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A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION



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An Alternative Approach to Sexual Abuse?

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The groundbreaking 1991 *Final Report of the Task Force on Sexual Abuse of Patients* transformed the regulatory approach to sexual behaviour towards patients. Instead of viewing it merely as sexual misconduct, it was now treated as a fundamental breach of trust exercised through the exploitation of an inherent power imbalance. Several resulting legislative provisions in the *Regulated Health Professions Act* reflect this approach including mandatory revocation (with an inability to apply for reinstatement for five years) for frank sexual acts between a registrant and a patient. Consent is irrelevant. Mandatory reports are required from any registrant or employer learning of any form of sexual abuse of patients by registrants. Some procedural protections were enacted including publication bans on the identity of the patient and the right to file an impact statement describing the impact of the abuse. Funding for therapy and counselling related to the sexual abuse is also available.

This approach has survived several legal challenges and is now well entrenched in Ontario. Despite these legislative changes,

the discipline process often remains difficult for patients. Further, given the private nature of the interactions and the serious sanction that results from a finding, allegations are often disputed, thus requiring a contested public hearing.

Regulators are rightly concerned that any departure from the “zero tolerance” approach to sexual abuse of patients could lead to at least a perception that they are minimizing the seriousness of such conduct and placing the public at risk.

However, a recent report, targeted at the criminal process, is raising the question as to whether alternatives might be available to better serve patients while still protecting the public: Evans, J. & Gray, M. (2025). *Bridging Justices: A Critical Exploration of Moratoriums on Restorative and Transformative Justice for Sexual harm in Ontario*. The report is co-sponsored by the Community Justice Initiatives (CJI) and Women's Legal Education and Action Fund (LEAF). A [webinar](#) accompanied the report.

The report speaks to the Crown policy of rarely permitting the diversion of sexual assault criminal charges from the trial stream. The report notes:

Decades of research has demonstrated that survivors of sexual violence often experience secondary victimization by the criminal legal system due to their treatment when disclosing or making a formal report of sexual harm, including disbelief or dismissal of their experience.... Research has demonstrated secondary victimization has a profoundly negative impact on psychological and physical wellbeing....

The research, including extensive interviews with those involved in addressing gender-based violence (GBV) and those who have experienced it, indicates that many “emphasized that offering alternative options could restore survivor autonomy and dignity, while also improving community safety through non-adversarial accountability.”

The options presented in the report are restorative justice (RJ) or transformative justice (TJ). RJ is defined as a process “... in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime, participate together in the resolution of matters arising from the crime, generally with the help of a facilitator....” TJ is described as an “alternative justice process intended to repair harm and prevent further or repeated injury by changing the structures and norms of a community” typically occurring outside of state control.

The report emphasizes the need for safeguards: “However, it is imperative that survivors are presented RJ/TJ as a potential option but are not pressured to take this route....” Concern is expressed that diversion is not permitted to lighten Crown case loads or be employed where

stereotypical views about the validity of the allegations are influencing the decision.

The report identifies the following safeguards as necessary preconditions to RJ/TJ:

- The option must be survivor-led and initiated. This would include the survivor defining “what accountability and repair look like for them.” For example, this could vary from a written acknowledgement, a face-to-face apology, steps to redress past harm or actions to prevent future harm.
- “RJ/TJ for sexual harm must be facilitated by someone with appropriate training and expertise in GBV”. Facilitators “must be knowledgeable about trauma and the unique power dynamics of sexual violence from a feminist lens.”
- Training must be provided for all those involved in the process including those working in GBV, facilitators, legal system actors, survivors, and the broader public.
- Ensuring that the process be culturally safe and relevant for the individual participants.
- Criminal legal proceedings need to remain an option at the discretion of the survivor.

The report addresses some misconceptions about RJ/TJ:

- “One is that people who have caused sexual harm are unlikely to take responsibility for the harm they have caused. While this does occur, it is not always the case.... The threshold for participation in the CJI Revive program is that the person who caused harm must acknowledge that they caused harm, and that their capacity for accountability can grow through ongoing discussions with a trained facilitator. The facilitator will

make this assessment after speaking to the person who caused harm.”

- “Another common misconception is that the survivor and the person who caused harm must meet face-to-face to discuss the specifics of what happened. While this may occur, it is not required. If a meeting between the parties is to occur, both the survivor and the person who caused harm work with an independent facilitator in preparation. Sometimes the survivor chooses alternative routes of communication with the person who harmed them, such as writing letters, text messaging, or video call.”

A particular challenge about transferring these concepts to professional regulation is the regulators’ mandate to serve and protect the public interest. RJ/TJ is principally focussed on choices of the individuals, particularly survivors. Regulators clearly will

want to know the perspective and position of patients but are not bound by them when they do not align with the public interest. While the larger community can have some involvement (e.g., Indigenous healing circles or circle sentencing), this is not a necessary part of the process. Even where public protection safeguards can be built into the process, publication of the outcome on the public register could be another hurdle.

If these concepts were to be incorporated into professional regulation, legislative change would likely be required. For example, the *Regulated Health Professions Act* prohibits any form of alternative dispute resolution for sexual abuse complaints.

As the report acknowledges in the criminal law context, much work needs to be done before RJ/TJ can become viable options for regulated professions.

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