

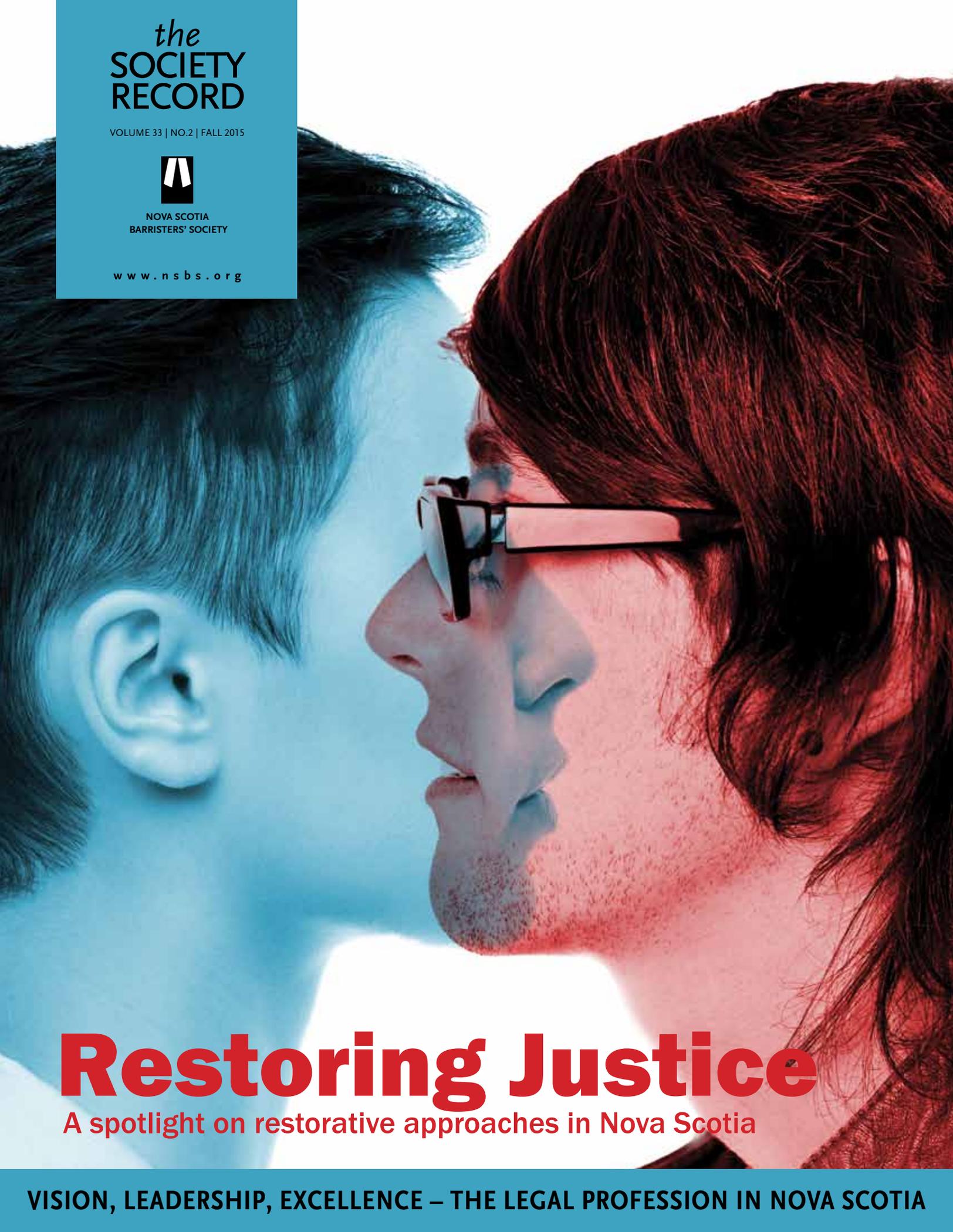
the
**SOCIETY
RECORD**

VOLUME 33 | NO.2 | FALL 2015



NOVA SCOTIA
BARRISTERS' SOCIETY

www.nsbs.org



Restoring Justice

A spotlight on restorative approaches in Nova Scotia

VISION, LEADERSHIP, EXCELLENCE – THE LEGAL PROFESSION IN NOVA SCOTIA



From “let’s get tough” to “let’s get it right”

Restorative justice offers a different understanding of what justice can mean in Nova Scotia

The first time I heard about restorative justice, I was skeptical. I was sitting in a first-year Criminal Law classroom at Dalhousie and Professor Wade MacLauchlan was attempting to open our minds by referencing how well it had worked in Aboriginal settings. My reaction was that while it might work for “them”, it wouldn’t work “us”.

