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Courage to Act Webinar - Making Outcome Decisions: Legal, Institutional, and Other Factors to Consider

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Anoodth: Hello everyone and welcome to the 9th webinar in our series. My name is Anoodth Naushan, Project Manager of Courage to Act. Courage to Act is a two-year national initiative to address and prevent gender-based violence on post-secondary campuses in Canada. It builds on the key recommendations within Possibility Seeds' vital report, Courage to Act: Developing a National Framework to Prevent and Address Gender-Based Violence at Post-Secondary Institutions. Our project is a First National collaborative of its kind to bring together experts and advocates from across Canada to address gender-based violence on campus.

The key feature of our project is our free webinar series where we invite leading experts to discuss key concepts and share promising practices on ending gender-based violence on campus.

Supported by CACUSS, these webinars are also a recognized learning opportunity; attendance at 10 or more live webinars will count towards an online certificate.

Our project is made possible through generous support and funding for the – from the Department for Women and Gender Equality (WAGE), Federal Government of Canada.

We could begin today's webinar by acknowledging that this work is taking place on and across the traditional territories of many Indigenous nations. We recognize that gender-based violence is one form of violence caused by colonization to marginalize and dispossess Indigenous peoples from their lands and waters. Our project strives to honour this truth, as we work towards decolonizing this work and actualizing justice for Missing and Murdered Indigenous Women and Girls across the country.

I'd like to pause now and invite everyone to take a deep breath with me, this work can be challenging.

Many of us may have our own experiences of survivorship, and of supporting those we love and care about who have experienced gender-based violence. A gentle reminder here to be attentive to our wellbeing as we engage these difficult conversations.

And before I introduce our speakers today, a brief note on the format.

Our speakers will present for about 50 minutes, and I invite you to enter questions and comments into the question and answer box. And I will

monitor this. And together we will pose these questions to them at the end.

The Q/A will happen in the last 30 minutes of the webinar. At the end of the webinar, you will find a link to an evaluation form. We'd be grateful if you take a few minutes to share your feedback as it helps us improve. This is anonymous.

Following the webinar I will also email you with a copy of the evaluation form and a link to the recording so you can view the webinar again and share with your networks.

We have four wonderful brilliant and accomplished speakers today, and I'm happy to introduce you to them now.

Karen Busby has been a law professor at the University of Manitoba for more than 30 years. One focus of her teaching, research and advocacy work is gender-based violence.

Most recently, together with Joanna Birenbaum, she has written a book titled "Achieving Fairness: A Guide to Campus Sexual Violence Complaints".

Another of her research projects is an empirical study on the reasons for attrition in criminal sexual assault cases. She is on the University of Manitoba's committee charged with reviewing the institution's response to campus sexual violence.

Karen has worked with various community and professional groups on numerous law reforms projects and case interventions related to gender-based violence, queer issues, and assisted human reproduction. This work has garnered numerous awards including the YW-YMCA Woman of Distinction Award, the Canadian Bar Association Hero Award, and the LAMBDA community changer award.

She is also a recipient of the University of Manitoba's highest teaching honour, the Saunderson Award for Excellence in Teaching.

Our second speaker, Joanna Birenbaum, is a litigator in Toronto with expertise in gender equality and sexual violence. Her extensive experience in this area includes constitutional litigation, civil sexual assault claims, employment law, human rights and workplace investigations, representing Complainants in sexual history applications in criminal sex assault proceedings, and defending malicious prosecution and defamation claims targeting women who have support – who have reported sexual violence.

Joanna's recent Supreme Court of Canada appellate advocacy in these areas includes Platnick v. Bent and R. v. Quesnelle.

Joanna prosecutes for a regulated health college in Ontario. Including in cases involving allegations of sexual abuse. Joanna also advises

institutions and employers on sexual violence policies and procedures. She was a McMurtry – 2014-2015 McMurtry Fellow at Osgoode Hall Law School and adjunct faculty at Osgoode from 2014-2017 teaching in the area of gender equality and the law and violence against women.

In addition to her private practice, Joanna is also the Director of Capacity Building for the Canadian Centre for Legal Innovation in Sexual Assault Law Response.

Our third speaker, Deborah Eerkes, is the Director of Student Conduct and Accountability at the University of Alberta. And a decision-maker under the Code of Student Behaviour. Including cases involving sexual violence. She has put into place measures to ensure that all work undertaken in the office is both trauma-informed and procedurally fair.

