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### Responding Restoratively to Student Misconduct and Professional Regulation – The Case of Dalhousie Dentistry

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# 9

## RESPONDING RESTORATIVELY TO STUDENT MISCONDUCT AND PROFESSIONAL REGULATION

### The Case of Dalhousie Dentistry

*Jennifer J. Llewellyn*

#### Introduction

I write this chapter on the relationship between restorative justice and responsive regulation on the third anniversary of a case that embodies their relationship in all its complexity and promise.

On December 16, 2014, four female fourth-year students in the Faculty of Dentistry at Dalhousie University in Halifax, Nova Scotia, Canada, brought forward complaints under the University's Sexual Harassment Policy about offensive materials posted on a private Facebook group site (called the "Gentleman's Club" Facebook group) by 13 male members of their class. The women's complaints were not limited to the posted materials but concerned the climate and culture at the Faculty reflected in, and perpetuated by, the posts. The women chose to proceed with their complaints through a restorative justice process available as an informal resolution option under Dalhousie University's Sexual Harassment Policy. All 13 men initially agreed voluntarily to participate in the restorative justice process selected by the complainants to investigate and try to resolve the matter. Ultimately, 12 of the 13 identified Facebook members followed through on their agreement and participated in restorative justice. The Faculty of Dentistry and the University also agreed to participate fully in the restorative justice process related to the climate and culture aspects of the complaints.

The restorative process ran intensively for almost five months, concluding successfully on May 6, 2015. It was an integrative response to the many aspects of the Facebook situation: professional regulation, educational discipline, and institutional and professional climate and culture. As the familiar metaphoric representation of restorative justice indicates, this process required as restorative justice pioneer Howard Zehr (2005) so profoundly sets out, a changing of the lenses commonly employed to address such issues to allow the light and depth required for relational seeing and knowing. Through such a lens we can see restorative justice and responsive regulation woven together in the response at Dalhousie.

#### **Restorative Justice and Responsive Regulation: Responding to Relational Complexity**

Before looking at the Dalhousie example further, it is important to consider the nature of the relationship between restorative justice and responsive regulation it illustrates. The relationship is a reciprocal

one whereby each requires the other to be fully realized. John Braithwaite's (2002) ground-breaking work identified restorative justice practices as promising and essential elements in responsive regulation. This is true but restorative justice offers more to responsive regulation than effective practice foundational to the responsive regulation pyramid (Braithwaite, 2002, pp. 30–34). The modern development of restorative justice began as practical reforms to justice processes aimed at greater participation and empowerment of affected parties, including victims, offenders, their support communities, and the wider connected communities. These practical reforms took hold in response to the perceived failures of criminal justice often absent or ahead of research and theory. The evolution of restorative justice, oriented in response to the urgent needs of individuals, groups, and communities failed by the traditional justice system, has had a lasting impact on the understanding of restorative justice. Most accounts of restorative justice now ground it as a way of seeing crime and criminal harms—as an idea or an approach. The implications of this conceptual underpinning have, however, been limited, for the most part, to explaining or advocating for the use of its practices. This leaves untapped the potential of restorative justice as a theory of justice to affect our understanding of justice itself and the structures, systems, and institutions through which it is pursued. It is this broader notion of restorative justice that is key to fully appreciate the relationship with responsive regulation. From this starting point, restorative justice is not merely strategic practice for compliance within a responsive framework. It is essential for responsive regulation because it reveals relational complexity in ways that are required for responsivity.

The view of restorative justice that drives this chapter, as it did the approach at Dalhousie, starts from the understanding of restorative justice as a relational theory of justice (Llewellyn & Howse, 1998; Llewellyn, 2011). Justice on this account is fundamentally concerned with just relations. It seeks relations marked by respect, care/concern, and dignity. This approach to justice is rooted in a broader relational theory of the world. This theory applies to human beings and by extension the meaning of human justice as relevant to this chapter, but, it is not anthropocentric. Rooted in the relational and interconnected nature of the world, the approach is similarly relevant for questions of environmental justice and in relational to non-human animals (Deckha, 2011).

A relational theory of human beings is more than a factual description of the ways in which we live. It claims not only do we *in fact* live in relation (and relationship) with one another, we could not be otherwise (Llewellyn, 2011). This is true in its most basic biological and evolutionary sense but also in terms of how human beings come to know, to understand, and to define themselves (Meyers, 1997; Koggel, 1998; Mackenzie & Stoljar, 2000; Nedelsky, 2011; Downie & Llewellyn, 2011). A relational approach does not see relationship as a good, to be secured or promoted, but, rather, as a reality that must be taken into account. Relationality must be core to our understanding of justice and injustice and how we respond. Interactions and arrangements at interpersonal, institutional, or systemic levels will be judged as just depending on the extent to which they reflect or structure relations. Injustice is similarly defined relationally for restorative justice rather than defined by the breach of rules or necessarily tied to an offence or specific harm. Approached in this way, it is clear how restorative justice is relevant both in reaction to particular incidents of harm and responsive to existing/underlying unjust relations as in institutional, systemic, or social injustices (Harbin & Llewellyn, 2015).

