.

### b. *Appointment of Advocates.*

Within one week of receiving the written complaint, the recipient (Dean of Seminary or grievance officer) shall appoint an advocate of the complainant's choosing for the complainant and an advocate of the charged party's choosing for the charged party. These advocates shall assist the complainant and charged party in representing themselves in the hearing process. The advocates shall be members of New Brunswick Seminary's faculty, administrators, staff, students, trustees, supervising pastors and their spouses. Although the charged party may consult with an attorney, in no case shall attorneys be permitted to appear as advocates.

### c. *The Hearing Board*

The Hearing Board is a standing committee of the seminary. It consists of one faculty member (and an alternate) elected by the faculty, one administrative staff member (and an alternate) elected by the Administrative Council, one support staff member (and an alternate) elected by the support staff, and one student member (and an alternate) elected by the Student Society. The term of office is one case. Members will be elected in the spring for the following academic year. The Board will elect its own chairperson after being composed in the spring. If no member of the Hearing Board is a counseling professional, the Hearing Board shall have the benefit of such a professional as a consultant. Likewise, the Hearing Board shall have the benefit of the seminary's legal advisor as a consultant.

d. *Procedures to be Followed by the Hearing Board*

- (1) The Hearing Board will begin meeting within twenty-one days of receiving the complaint, and report its finding and recommendation for action to the President within ninety days of the submission of the complaint. A copy of its finding and recommendation will be supplied to both the complainant and the charged party.
- (2) The charged party will be called upon in writing to appear and defend him/herself.
- (3) The complainant and the person charged with misconduct shall both have an opportunity to present whatever evidence and witnesses they deem relevant to the charge and to respond to evidence and witnesses presented by the other party, including cross-examination.
- (4) The burden of proof (by the preponderance, i.e., the greater weight, of the evidence) shall rest upon the person(s) bringing the charges.
- (5) At any point during the process, the Hearing Board may recommend psychological counseling for either of the parties involved.
- (6) Either party shall have the right to challenge the presence of any two members of the Hearing Board on a peremptory basis, or any member for cause. Those persons shall then be replaced by their alternates.
- (7) Any person involved in adjudicating a case under this policy who believes that they may not be able to decide the case impartially, or believes that it would appear to others that they are unable to decide the case impartially, may request that the President excuse them from their duties. In the event that the President judges that the person's request for excuse should be granted, he or she shall be replaced by their alternate.
- (8) A record of the evidence presented and considered by the Hearing Board must be established and kept. This record shall include a written summary of the evidence and arguments presented to the Hearing Board, audio tapes of all oral argument and evidence presented to the Board, and all written submissions of argument and evidence. This entire record shall remain confidential.
- (9) Confidentiality will be respected in all these procedures. The procedures will be private.
- (10) After hearing the evidence, the Hearing Board will render a finding. The finding is to be based only on the evidence in the record. On the basis of this finding a recommendation for action will be made as well. Prior to determining its recommendation for action the Hearing Board shall consult with the aggrieved party.
- (11) The finding and recommendation of the Hearing Board shall be approved by three quarter vote and shall be final, subject only to review by the President to assure that proper procedures were followed. If the President finds material procedural errors, the entire matter is to be referred back to the Hearing Board for rehearing.

(12) The President may not change the finding of fact of the Hearing Board, but she/he may modify the recommendation for action. When the recommendation for action proposes steps that require the action of the faculty or trustees, the President, in collaboration with the report writer, shall present the recommendation to those bodies.

(13) If new evidence comes to the President, she/he must refer the case back to the current Hearing Board for a new finding and recommendation. The President must make her/his decision within two weeks of receiving the finding.

### C. DISCIPLINARY PROCEDURE

#### 1. A FINDING OF UNSUBSTANTIATED CHARGES

If the finding is that sexual misconduct did not take place, the President, in consultation with the person falsely charged, shall take steps to remove or alleviate adverse consequences resulting from an accusation, in ways appropriate to the particular case.