In addition to casework, Deb has been involved in the University's broader response to sexual violence since 2015 when she co-chaired a review of the University of Alberta's response to sexual assault. The report was released in 2016.

Following the review, she led the development of the University's Sexual Violence Policy suite approved in June 2017. And co-chaired a working group on using restorative justice in the context of sexual violence at the University of Alberta. The report released in 2018.

In 2011, she designed and implemented the Restorative Justice Program for U of A Residences. She chairs the Restorative Justice Training Team, which provides annual training to University of Alberta staff and participants from across the country.

Finally, Deb's role includes policy development, review and revision for the University of Alberta.

Our fourth speaker, Zanab Jafry, is a Pakistani first generation immigrant and Muslim woman dedicated to eradicating gender-based colonial violence. While earning a BSc in Medical Sciences at Brock University, Zanab helped create decolonial anti-violence frameworks and co-founded Decolonize & Deconstruct. An organization committed to the dispersal of anti-colonial gender-based violence education.

Through her work, Zanab seeks to expand the recognition of gender-based violence as a tool of warfare, genocide, imperialism and a method of destabilizing nations in the global south.

As a proponent for prison abolition and criminal justice reform, Zanab brings extensive experience in constructing trauma-informed policies based in the mitigation of administrative and systemic violence as well as informal conflict resolution. As an advocate for political refugees, survivors of war, and persecuted ethnic and religious minorities, she is dedicated to building safer alternatives to the criminal justice system.

As you can see everyone, we have a wonderful line up and I'm excited now to hand it over to our presenters.

Karen: I think I'm first. So, thank you very much Anoodth that was a wonderful introduction. And I also want to acknowledge the great work that Anoodth has done in putting together these seminars and keeping everybody on time and in line and so on. She's just wonderful to work with so thank you very much Anoodth.

I also want to acknowledge that I'm coming to you today from Treaty One territory. I'm about a kilometre away from the forks of the Assiniboine in Red River, which is a historic meeting place for the Initial Bay Cree Oji Cree and Dene and Dakota People as well as the Métis. And I wanted to mention the book that Joanna and I wrote "Achieving Fairness: A Guide to Campus Sexual Violence Complaints". It was published earlier this year by Thomson Reuters and I mention the book because sometimes in our presentation Joanna and I will say many colleges and/or universities do this or some do that. And what we're referring to is the methodology that we used in that book which is we reviewed the policies of 25 different post-secondary institutions across the country. So when we give a quantitative statement such as some or many or all institutions do things in a particular way, we're referring to the 25 institutions we surveyed in that book.

OK. So – and I should say we want to leave a lot of time for questions so we want to have a really – a good question and answer period after our presentation. So we've been through an investigation. You've been through some kind of process and at the end of the process, and at the end of the process the finding of breach of a sexual violence policy has been made against the Respondent. So what happens now?

And Joanna is going to talk about what we'll cover and some of the challenges that we face in deciding how to approach these questions.

Joanna: This slide sets out what we will cover in this hour that we have together, plus the half-hour for questions. And you'll see that at least the portion that Karen and I will be speaking to you about – we've decided to start with the legal authority to impose sanctions. And the reason for that is that a central question that we will discuss in this webinar is, what is the purpose of outcome measures? Are sanctions or outcome measures aimed at punishing the Respondents? Are they aimed at educating and remediating the Respondent? Or are they focused on ensuring the safety and wellbeing and access to employment or education of the Complainant? Or aimed at all of these things?

And in answering the question of what is the purpose of outcome measures or sanctions it's important to understand the legal authority for PSI's or post-secondary institutions to impose sanctions and what the objectives of those pieces of legislation are.

You'll see that we will also cover in this time that we have together some questions that you would think ought to be straightforward but aren't like

who within the institution is the decision-maker for the purposes of outcome decisions or sanctions. We'll talk about the importance of procedural fairness for the Respondent but also the importance of procedural fairness for the Complainant in the process by which outcomes are decided and what criteria or sets of considerations guide the choice of measure.

And overall, today we'll conclude with providing really important analysis of trauma-informed practices relevant to outcome measures.

Now, just a short note before we go to the next slide on language. Then I'll be alternating between using the words outcome measures and sanctions. Sanctions frequently connotes punishment or disciplinary purpose. But and so we'll try to use the world outcome measures but just to appreciate that's a bit more of a mouthful and so we might be moving between the two phrases interchangeably.