Grounding restorative justice as a relational theory of justice defines and guides its application. It requires processes that take account of context, causes, and circumstances of incidents and issues to ensure comprehensive and integrated responses. This cannot be achieved through a fixed set of processes or practice elements. A principle-based approach to doing and assessing the work of justice is necessary. The answer, then, to whether a particular practice is restorative cannot be found simply by some measure of its practice elements (as in McCold & Wachtel's (2002) restorative typology) but in the

extent to which it reflects core relational principles in its process and substance (Llewellyn et al., 2013). At a principled level restorative processes are:

- Relationally focused: resist isolated view of individuals or issues;
- Comprehensive/holistic: take account of contexts, causes, and circumstances and are oriented to understanding what happened in terms of what matters for parties;
- Inclusive/participatory: relational view of parties with a stake in outcome of the situation—those affected, responsible, and who can affect outcome, communicative, dialogical processes that support agency and empowerment;
- Responsive: contextual, flexible practice attentive to needs of parties;
- Focused on taking of responsibility (individual and collective) not on blame;
- Collaborative/non-adversarial;
- Forward-focused: educative, problem solving/preventative and proactive (Llewellyn et al., 2013; Llewellyn & Llewellyn, 2015).

The robust relational conception of restorative justice affirms and explains why inclusive, participatory, and dialogical processes should serve as a starting point for regulation. Insofar as restorative justice processes and practices give central attention to relationship they are better able to marshal the knowledge, authority, and relational capacity needed to ensure successful justice responses. In this way, restorative justice serves as a backdrop for the regulatory pyramid and can inform interventions at the base and all the way up. It also helps discern when and why less interventionist approaches might fail according to where existing relationships are unable to support healthy and just regulation.

This account of the relationship between restorative justice and responsive regulation posits restorative justice as more than strategy or operationalizing a theory of compliance. It is more than just *foundational* to responsive regulation by virtue of its place at the base of the regulatory pyramid. It is *fundamental* to the very idea of responsive regulation. It is possible to read Braithwaite (2002) as suggesting a more limited view, as he explains the “most distinctive part of responsive regulation is the regulatory pyramid. It is an attempt to solve the puzzle of when to punish and when to persuade” (p. 30). The pyramid helps answer: “what do we do when [restorative justice] fails, as it often will? What is our theory of when not to use restorative justice?” (p. 27). It does so, he claims, by responding

to the fact that restorative justice, deterrence, and incapacitation are all limited and flawed theories of compliance. What the pyramid does is cover the weaknesses of one theory with the strengths of another. The ordering of strategies in the pyramid is not just about putting the less costly, less coercive, more respectful options lower down in order to save money and preserve freedom as non-domination. It is also that by resorting to more dominating less respectful forms of social control only when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate.

(p. 32)

This takes restorative justice, though, as a set of practices not a theory. As a relational theory of justice it offers more than collaborative and dialogical processes. It can identify the relational conditions and circumstances that require more structured interventionist responses and then inform processes and practices to secure those conditions until such time as capacity or commitment exists to relate in just ways reflective of respect, care/concern, and dignity. But, for this to be so, all levels of the regulatory pyramid must

be reflective and anchored by these commitments. None can forgo the values they seek to secure and produce. As the pyramid suggests “law enforcers should be responsive to how effectively citizens or corporations are regulating themselves before deciding whether to escalate intervention” (Braithwaite, 2002, p. 29). This capacity must then be nurtured by the ways in which law enforcers intervene. This makes the case for a restorative approach to responsive regulation to ensure that at all levels of the pyramid interventions are guided by restorative principles so as to build the capacity among citizens and corporations to govern themselves in future such that de-escalation in the pyramid is possible.

At times responsive regulation will entail a departure from robustly collaborative and inclusive processes that are the hallmark of restorative justice. This departure does not, however, necessitate a retreat from the relational principles that mark a restorative approach to justice. These principles need to shape the decision to employ non-restorative practices in view of the overall relational goals of just responsive regulation. Greater intervention should then be considered *within* a relational approach as it may be required to establish conditions for dialogue, participation, and collaboration of parties. Escalation up the pyramid, then, with the increased use of authority and intervention entailed does not necessitate an abandonment of a relational approach. The increased exercise of authority and potential for domination characteristic of the peak of the pyramid is no less relational in nature than the less dominating, freer processes at the bottom of the pyramid. Recall, relationship here is not describing a good or positive interaction but focused on the fact of relationship. Domination is not less relational by nature than its more positive relational dynamics at play lower on the pyramid. Indeed, it is precisely because of this relational nature and implications of these responses at the top of the pyramid that we should be concerned to ensure that they are used in a way that does not replicate, reinforce, or become sources of injustice. If the focus of justice is achievement of the conditions of just relationship—of mutual respect, care/concern, and dignity—then mechanisms of justice must take care to model such relations to the extent possible and the overall system of responsive regulation aim to establish the conditions for such relations in future. This is particularly important because responsive regulation is a dynamic model (Braithwaite, 2002). Escalation will only be effective in supporting responsive regulation if it is approached in such a way that it does not undermine de-escalation to more informal and robust relational networks. For responsive regulation to be successful there must be a feedback loop whereby relational skills and capacity needed for de-escalation are modelled and developed through interventions higher up on the pyramid. Decisions about moving up and down the pyramid should be considered within a relational frame and not beyond it.