In the 30 years since, I’ve come to learn that restorative justice not only works outside an Aboriginal context, it also works outside a criminal justice context.

The basis for this analysis nonetheless starts with criminal justice. Prof. MacLauchlan’s message disrupted my sense of justice. Through the influences of family, community and media, I grew up believing that jerks and crooks would straighten up if they received swift and unambiguous punishment – proportional to the harm they caused.

Three years into practice, my sense of justice was disrupted again when I joined Nova Scotia Legal Aid as a criminal lawyer. I was surprised to learn that for many of my clients, their turbulent upbringings inoculated them from the tough measures I thought would work. By the time they reached the criminal justice system most had been suspended, put down and/or slapped around so often that the punishments of probation and jail were just more of the same.

As they repeatedly cycled in and out of courts and jails, much of the sting of court-imposed penalties wore off. Despite its commendable balance of procedural checks and balances prior to sentencing, when it comes to imposing penalties and ensuring harm was not repeated,

the criminal justice system has been a dumping ground for social problems instead of a forum for opening them up to be resolved.

To compound this, the more personal needs of victims – for understanding, closure, restitution and a feeling of safety – too often go unmet.

Change will only happen if we ask for it. As legal professionals, we have a responsibility to shine a light on public misunderstandings about the shortcomings of the system they have entrusted to us. Our frustration with wrongdoing understandably triggers a “let’s get tough” reflex, but it is time that we shifted to a “let’s get it right” reflex. Our tough predispositions have been sacrificing opportunities for more satisfied victims, safer communities and reformed offenders for generations.

Restorative justice offers considerable promise in addressing these shortcomings because it keeps the focus on what is most effective, instead of what is a right level of toughness. By carefully viewing every case and every relationship as unique, it is more possible through restorative justice to identify and begin to address the systemic – and often generational – social problems that brought about the harm in the first place.

Research points to those harmed being the biggest winners in a well-implemented restorative justice process – with victims consistently reporting substantially higher satisfaction rates than in

Danny Graham QC

Special Advisor, McInnes Cooper

“As legal professionals, we have a responsibility to shine a light on public misunderstandings about the shortcomings of the system they have entrusted to us.”



the mainstream justice system. Recidivism and restitution rates are also more favourable in well-run restorative justice programs. Like any initiative, the keys to success are grounding the approach in core values, good practice and constant evaluation.

The Nova Scotia Restorative Justice Program has grown substantially in sophistication, scope and reputation since it began in the 1990s. Our province is now recognized around the world as one of the leading jurisdictions for restorative approaches. Justice leaders from every continent have come here to learn from our success.

The leadership of Prof. Jennifer Llewellyn and many others has been critical to this growth. Her greatest contribution has been in framing restorative justice as being “about more than a different way of doing justice. It is a different understanding of what justice requires.”

This foundation has opened the door to the applicability of restorative approaches to contexts we had not imagined 20 years ago. By thinking of conflict through the lens of broken relationships and not just broken rules, Nova Scotia is unlocking unseen possibilities in the reconciliation of relationships for individuals and groups of individuals.

Nova Scotia is pioneering the applicability of restorative approaches in schools, universities, workplaces, tribunals and reconciliation processes because the principles of restorative justice are universal, and our understanding of it is becoming more grounded.

Restorative justice is not a panacea, however. It does not offer solutions for all people in all situations. It is more challenging in situations where there are ongoing relationships amongst parties. Careful attention needs to be taken to ensure participants don't sacrifice their rights to due process, or feel coerced into participation.

Justice requires us to balance the due process interests of someone accused of causing harm with the need to find a resolution that leaves us healthier and safer. In restorative justice, this balance is still emerging and I welcome the debate that will continue to ensue.

Much progress has happened in the last two decades and I hope it continues. If ever there was a culture that can navigate the intricacies of these issues, Nova Scotia is it. At our best, we are a tolerant and balanced people – not seduced by fancy new ideas or easy outs. We understand both the frailties and shortcomings of human beings, and the power of community to hold each other accountable. ♣

Danny Graham QC was recognized by the Nova Scotia Government in 1998 for leading the development of the Nova Scotia Restorative Justice Program. Since then he has also worked nationally and internationally to advance restorative justice in other jurisdictions.



Nova Scotia Lawyers Assistance Program

Confidential Referral and Short Term Counselling Program

Available to members of Nova Scotia's legal profession, as well as their staff and families.

Through our provider, Homewood Health short-term counselling and other resources are available for managing personal, family and life events as well as helping you take charge of your health and well-being.

Call in confidence from anywhere in Nova Scotia, 24 hours a day: **1 866 299 1299**
1 866 398 9505 (en français) | 1 888 384 1152 (TTY)

Or log on to our website to access online wellness resources. Remember that your company name is NSLAP: www.nslap.ca