What are some of the challenges faced by a decision-maker who is now tasked with deciding what the appropriate outcome is when a finding of breach has been made? And the decision to determine what is the appropriate outcome is an inherently difficult decision, but it's made even harder for PSIs because of a number of external challenges. And so what are some of those external challenges?

Well, one external challenge faced by decision makers is that some policies lack detail on what the objectives are to be achieved by outcome measures or sanctions and what the criteria the decision-maker ought to consider. Or if there's a number of criteria, what priority each different set of criteria has and how they ought to balance these competing objectives.

For example, of restoration focused on the Complainant discipline focused on the Respondent, or remediation or education of the Respondent. So one challenge for decision makers is how does one balance these competing objectives and purposes and what does it say in the policy and is the policy clear on how these different sets of concerns ought to be weighed.

A second challenge, and this is a really significant one, is that decisions on outcomes are confidential. So there's no public database either within institutions or between institutions on which Complainants or Respondents who appear before decision makers, or the decision makers themselves, have by which to assess – well, how was this handled in similar cases?

That makes among other things consistency between outcome decisions very difficult. There's no body of case law or precedent for decision makers or the parties who appear before them to refer to. So those are two challenges.

Deborah: So, in addition to the external challenges we face internal challenges in some of our institutions. And one of those might be, for example, a lack

of recognition about the demands that are associated with adjudicating complaints. Which could then result in limited investment in appropriate staffing training, lack of funding for whatever office does this work. It could also result in incorrect assumptions being made about how the process works, thinking potentially that, well this is very much like the criminal system so we should import – incorrectly we're assuming that we should import those notions and practices from the criminal justice system.

Things like you know the right to silence, using the wrong standard of proof, using a standard of proof beyond a reasonable doubt. And then as a result potentially assuming or presuming that we have to use punitive outcomes.

Another challenge within the institution is who does the policy apply to? And then what other sort of overlapping rules or regulations might apply. So are you using a code of student conduct, are you using a collective agreement, are there other policies that intersect with the work we're doing?

I must say that most of the work that's been done around outcomes focuses on students and we should be clear that the principles we're talking about today apply to all, not just students. And we want to make sure that you don't contradict collective agreements. But these are decisions that are based on principles first.

So other institutional factors, under Administrative Law the institution has a latitude to determine their own procedures and that choice, so whether it looks more like a court or more like a human rights process could very likely influence the choice of outcomes as well. There might be structural sorts of things within the institution that affect our choice of outcomes. Is it a large institution or small and close knit, what kinds of governance exist? Is it corporate or hierarchical or collegial? Are there many different areas on the org chart involved or just one person with a whole lot of roles?

So those things could affect the decisions. And then the institutional culture. So is there an activist culture? Do people trust the institution or trust the system to do the right thing. What are the community norms and expectations? Is restorative justice an option? Or are there other kinds of non-adjudicative options available? And then how well the policy is known or understood by those in the institution can be a factor as well.

Joanna: So as I said, the first topic that – around the overarching legal framework that Karen and I wanted to layer on top of Deborah's comments are, well, what are the specific statutory authorities in which PSIs impose sanctions?

So there's a number of categories of legislation that provide PSIs the authority to impose sanctions.

And as Deb mentioned, that authority differs depending on whether the Respondent is an employee or a student. And so if the Respondent is an employee, there really is a very different on top of the sexual violence policy, there's a very different layering of legal regimes that apply. Whether it's a collective agreement, because it's a unionized employee, common law and other employment legislation. If it's non-unionized as well as occupational health and safety or other workplace legislation. Which increasingly across the country requires not just – because it's a good idea – but requires as a matter of statute employers including PSIs to have sexual violence specific policies and procedures within their institutions.

One piece of legislation that applies both to employees and to student Respondents is human rights legislation. Human rights legislation requires PSIs to have robust and effective responses to discrimination. So what that means is when sexual violence has been found to occur under sexual violence policy, the PSI has a legal obligation to take pro-active steps to address the rights of the Complainant who has experienced sexual violence. And to create a learning or working environment that's free from discrimination. And this may be unfairly interpreted to mean, for example, in the case of a student, that she is able to return to class and be able to study without psychological – negative psychological consequences.

And then finally, in all provinces and territories there is legislation that establishes universities and colleges, and that legislation by in large is the source of authority for PSIs to impose discipline on students. But that legislation also by in large is really contemplating discipline being imposed as a matter of a punitive response or a remedial punitive response as opposed to a restorative response focused on the Complainant which is driven by Human Rights obligations.