This commitment to ensure a restorative approach informs the entire pyramid does not mean that only relational mechanisms or responses can be employed within the pyramid. While there will certainly be a preference for such mechanisms it is possible to accommodate the use of other responses that are not themselves restorative in nature. A relational approach requires their use be considered and justified through a relational analysis. For example, at the top of the pyramid, as Braithwaite has contemplated, non-restorative responses might be required including, for example, in the criminal context, imprisonment; in child protection, removing children from parents who do not want to give them up; in the corporate sphere, removing licences from businesses; or in the educational context, suspension or even expulsion. Taking a relational approach to regulation would certainly prefer restorative interventions where possible (as reflected by the commitment to such processes as the base of the pyramid with escalation only as necessary). A restorative framing should and does make a difference in terms of the strategies or practices included within the regulatory pyramid. This is consistent with Braithwaite’s (2002) own rejection of retribution and punishment within the values of restorative justice.

The most fraught issue in the values debate is whether values such as retribution, just deserts, fair punishment should be accommodated in a restorative justice framework. Many of the most distinguished restorative justice thinkers think they should. My own inclination is to think they should not. [...] I argue that in the conditions of late modernity our retributive values are more a hindrance to our survival and flourishing than a help. Hence restorative justice should be explicitly about a values shift from the retributive/punitive to the restorative. Retributive emotions are natural, things we all experience and things that are easy to understand from a biological point of view. But, on this view, retribution is in the same category as greed or gluttony; biologically they once helped us to flourish, but today they are corrosive of human health and relationships.

(p. 16)

A relational approach does not, though, insist on restorative processes. It does insist that responses, even if not restorative in their modality, are relationally considered in terms of their impact. A relational approach would require, for example, consideration of why an isolating mechanism might be used with respect to wider relational purposes. In this way it is possible a relational analysis could support the use of such mechanisms in certain circumstances.

In all circumstances, though, compliance with regulations and the mechanisms employed must be in service of justice—of promoting and protecting just relations. Whether within the criminal justice system or in the context of some other regulatory system justice must overlay responsive regulation. Braithwaite (2002) makes this assumption clear in his caveat that responsive regulation is concerned with compliance with *just* law, otherwise the dialogue would rightly be about the justness of the law and not regulating to secure compliance (p. 30). This commitment to justice cannot simply be the starting point for compliance but must invade all aspects of the enterprise of regulation. Absent this core commitment, responsive regulation can become manipulation in service of any end.

As much as restorative justice is essential to ensure just and effective responsive regulation, responsive regulation has a similar crucial role in restorative justice. Thinking about restorative justice through the lens of responsive regulation focuses attention on the dynamic nature of the work to regulate relationships key for justice. As described above, justice, understood relationally, is fundamentally about just relations—requiring relations marked by mutual respect, care/concern, and dignity. It is not, as some restorative justice practices might suggest, narrowly focused on reconciled interpersonal relations of the ‘hug and make up’ variety (Llewellyn, 2011). While this may sometimes be the result of restorative justice, it is not necessarily so. Just relations often entail the end of existing relational arrangements. The broader sense in which restorative justice conceives of, and approaches, its work towards just relations comes clear through the lens of responsive regulation. Relationships are not static or fixed and the work to secure just relations requires constant care and attention—it is regulatory work. To be effective, such regulation is best done by those closely involved with the relations at stake (whether at interpersonal, institutional, systemic, or societal levels). There will, though, be circumstances in which such ‘self’ regulation is not possible and intervention to assist and insist on compliance with just relational norms is required. In such cases, restorative justice insists the interventions must still focus on the relational nature of their aim and take an appropriate approach while always attending to the principle of inviting the person(s) to step up and use their own ‘agency’ to self-regulate.

Understanding the regulatory nature of the work of justice in this way requires restorative justice advocates to resist their own versions of regulatory formalism. It requires consideration of how and when to escalate to more formal interventions when self-regulation or dialogue-based processes

between and among parties are not possible (yet, or at all) or sufficient to respond to the situation and establish conditions for just relations. If restorative justice is about more than simply achieving a settlement or agreement between the direct parties on a particular issue, it requires understanding what happened in light of context, causes, and circumstances to establish a plan for what needs to be done to make the future better. This work demands flexibility in terms of the process and a vision of restorative justice as more than a one-off intervention (no matter how restorative). It also makes clear that within a restorative process one might need to move up and down the pyramid. Restorative justice cannot then be identified with a certain set of practices or limited to what happens within them. It must be designed to adapt and adjust depending on the needs and responses of the parties during the process. An approach to restorative justice as purely an alternative justice practice or aligned with particular tools is not up to this task. Responsive regulation reinforces the necessity for a principle-based approach to restorative justice if it is to be capable of the responsivity required to secure just relations.