#### 2. A FINDING OF SUBSTANTIATED CHARGES

a. Disciplinary action can be recommended through these penalties or others deemed appropriate. When reporting to the President, the Hearing Board, based on their knowledge of the facts and findings of the case, and in consultation with the victim, shall make a recommendation concerning an appropriate course of disciplinary action, which may include one or more of the options listed below. In addition, the Hearing Board shall make a recommendation concerning the placement of an open notation in the charged party's personnel file, or in the case of a student, on the transcript, to the effect that confidential disciplinary action was taken under this policy, and that the charged party's permission is required for detailed disclosure. Further, the Hearing Board may recommend that for a specific time period (e.g. one year, two years, indefinitely) prospective employers be informed of such a notation.

- 1) *ADMONITION*: An oral statement by a representative of the Seminary to the offender that explains what about his/her conduct was wrongful, and that reflects the nature of the offense. This statement should also name expectations for changed behavior. Where the finding in the case concludes that the misconduct arose because the parties involved operated from different cultural assumptions the President may elect, in recording the substantiated charges as provided below, to append a statement in both the open and the sealed record that this was judged due to cultural differences.
- 2) *WARNING*: A notice, to the offender in writing that failure to discontinue objectionable conduct forthwith will result in penalties under options (3)-(7) below.
- 3) *PROBATION*: The offender will report to a supervisor within the seminary on a regular basis for a specified period of time. During this time a program of psychological counseling may be either recommended or required, at the offender's own expense.

- 4) *RESTITUTION*: The offender will be required to pay the costs of needed psychological counseling for the complainant for a period of up to two years, but not to exceed a total of \$10,000. This option is not intended for use as a sole sanction, but is intended for use in combination with other sanctions listed here.
- 5) *SUSPENSION*: Exclusion from classes or employment or other participation in seminary activities for a definite period of time. The conditions for readmission shall be stated in the order of suspension, including possible psychological counseling for the complainant and/or offender, at the offender's expense.
- 6) *EXPULSION*: Termination of status or employment. This may also involve the withholding of a degree or certificate in the case of students.
- 7) *REFERRAL TO LAW ENFORCEMENT AUTHORITIES*: Any substantiated complaint that involves behavior which appears to violate the criminal laws of the State of New Jersey or New York shall be reported to the appropriate law enforcement authorities by the Seminary.

b. The President will receive the finding and recommendation from the Hearing Board, make a determination on procedural correctness, and impose a penalty within two weeks of receiving the finding and recommendation, and under the restrictions noted above.

c. Where the offender, by virtue of ordination or participation in a formal process of ministerial preparation, has accountabilities to denominational authorities and/or a governing body, or is officially engaged by the seminary to serve on a lay committee in a seminary-affiliated supervised ministry setting, the President shall inform the appropriate denominational authorities and/or the appropriate governing body(ies) that charges have been sustained against the individual in question. The President shall also discuss with the victim and offender the possibility that denominational and/or other policies and disciplinary procedures may apply in addition to the Seminary's policy.

d. If the finding is that the charges are substantiated, and no appeal is filed, a sealed record of the charges and their disposition shall be placed in the charged party's file. Upon the recommendation of the Hearing Board and concurrence of the President, an open notation may be made in the charged party's personnel file, or in the case of a student, on the transcript, to the effect that confidential disciplinary action was taken under this policy, and that the charged party's permission is required for disclosure. The Dean of the Seminary or other personnel officer will inform prospective employers of such a notation according to the terms specified by the President as part of the penalty imposed.