So that's what's important to understand, these different legislative regimes, all of which apply to PSIs but have different considerations in the outcome decision as they apply to Respondents or Complainants in the purposes of outcome decisions.

Deborah: So already you have sort of a complex you know constellation of priorities and then you add on some of the other institutional priorities that might affect the human experience of our processes in a profound way. So things like compliance with all of the applicable legislation as you just saw, there's a lot of it to think about. But also risk management for the institution, they are going to care about that and typically it's going to be legal risk or reputational risk that they think about in the area of sexual violence and then how do they apply or enact their policies and procedures?

So the human experience of the complaint process and its outcomes will vary widely from institution to institution. And if the PSI – if the institution forgets that they are shaping the human experience, outcomes may have the protective value for the institution but very little educational, reparative or restorative value for the participants.

Karen: OK. I'm going to talk for a few minutes about the procedural fairness rights of Respondents and of Complainants. So many of the policies that Joanne and I reviewed state that all decisions under the policy will be made using procedurally fair processes. The term procedural fairness is a term of art in law. It's a process that's designed to help decision makers choose processes that are appropriate for the context of the decision that they're making.

Now when we talk about procedural fairness we often talk about the concept of having – that has two branches. The first is that it protects the right to have a fair hearing. And it – the second branch is it protects the right to have a hearing that's free from bias. Now in our view, the procedural fairness for Respondents should in the context of outcome decisions ensure that following a finding of a breach the Respondent has the following rights.

So, the first one is the right to know who makes the decision on outcome or sanction. The second is the right to know the criteria for making the decision. And so, for example, one criteria matrix that could be used is to consider mitigating factors, aggravating factors and compounding factors. So if this is the matrix that's used then the Respondent should know that and be able to respond to that matrix in the submissions that they make on outcome. They should have the right to notice that a decision will be made on outcomes and they should have a right to participate in the decision-making in some way.

Now, the right to participate doesn't necessarily mean that they've got a right to make an in-person appearance. But they should have the right at the very least to make some kind of reasons to submit some kind of written submissions on what is an appropriate outcome in the case.

The final right that, in our view, Respondents should have is the right to reasons for a decision. These don't have to be long and complicated but they should satisfy the Respondent that the appropriate criteria has been taken into account and only relevant factors have been considered and balanced and weighted in making a determination on outcomes. And in our view, these rights should be afforded even where a policy is silent on what are the procedural fairness obligations of institutions when it comes to Respondents on a decision around outcome.

Now, one of the things that we found is that in many policies, breach and sanction decisions are made at the same time. So this is especially true when student discipline by-laws – the processes are student discipline processes that are grafted onto the sexual violence processes.

In our view, the decision on policy breach and the decision on sanction should be made separately. There should be a separate process, and the reason for this is because it's unrealistic and unfair to expect Respondents and Complainants to present information relevant to questions around sanction and remedy, such as seriousness of the misconduct, aggravating factors, compounding factors, at the same time as they're presenting evidence on breach. It's just they're two very very

different issues. And the processes for determining the relevant factors should be separated from each other.

Let me speak for just a couple of minutes on the procedural fairness rights of Complainants when it comes to outcome decisions.

Again, it's our view that Complainant should have procedural fairness rights, but some policies could be read as denying these rights. And some are less likely to express these rights. So policies – many policies are unclear about whether or not these rights are there. And this is a concern for us. So one of the things that Joanne and I have explored are why are policies so divergent? Why do some give procedural fairness rights to Complainants and others not on the question of outcome?

And here is something that we've eluded to already in this presentation is that many policies have different conceptual frameworks. And basically, some policies are based on a discipline framework and some are based on a human rights framework.

Where policies are based on a discipline framework, the objective of the policy is to investigate, punish and correct individual wrongdoing through the imposition of sanctions. Under such a framework, the Complainant is simply witness to a policy breach and this status is similar to her status in a criminal sexual assault complaint. So in other words, she doesn't have any other participatory rights as an active party, and the ability to bring submissions into no outcomes if the discipline framework is the one that governs how the policy operates.

In contrast, a smaller number of policies are based on a human rights framework, and under a human rights framework the primary objective is to ensure the safety and wellbeing of the Complainant. So if the objective of the policy is protective, remedial and educational, a Complainant's role in the proceedings will be much more significant, as her needs will have more of an important focus.