The relationship between restorative justice and responsive regulation does not thus flow in one direction or the other. One is not a servant of the other. It is a relationship of mutuality—of interdependence—born of their shared relational DNA. They are, on this account, travelling companions on the relational path toward justice. Responsive regulation without restorative justice would lack an important moral compass and risk getting lost to the tyranny or illegitimacy of manipulation for compliance through the strategic use/misuse of relationships. Likewise, restorative justice requires responsive regulation to navigate when and how to move up and down the regulatory pyramid without abandoning the relational insights that ground and stabilize the pyramid.

## **Dalhousie's Facebook Incident: A Case Study of Restorative Justice and Responsive Regulation**

The response to the Facebook incident at Dalhousie University is a rich and layered case study of the interplay of restorative justice and responsive regulation in the face of relational complexity. Fully explored, it offers many insights and raises many questions and issues for consideration (Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015). Below I take up three key points relevant to this relationship: 1) the restorative process revealed the relational complexity of the issues and the parties involved; 2) responsivity was essential to the success of the process; and 3) the regulatory environment was a significant challenge for the success of the process.

### ***1) Restorative Justice: Revealing and Responding to Relational Complexity***

Dalhousie Dentistry is a case study in the importance of a restorative approach to reveal relational complexity of the issues, the parties, and their roles.

#### ***a. Relational Understanding of the Issues***

Perhaps the most fundamental difference the restorative justice approach made in the Dalhousie case was to the understanding of the issues involved. Traditional approaches to such matters, whether through the criminal justice system or university complaint and discipline processes, focus on regulating behaviour. This influence was evident in the initial reactions to the incident on- and off-campus. The Facebook site became the subject of significant public attention shortly after it came to light through the release of select screen shots of the most egregious content. The public reaction, led by some prominent academic

leaders on campus, was swift. The site and the men involved were cast as concrete manifestation of the widespread problems of campus rape culture and misogyny. A public campaign was quickly organized demanding a response under the rallying cry ‘expel misogyny.’ The situation garnered an exceptional amount of public attention in mainstream and social media, including approximately 3,500 local and national news stories, a public petition demanding expulsion with over 50,000 signatures, and a trending hashtag on Twitter. The reaction linked the case to broader social problems and the culture and climate they create for women on campuses. However, the solution demanded centred primarily on the individual male students. The loudest calls focused on the individual actions of the men involved and sought criminal charges, and/or university and professional discipline. Wider questions about the climate and culture at the Dental School or the University were generally raised in terms of institutional culpability for the men’s actions and to compel a strong institutional response to the men. The demands for accountability for the men and the institution were shaped by the same individualized conception of culpability required for punitive responses (Harbin & Llewellyn, 2015; Heiner & Tyson, 2017).

It is likely that this individualized focus and approach would have prevailed but for the fact that staff within student and security services on campus had some prior experience with restorative processes on campus. This was significant not merely because of the process alternatives available but for the capacity to think about situations through a relational lens. As a result, when several of the women impacted by the Facebook site came forward to make a complaint under the University’s sexual harassment policy the staff were not hampered by a narrow individual focus of traditional processes but could see the issues, as the women described them, in all their relational depth and complexity.

The women clearly identified the conduct of the individual men in their class as unacceptable, harmful, and extremely hurtful. Their dentistry class was small, they knew each other well and were under no illusions about one another. They had more complex knowledge of the men involved and of the context for their behaviours. From the outside it might have been possible to portray this as an issue of 13 bad apples (even if remarkable that there could be so many rotten apples without a sick tree). From up close, though, the complexity was obvious. The women’s story about the Facebook site could not be fully captured as a matter of personal harassment. They had a different—broader—account about what happened and what mattered most about what happened to them. They located the harms they experienced and the issues at stake in their personal interactions as nested within sets of wider relationships—with their peer group, at the Faculty, within the profession, and in society (on nested relationships see: Nedelsky, 2011). The men’s comments and the existence of the Facebook site itself reflected attitudes, assumptions, and patterns within the culture of the institution in which they learned, the profession they sought to join, and the society in which they lived. The women did not excuse the men’s behaviour with this more complex account but sought to more fully understand its significance and impacts.

A relational approach clearly revealed the intersecting issues and relationships at stake in this case including:

- The climate and culture within the Faculty of Dentistry that shaped relationships between and among students and Faculty, across different programs within the Faculty including dentistry and dental hygiene and across the decades (Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015).
- The relationships between the Faculty and the profession—they were interdependent with the Faculty relying on the profession for instructional and financial support and the profession on the Faculty for professional preparation and development.



- Gender relationships within the profession.
- The relationship between the profession and the public—public trust was declining for dentistry specifically and generally with respect to self-regulated professions (Croutze, 2010; Smith, 2011).
- Relationship of Faculty and University administration with respect to University governance (MacKinnon, 2018).
- Societal issues related to gender violence and misogyny (including rape culture on university campuses) as reflected recently in the #metoo and #timesup movements.

What at first blush may have looked like an issue of personal harassment (even if one of many similar stories) was quickly recognized as a situation of significant relational complexity with a set of interconnected issues that could not be understood or addressed adequately in isolation.