#### D. APPEAL PROCEDURE

1. After the President has reviewed the procedural correctness of the hearing process and imposed a penalty where the charges have been substantiated, either party may appeal a decision of the Hearing Board to the Trustees of New Brunswick Theological Seminary. Written intent of appeal must be submitted to the Moderator of the Board of Trustees within two weeks of the President's decision, stating the grounds of appeal. The written submissions for or against the appeal itself must be filed within 30 days of the President's decision. These are to be filed with the Moderator of the Board of Trustees.
2. The Moderator of the Board shall appoint and convene a committee of the Trustees to review the finding and the records of the original hearing procedure, as well as the written submissions for and against the appeal. The Trustee Committee may either sustain the finding without a hearing or grant a hearing. This Committee will meet within 30 days of the Moderator of the Board of Trustees having received the written submissions for and against the appeal, and shall decide whether to sustain the finding or grant a hearing within two weeks of this meeting.
3. If a hearing is granted, the Moderator of the Board of Trustees shall notify the parties in writing of the date and place of the appeal hearing, which shall be at least two weeks, but no longer than four weeks, from the date of the written notification concerning the hearing. The purpose of this hearing is to receive from both parties oral arguments concerning the appeal.
4. The appeal is to be based on the record developed before the Hearing Board. The Trustee Committee may review the matter for material procedural errors, may substantively review the finding of the Hearing Board on the merits, and may review the appropriateness of the penalty imposed by the President. The Trustee Committee shall have discretion to remand the matter to the Hearing Board with instructions, or to modify or reverse the decision of the Hearing Board as well as the penalty imposed, if any. If, on appeal to the Trustee Committee, the appellant claims to have come across newly discovered evidence, and if the Trustee Committee is satisfied that the newly discovered evidence is material and could have affected the outcome, the matter shall be remanded back to the Hearing Board for presentation of the newly discovered evidence.
5. A record of the arguments presented and considered by the Trustee Committee must be established and kept. This record shall include a written summary of the arguments presented to the Committee, audio tapes of all oral argument presented to the Committee, and all written submissions of argument. This entire record shall remain confidential.
6. Confidentiality will be respected in all these procedures. The procedures will be private.
7. The Moderator of the Trustees shall send written notice of the Trustee Committee's decision to the parties within three working days of the hearing of the appeal.
8. The decision of the Trustee Committee is final, subject only to review by the Board of Trustees to assure that proper procedures were followed. Such review will be conducted by the Board only upon the request of the complaining or accused party, providing such request is filed with the Moderator of the Board of Trustees within three weeks of the Trustee Committee rendering its decision on the initial appeal. If the Board finds material procedural errors that could have affected the outcome of the proceedings, the entire matter is to be referred back for a new hearing procedure at the lowest level of the process at which the errors were found.

9. In the case where charges have been substantiated against a General Synod Professor of Theology, and a penalty of dismissal has been imposed, once the appeals provided for in this policy have been exhausted, the professor retains his/her right of appeal to the General Synod of the Reformed Church in America (Book of Church Order, Part IV., Article 8., Section 5.).

10. If no appeal from the decision of the Trustee Committee is made, the Trustee Committee will report to the full Board only that they have heard the case and reached a conclusion.

11. After all appeals have been exhausted, if the finding is that the charges are substantiated, a sealed record of the charges and their disposition shall be placed in the charged party's file.

Upon the recommendation of the Hearing Board and the concurrence of the President, an open notation may be made in the charged party's personnel file, or in the case of a student, on the transcript, to the effect that confidential disciplinary action was taken under this policy, and that the charged party's permission is required for disclosure. The Dean of the Seminary or other personnel officer will inform prospective employers of such a notation according to the terms specified by the President as part of the penalty imposed.

#### **IV. THE PROCESS OF IMPLEMENTING AND EVALUATING THIS POLICY**

The joint faculty-administration-staff-student task force that was responsible for drafting this policy will design and implement during the Spring term of 1994 a series of educational events designed to interpret this policy to the various segments of the seminary community (faculty, administration, staff, students, supervising ministers, spouses) and to hear any additional concerns from the community. In these events the members of the task force will be responsible for the interpretation of the policy to the community. This will constitute the first biennial educational experience mandated in section II., subsection 1.

At the same time the President will appoint a task force composed of faculty, administration, staff and students whose role in these events is to listen for concerns that may point to a revision of the policy. Where the expressed concerns warrant a revision of the policy, the task force will formulate proposals for revision, and will present those proposals to the Faculty, Administrative Council and Society of Inquiry for endorsement to the Board of Trustees no later than its winter, 1995, meeting.