Additionally, she will always have the right to know what the sanction or remedy imposed is. So this is something that we really encourage people to look at in their policies. Are they based on a disciplinary framework, which is more likely to exclude the rights of Complainants? Or are they based on a human rights framework, which are more likely to include participatory and rights for Complainants in outcome hearings?

Now I'm going to turn it over to Joanna to talk a little bit about how trauma informed practice layers on top of questions of procedural fairness.

Joanna: Mm-hmm.

I'm going to speak primarily from the perspective of the Complainant in this section, but acknowledging that Respondents may also be impacted by trauma and that the remarks I'm about to make equally hold true for Respondents in those circumstances.

And as you've heard from the introduction at the very outset of the webinar, I'm a lawyer in private practice. And in addition to having the privilege of working on the book with Karen, I worked for institutions. I also worked for Complainants and Respondents. And I can tell you that a consistent concern that I hear from Complainants is that they weren't informed; or they weren't adequately informed about the steps in the process, including steps around decision-making on sanctions. Either at all or in a timely or sufficiently substantive way. Now it may be for some of the people who expressed that concern the you know the difficulties in part how – the barriers to processing information when you're experiencing trauma. But at a minimum, it means that they didn't receive the information if they did receive it in a way that was able to be processed given the experience of trauma.

And I can tell you that the feeling of being a legal [00:29:30], of not knowing where the process is at, of having it hanging over your head, of waiting; and then the hurry up and wait when either party is then asked – I don't know, sometimes in a short notice basis to provide information in the context of an investigation could be very difficult and experienced as re-traumatizing.

So as PSIs participating in this webinar, or those of you who do frontline work and know that you're doing your utmost best to provide this kind of process information to Complainants or Respondents, all I can say is to emphasize the importance of that work from a trauma informed perspective. Because the trauma – the process piece can have a really big impact on the overall experience of being heard.

Complainants as well as Respondents should know who is making the decision, how will that decision will be made, what will the criteria for the decision be. How do I participate in that decision? When will I hear the results, how will I receive the results?

So those are procedural – technical procedural fairness questions. But they are also essential to a trauma informed approach that the person who is participating in the process has the answers to those questions and that the answers are realistic, and not, well you'll get an outcome decision in a week. Oh, now it's going to be another week. Oh no, now it's going to be another month.

And then, finally, just to layer on to what Karen concluded with about the importance from a trauma informed perspective as well as a procedural fairness perspective that Respondents and reporters or Complainants not be making submissions on sanctions at the same time as breach. This is really important.

So, from the perspective of the Complainant, imagine the experience of spending lots and lots of time thinking about what the appropriate remedy or outcome is, providing submissions on that and the decision-maker only to be told, oh well, there was no finding of breach in the first place. That is not a trauma informed process, procedurally it doesn't.

In Karen and my views, it doesn't make a whole lot of sense to have people making those submissions at the same time. They ought to know what it is that the finding is of breach before you're then making submissions on what the appropriate remedy is. But layered on that, it's also an inappropriate approach from a trauma informed perspective.

Deborah: And what that Complainant role is within the institution will probably also influence the outcomes that are chosen. So for example, if the Complainant is a party to the matter or just a witness may adjust how a decision maker understands or hears what that person has to say about sanction. Is there access to an appeal by the Complainant? In some cases there is, in some cases there is not. So, typically you could have a true appeal, which is a question of whether or not a decision process was fair versus a fresh rehearing or a de novo hearing of the entire matter, so retrying the matter essentially. And that would also sort of affect that Complainant's role and the choice of outcomes as well.

And then, does that person or that Complainant have access to judicial review? Typically it's been understood by post-secondary's that really the Respondent is the only one who has access to court review of our decisions. But that may not be true.

And so, if we sort of recognize also that the Complainant has access to that route of review that can also affect the kinds of decisions we make on outcome, on sanction or what happens within one of these processes.

Karen: I just want to pick up on what Deborah has just said about judicial review; and again, this comes back to this dichotomy between a human rights approach and a disciplinary approach. If the approach set out in the policy is a human rights approach, then it would be much more likely that a Complainant would have sufficient standing to initiate a judicial review application.

On the other hand, if the approach is disciplinary, if the approach is focused solely on what should happen to the Respondent, then it's less likely that she would have access standing to bring a judicial review application. So that's another example of why it's important to know how it's framed in your policy. Whether or not it's a disciplinary approach or whether or not it's a human rights approach.