### *b. Relational Understanding of the Parties and Their Roles*

This more complex relational view of the issues involved changed and expanded the parties involved. One of the most significant misconceptions of the restorative process at Dalhousie in the public discourse was that it was a process in which “the two sides come together and discuss what an appropriate punishment should be” (CBC News, 2014). In contrast to this perception, from the outset the restorative process involved a much wider circle of participants than the male and female students directly involved. It included students from other years and programs within the Faculty of Dentistry, Faculty, staff, and administrators from Dentistry, members of the profession including provincial professional associations and regulators, University administrators, on-campus advocacy groups related to the issues of safety and inclusion, representatives from women’s organizations and men’s violence prevention organizations in the province, patients of the Faculty’s clinic, and representatives of the wider community. Dealing with the relational complexity of the issues required what Mimi Kim refers to as “multidimensional holism,” that is, “the consideration of multiple perspectives, including those of survivors, community allies, and those doing harm, in the process” (2012, p. 19). Engagement of those connected to the issues in appropriate and meaningful ways within the process required more than the recognition that these wider groups had an interest and should be consulted on the nature of the process or its outcomes. It had to take account of the different and more nuanced roles and responsibilities of these parties in relation to the issues at stake.

This challenged the prescribed and fixed roles familiar from the standard individual punitive and adversarial responses to such incidents. The temptation to sort parties on one side or the other as offender or victim with the related assumptions about blameworthiness or innocence and responsibilities versus entitlements was significant. Responding to the relational complexity of the situation meant appreciating that parties might have experienced harm and at the same time held some responsibilities related to what happened and/or what needed to happen next. This was true, for example, for the Faculty and University administrators who experienced damage to the institution’s relationships and reputation from the men’s conduct but also bore responsibilities for the climate and culture within the institution that enabled or tolerated such views and behaviour and for failures to respond to earlier complaints.

Similarly, the relational approach disrupted assumptions about the roles of the women and the men involved from the dentistry class. For example, the women who sought the restorative process were clear that their classmates needed to be held to account for their actions but argued that real accountability

required the men be part of the solution and carry their responsibility to bring about change along with leaders from the Faculty, the University, and the profession. In their words,

We were clear from the beginning, to the people who most needed to hear it, that we were not looking to have our classmates expelled as 13 angry men who understood no more than they did the day the posts were uncovered. Nor did we want simply to forgive and forget. Rather, we were looking for a resolution that would allow us to graduate alongside men who understood the harms they caused, owned these harms, and would carry with them a responsibility and obligation to do better.

*(Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015, p. 9)*

This would require the men involved to step into the process prepared to accept their responsibility for the harms caused by their actions and to be able to stand along side the women impacted to hold other parties to account for their contributions to the climate and culture that facilitated and perpetuated harmful patterns of interaction and behaviour. The women involved in the restorative process also came to recognize the complexity in their own roles:

As we moved through the restorative process, eventually we also had to unpack the assumptions we as women brought with us. We are a part of a generation in which inappropriate sexualization is more common and widespread than ever before and we have become used to this. Because such attitudes are everywhere, we rarely take time to question them. For example, we had always known about the men's Facebook group but had always assumed that, as a rule, there were no posts about women in our class. We assumed though, and did not address the fact, that the material on the site was likely by times sexist, unprofessional, and inappropriate. It was only when we knew it was about us that we took real offense. This made us realize that we, as women, also contribute to the culture and climate that allows Facebook groups like the one at issue to persist and flourish. We had to ask ourselves: why we are only up in arms when it is about us, but unconcerned with the objectification of other women? Why was this tolerable? We needed this restorative process because we had work to do ourselves.

*(Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015, pp. 9–10)*

This honesty about the complexity of their roles resulted in significant criticism from those committed to a more formalistic approach. An external task force appointed by the University to quell public criticism chose to ignore the experience of the women who participated in the restorative justice process (most women from the class) in favour of the view of one female student who opted out. The women's response was also deemed "unnecessarily self-critical" and evidence of an undue burden placed on them (*Globe & Mail*, 2015). Two of the women involved in the restorative process later reflected:

By acknowledging our understanding of the role we played in the culture at the school, we did not excuse the wrongs that were done by the men in the group, nor did we place the blame on ourselves as some have suggested. The men still had to be accountable for their actions, but we took the opportunity the restorative justice process provided to develop a deeper understanding of the issues that shaped climate and culture and to empower ourselves to affect the changes we

wanted to see because we felt this was also our right and responsibility. Restorative justice processes are about learning and are future focused, and we would not have been fully participating in the process if, by the end, we were preceding exactly as we had before the process began.

[. . .]

Perhaps our decision to participate in the RJ process was too complicated a story, or we did not seem like good enough victims to earn a place in the narrative the Task Force crafted of what happened. Regardless of whether we warranted a place in the Task Force's story, restorative justice was a path that we chose for ourselves, and the gains we made individually and as a collective of young professionals will carry on.

*(Llewellyn, Demsey, & Smith, 2015, pp. 48–49)*

Recognition of the relational complexity of the issues at stake necessarily also affected the scope and nature of the parties' involvement. Viewed as a matter of interpersonal harm within the institution, the standard response would have focused on individual culpability despite the collective participation in the Facebook site. The institution would have stepped in and taken up its role to hold the men accountable by prosecuting the case before the Dalhousie Senate Discipline Committee. The women's participation would be limited after they filed the complaint. They would be the subjects of, but not agents within, the process, something the women in the restorative process were clear they did not want. "As the subjects of some of the offensive Facebook material, we wanted to be active participants in responding to it. It became clear to us that only through the restorative justice approach could we play the active roles we wanted" (Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015).

The centrality of the women impacted was a significant difference, but not the only one, a restorative approach made in terms of widening the circle of participants. Despite some common tag lines of restorative justice as "victim-centred," such a singular focus would fail for many of the same reasons a narrow offender-centred process does. Instead, restorative justice widens and re-centres processes relationally for more inclusive and dynamic involvement of all parties. This was significant for the women harmed in this case not only in terms of their own roles but also their engagement with other parties needed for a meaningful outcome.

The relational complexity visible through a restorative lens together with the widening of the parties involved and the nuanced and multifaceted nature of their roles possible within a restorative process was essential to responsive regulation. It allowed the involvement of a wider set of parties to provide insight, influence, and contribute to the conditions required for future compliance. Braithwaite's well-known example of nursing home regulation revealed the importance of moving away from a prescriptive and punitive regulatory system to a restorative one involving the broad range of actors and stakeholders in the industry (Braithwaite, Makkai, & Braithwaite, 2007). The wider engagement brought compliance and produced better-quality outcomes and greater trust there, as it did at Dalhousie.

## ***2) Responding to Relational Complexity—Responsive Regulation for Restorative Justice***

Standard complaint processes are not designed to deal with relational complexity. They reflect a prescriptive and formal approach to regulating behaviour enforcing rules crafted to proscribe individual behaviour and to ensure accountability for transgressions. The women understood that under the

formal complaint process available to them what would be central about their story was the actions of the individual men and the solution available dictated by the code of conduct. Broader issues of climate and culture and other systemic matters would not be considered relevant within this process. These issues would be left for some other process to deal with, likely divorced from their harms. The women who undertook the restorative process did not want their experience to be reduced to micro-relational issues between the men and women in the fourth-year dentistry class. They could not be separated from the macro relational issues that shaped and marked the culture and climate at the dental school, on the campus, in the profession, and beyond. Any response to the Facebook site needed to appreciate this relational interactivity whereby the interpersonal was influenced and reflective of a sexist and misogynist culture that at the same time contributed, reinforced, and perpetuated that culture. Being responsive required a process capable of revealing and attending to these connections to disrupt this cycle and bring real and lasting change.

It is a common misconception that restorative justice consists of a single circle or conference. The role of responsive regulation in achieving restorative outcomes makes clear the importance of designing processes that are dynamic, layered, and tailored to the needs of the parties and to allow for evolution in their understanding of the issues. Processes must be multi-leveled to account for different and intersecting relationships. In the Dalhousie case the restorative process worked with similarly situated individuals and groups (intra-party sessions), it brought certain parties together on issues of shared importance (inter-party sessions), and gathered many or all the parties connected to the situation together when appropriate (multi-party sessions). A flexible approach to the restorative justice process was required so that decisions about who needed to be involved, when, and in what ways could be made throughout the process in response to ongoing feedback from the parties. For example, the Dalhousie process began with significant work separately with the women impacted by the posts and the men involved in the Facebook group to deepen their understandings of the situation. As part of the work to support learning for the men they met together with other groups impacted by or connected with the issues involved. The women also met together with others who could offer support and help them contextualize their experience (e.g. women from organizations concerned with gender violence and those within the dental profession). Contrary to assumptions about restorative process, it was only after significant work by the men and support processes for the women that the two groups came together within the process to address the impact of the men's actions. Through this process the men and women also identified common concerns related to the climate and culture at the Faculty and within the profession. They committed to working collectively through the process to address these concerns. The process was not, however, a linear one moving from the interpersonal to the institutional and the professional level. It was attentive to the relationships and issues as they were evolving during the process. For example, late in the process, after the members of the class had been collaborating for some time, it became clear that time and new insights surfaced issues for the women regarding the impacts of the men's actions that required further attention. This necessitated a return to an inter-party dialogue. In this way, the wisdom of responsive regulation was operative. The process was not fixed or rigid but sufficiently flexible to ensure time to test learnings, understandings, and commitments to change—to allow for failures and retries (Braithwaite, 2002, 2016).