I just briefly want to talk about who makes a decision now around sanctioning, because there is some confusion in some policies about this.

Under many policies, it's the Dean or the Department Head who makes the decision. Under some policies it can be a committee. It can be an internal faculty committee although that's unusual. Sometimes it's a committee of experts. A designated committee that's made up from administrators. Sometimes it's the student discipline body. And this is particularly so in situations where the final decision maker on facts is not the investigator but rather a student discipline body. And then sometimes

there's a list of possible persons the response was so called responsible authority.

And the point we're really trying to make here is that many policies are confusing because they list multiple different persons who might be the decision-maker on sanction. And it's important for Respondents to be aware which of the range of institutional representatives is making the decision in his or her case.

So the question of who is making the decision should in some policies be clearer than it is; that's just an observation we want to make.

Deborah: So in addition to who, the question is how qualified are they to make that decision and so how well do they understand the rule? Have they had sort of basic training in administrative law, do they understand the dynamics of sexual violence, are they trauma informed, have they been trained in understanding trauma? Their experience matters as well. Because as was mentioned previously, there's no database of previous decisions that have been made in these kinds of cases and there is very little case law. It's very difficult to have consistency in our decisions.

So, how many cases have they decided, you know? Do they have a good understanding of the range of outcomes and how can those apply and interact or do they limit their discretion by relying on a single way to address sexual violence? Choosing not to access the full range of one's designated authority or fettering discretion is also a fairness issue.

So understanding what is the range of their authority and then using that entire range.

Joanne: I think we've covered this slide quite comprehensively already. So the only comment I'll make to add to it, is that look at your own policy now having listened to this webinar, and consider what is the objective of your policy. Is it punitive, is it remedial, is it restorative? Is it all three? Would you describe your policy as having overall a disciplinary framework or a human rights framework?

And other than that, I'll just comment that even for policies where the framework is disciplinary, I would argue – and well Karen may want to jump in now as well, when I finish that, irrespective – because PSIs have human rights obligations, there must be a human rights approach as well to this actual violence policy. That, quite frankly, you can't get around; the legal obligation to respond to the report of what is fundamentally a concern around equality and discrimination to the institution. And to consider what measures the PSI must take in order to provide that Complainant with an educational experience that is consistent with its human rights obligations.

Karen, you want to jump in briefly?

Karen: No, I – not specifically on that question because I think we're talking about it in general.

I want to talk about now what are some general considerations on sanctions and in particular what I want to talk about here is what are relevant considerations and what are irrelevant considerations.

So a decision on sanctions is a discretionary decision and it's deeply tied to the facts of the case. But the principle that applies with discretionary decisions is that all relevant discretionary factors have to be taken into account and irrelevant factors cannot be taken into account. Now that might seem really obvious but let me just state it again, you must take into account all relevant considerations and ignore those that are irrelevant. So you need to figure out what are the relevant considerations and what are the irrelevant considerations. And basically you do this by the first principle is the outcomes have to be consistent with the purpose of your statute and with the objectives of your sexual violence policy. So again, go back to first principles. What is the objective of your sexual violence policy? That's principle number one.

Principle number two is that similar cases are treated similarly. But as we've already alluded to, there's almost no Canadian case law and there's no secondary sources on sanctioning norms in the context of student discipline in these kinds of cases. So the principle that similar cases should be treated in similar ways is hard to achieve because there's no kind of repository of decision or other accessible reporting mechanisms. In other words, most of us don't have a clue what people are doing at other institutions in these kinds of cases. And we might not even know what's going on at our own institution. So we don't know what a range approach this is within our institution or elsewhere.

Now it's possible that some experienced administrators like Deborah, for example, may have acquired this knowledge overtime. Just by virtue of having been involved in a number of cases. But others involved – and here I'm especially thinking of Respondents and Complainants and student members of discipline panels, have no way of getting this information.

So the basic principle that similar cases should be treated similarly is a principle that's really hard to follow when nobody knows. Or many of the decision makers don't know what happens in similar kinds of cases.

So that's one thing I wanted to mention. The other thing I wanted to mention is the question of the extent to which the needs of the Complainant factor into decision making. And again, if the matter is purely a disciplinary matter then the needs of the Complainant are not going to be a relevant factor. And obviously people in this panel would disagree with that, we think the needs of the Complainant should be one of the primary factors in making a determination on sanctions. Under some policies this is possible. But on other policies it's not. And again, if you go to the next line, please Anoodth.