This was also true in terms of the regulatory responses to the Facebook group members. The Faculty referred members of the Facebook group to the Academic Standards Class Committee (ASCC) (responsible for professional standards for graduation) as a matter of unprofessional conduct. The ASCC agreed to defer its final determination in the matter for the 12 men participating in restorative justice

to allow them to remediate their behaviour in line with required standards for professionalism through the restorative process. Before the restorative process was even underway, the University decided, in response to public reaction and concern, that the men should be suspended from clinic duties pending investigation. This decision was, in part, reflective of the expectations of formal regulatory responses that shaped debate about the case on- and off-campus. Nevertheless, with the restorative justice process came opportunity for responsive regulation in ways particularly important to the development of professional responsibility. As the men worked to understand the context and impact of their actions they were given the opportunity to return to the dental clinic and test their commitments to changed behaviour. The process was designed with a recognition that change is not linear and resistance and failure are part of the process (Kim, 2012; Heiner & Tyson, 2017). The process was designed, however, not simply to wait for failure in order to intervene with a different regulatory response. The men continued to meet within the restorative process during their return to clinic to reflect on how their changed perspectives affected their experience and work in the clinic. Working together within the restorative process they committed to supporting each other, learning with one another, and holding each other to account for compliance with new norms and behaviours as they returned to the wider educational and clinical environment. The restorative process provided a safe environment in which to test, fail fast, and adapt. Over the course of the process the male and female members of the class worked together to develop capacities and processes to support such regulation in the future. The importance of this for their future professional obligations was not lost on them.

Dentistry is a self-governing profession, a fact we didn't think about in detail five months ago. Having been through the restorative justice process, we have seen first-hand the immense responsibility that comes with being accountable for ourselves and ensuring accountability for how our colleagues act. In the restorative process we became comfortable questioning the status quo and demanding of ourselves that we come to the table with honesty and integrity. We have come to circle with members of our class, but also with our faculty and every level of leadership at Dalhousie, each time posing the same underlying question—how can we be better?

*(Report From the Restorative Justice Process at the Dalhousie University Faculty of Dentistry, 2015, p. 10)*

Key to the success of this restorative process at Dalhousie was the balance it enabled between healing and regulating through the marriage of responsive regulation and restorative justice. The focus was not simply on repair or healing the relationships harmed but to envisioning and establishing the conditions for the regulation of just relations in the future. The successful outcome was owed, in part, to the common commitment of healers and regulators, facilitated through the restorative process, to see beyond the horizon of conflict resolution and discipline for the Facebook site, to the culture and systemic work still ahead.

In this way, responsive regulation makes sense of the future-focused orientation of restorative justice. The process is aimed at establishing a plan amongst the parties to regulate future just relations. This was the outcome of the restorative justice process at Dalhousie. Contrary to traditional processes that result in judgements, orders, or lists of recommendations, the restorative justice process generated commitments to address what community accountability scholars call the “unfinished” (Heiner & Tyson, 2017). It was clear that the work undertaken within the process could not stop at its conclusion. The plan in the Dalhousie case contemplated the ongoing nature of the process of climate and culture change at the Faculty, the University, and in the profession. The parties within the process committed to be part

of that continuing work and established a responsive approach to ensuring mutual compliance by intentionally involving those who would be key to ensuring change. For example, it engaged students across the other years of the program so that they could be part of carrying the work forward. The processes involved Faculty, staff, members of the profession, and the community. The process ended with a day of learning explicitly focused on considering a plan to ensure meaningful and lasting change on the issues at stake. The success of the process in this respect must be measured in the years to come in terms of the breadth, depth, and sustainability of the resulting changes in climate and culture on campus and beyond. In terms of the changes on campus, other students at the Faculty of Dentistry have continued to work through a restorative process to assess issues of climate and culture and to make changes to the ways in which they govern and relate to one another. These efforts were recently considered along with other impacts of a restorative approach on campus through an external review process that found significant positive impacts and outcomes and recommended expanded use of the approach (Case, 2017).

### ***3) Concluding Reflections on the Dalhousie Dentistry Case and the Importance of the Regulatory Environment***

The Dalhousie case is a rich example of the potential, if not necessity, of integrating restorative justice and responsive regulation. It also reveals, though, in powerful ways how important the regulatory environment is to the success of such an endeavour. Regulatory formalism as the systemic or ideological backdrop makes working responsively and restoratively difficult if not, sometimes, impossible. A regulatory backdrop that is inconsistent with the relational orientation of restorative justice and responsive regulation will be destabilizing, challenging, and likely to cause significant misunderstanding and conflict. This was the case at Dalhousie.

The restorative and responsive approach at Dalhousie was undertaken within an existing regulatory eco-system that was very formalistic. It is never smooth sailing the first time something is tried and certainly the restorative response at Dalhousie was a first in response to this sort of situation. Yet the ferocity of the response cannot simply be explained by novelty and lack of understanding. There were clear and persistent misconceptions of the restorative process maintained and fostered throughout despite clear contrary evidence. It became obvious that some of this misunderstanding was not the result of a lack of information or knowledge. It was the product of an inability and/or unwillingness to understand because it would disrupt the power of those with regulatory authority or who took comfort in established and formal systems. The restorative approach threatened or sacrificed their authority and certainty. The existing systems were not designed to respond to relational complexity but to provide certainty through prescriptive precise regulations and responses. The restorative justice process at Dalhousie proceeded in the face of a number of these formal regulatory processes including the University Senate discipline process, the criminal justice system, the Faculty Academic Class Standards Committee, provincial professional regulatory bodies, and an external task force appointed by the University. While each posed slightly different challenges for the restorative justice process, the source of the threat they posed was similarly rooted in regulatory formalism. Each process valued and required certainty of response over evidence of effectiveness. Further, each was designed to respond to a specific or narrow issue in isolation from, and to the exclusion of, other connected issues. The siloed nature of these processes prevented the integrated and comprehensive response required in the midst of complexity. In order for the restorative justice process with its responsive approach to regulation to proceed these processes had to stand down or collaborate. Much could be learned by exploring the interaction of each

of these regulatory systems with the restorative process at Dalhousie. For the purposes of this chapter, though, it is sufficient and significant to note that these formal regulatory processes generated considerable expectations for some individuals and groups about what should have happened at Dalhousie. Indeed, the certainty offered by these systems resulted in considerable disappointment, occasionally rising to the level of outrage, that restorative justice had denied what was deserved or owed according to the existing formal processes.

While each process posed its own practical set of challenges for restorative justice in this case, it was the ideological commitments underpinning these systems that posed, perhaps, the greatest issue and continues to feed misrepresentations of the process. At its core the considerable controversy over the Dalhousie restorative justice process turned on a debate about the nature of the problem and related convictions about the solution. The concerns raised at the time that genuinely reflected misunderstandings of the process or worries for the safety and wellbeing of those impacted have receded. Indeed, in many cases such views have been transformed by the evidence of the success and lasting impacts of the process for the parties involved. For example, after the process concluded the media coverage shifted significantly (*Chronicle Herald*, 2015; *New York Times* Editorial Board, 2015; Johnson, 2016), viewing the process as a promising example. This view is shared by several universities and experts around the world now exploring a similar approach to address culture and climate on campuses and in professions that tolerate or perpetuate sexism, misogyny, homophobia, and other harmful forms of discrimination (Schulich School of Law, 2016; Campus Prism, 2017).

What has endured is a particular strain of discontent rooted in the certainty of regulatory formalism and a punitive logic so ingrained it has “effected an *epistemic occupation* such that many of us encounter profound difficulty imagining and conceptualizing the redress and prevention of violence (including state violence) without recourse to the heteropatriarchal violence of the state” (Heiner & Tyson, 2017). As a result, Heiner and Tyson argue,

it can even seem wrong to consider noncarceral responses to violence, because dominant neo-liberal logic delineates only one intelligible schema of accountability for violence—that of an individual (non-state) agent—and only one general form of legitimate response: state-centric punishment (whether confinement, execution, or other form of social death). Alternative forms of community accountability and redress that break from state-centric carceral systems appear baffling, irresponsible, even monstrous. The choice seems to be confined to either ensnaring an individual with the punitive arms of the state or fomenting complete, unaccountable disorder.

(Heiner & Tyson, 2017, p. 2)

Critics of the restorative response to the Facebook incident argue that relational complexity could not justify a departure from dealing with the men individually through the standard punitive discipline systems (CBC News, 2015). Surprisingly, perhaps, was that much of this resistance came from within the academic feminist community. The development of relational theory has been led by feminist scholars (Downie & Llewellyn, 2011; Koggel, 1998; Campbell, Meynell, & Sherwin, 2009; Nedelsky, 2011), but the critics saw the Dalhousie case differently. In their view, the place and time to take account of relational complexity was not here and not now—not when regulatory formalism would provide the certainty they felt was so needed. Though they certainly recognized the institutional, systemic, and societal problem of sexism and misogyny at stake in this case, it did not drive a more nuanced, relational, or complex appreciation of the behaviours and their causes, context, circumstances, or impacts. On the



contrary, it heightened the expectation for justice as available through existing individually focused, punitive, and adversarial processes. When the women asked for a restorative approach that might forgo this response it was perceived as a failure of justice. For these opponents, if the men were not expelled or punished the injustice would not be vindicated and the wider prospects for change lost. The radical insistence of the women who chose restorative justice that what was needed was education to equip and prepare these men to be part of the solution did not fit such a formalistic vision of justice.

The orientation and expectation of regulatory certainty seemed to impact how such critics could see the situation. Through the lens of individual, singular focused systems and the expectations and entitlements, the relational and complex nature of the facts was clouded or distorted. For such critics the flexibility and dynamic nature of restorative justice and responsive regulation and the irreducible relational complexity they reveal destabilized claims for certain and fixed responses in ways that seemed unconscionable and untenable compromises of their principles. The Dalhousie process was grounded in relational principles that insisted that facts matter. The commitment to contextuality makes it a fundamental principle of a restorative approach to take careful account of the relational context on the ground. This makes being right and doing right by those involved messy and uncertain work, but, by the marriage of restorative justice and responsive regulation, not remotely unprincipled. By contrast, the principles and convictions underlying existing regulatory systems ignore the complex realities in the case in service of the certainty of rigid rules and fixed processes. One can appreciate that such certainty offers immediate comfort in an uncertain world. But it will be cold comfort when it ultimately fails to respond to the relational complexity of the world and those wrapped up in it. The Dalhousie process is an example of responsivity to relational complexity through restorative justice. It is a model of responsive justice for a complex world.

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