This has to do with the objectives of the sanctions. Again, so one of the objectives is it to promote a learning and working environment free from sexual violence. In some policies that's what the sole focus is. In others

it's to ensure the safety, security and wellbeing of the Complainant in particular. So there's a tension there on what the primary focus should be.

And we're going to give it to Joanne and she's going to talk about how this tension plays out in a few different policies in different institutions in Canada.

Joanna: We just wanted to show you some examples of language that you find in different policies. So the University of Ottawa, they ask decision makers to consider the severity of the incident, which could be both a punitive consideration but also one that will go to remedy. Meaning remedial considerations right. If it was very severe, is an educative response appropriate?

Preventing reoccurrence in the future, that's another example of overlapping consideration that's relevant to protecting the University environment as well as a concern about the perpetrators being a potential recidivist. Correcting the negative impact of the incident on the Complainant, that's a restorative and human rights consideration. Ensuring or enhancing the safety of the Complainant and the University community, so I would characterize that as well as a human rights focused consideration on restoring a university environment that's safe for learning for the Complainant and for everyone.

But you see, and I'm encouraging you now to go back and look at all of your institutional policies and go through each of these considerations, if they're listed in your policy, to think about is it restorative, is it punitive, is it remedial?

Next slide.

McGill University asks decision makers to consider what the impact was on the Complainant so it anticipates that the Complainant will participate in that way and not all Complainants do, they don't necessarily want to expose themselves any further in terms of their privacy and psychological dignity to talking about just how much it impacted them. Although you would expect that Complainants will want to say or inform the decision maker how it will impact them if they were to return to class and campus with that Respondent.

Principle of progressive discipline, that's clearly a principle that's within the discipline framework, the University's role as an educational institution, which is really interesting because PSIs, unlike other forms of employers, are committed to education. So, how does that play out in determining sanction or outcome given that the university or the college's primary mandate vis-a-vis students is to educate? And again, in the tensions, in the balancing, where does educating that Respondent play out as against restoring and ensuring the safety of the Complainant if her participation in the process is to advise the PSI, I'll drop out of school if I have to be back in class with him?

Not many, some policies that we reviewed specifically ask for the thoughts of the Complainant, not just on how she was impacted but what sanction she is seeking. And you know, in general, I could say that's a double-edged sword because sometimes a Complainant is asked, well what do you want to happen? And her reaction is, well, why are you asking me? It's not on me to tell you what you should do with this person.

On the other hand, if that question isn't asked at all, if that space isn't opened then some Complainants don't feel heard and feel like they've been shut out of contributing to the sanction imposed.

Finally, we thought we'd use as an example Sheridan's policy. They have the decision maker consider whether or not the misconduct was intentional, which could be a factor that would go to severity. But in sexual violence it's also a tricky factor, because the intent of the Respondent is generally not the focus in – particularly where it's sexual assault. Consent is in the mind of the Complainant and the question then shifts to the Respondent of whether or not he took reasonable steps to ensure her consent.

But it's interesting, and I thought you'd be interested to see that as a criteria in one of the policies.

But you do often hear, well he didn't mean it – he didn't mean harm and so it's the kind of reasoning that is tricky putting into a policy.

And the next bullet is whether the misconduct in question was an isolated incident or part of a repeated set of acts. That too goes to a concern about protecting the university environment as well as severity and discipline consequences for the individual Respondent.

And then, finally, just another way of expressing the objective of the sexual violence policies of creating and ensuring protecting a safe learning environment. And under Sheridan's policy, as the risk that the misconduct poses to Sheridan and potential safety of its community members. Those are just examples.

Over to you Karen. Oh, you're on mute; there you go.

Karen: OK. I thought you were doing the slides, but that's OK. So what are some of the objectives that are not achieved through sexual violence policies? And this is really important so what are things that they are not – none of them are entitled to do?

None of them are about public denunciation. If they were about public denunciation then we'd be publishing the names of Respondents of students or of faculty or staff that were involved in these cases. So that's not one of the outcomes that's to be achieved.

Another one is a degree of revocation. That's just not something that can happen that happens under any of these policies. Nor is there a notation

on transcript, other than if there's a suspension or an expulsion. So this isn't the kind of thing that gets noted on transcripts. So we just wanted to make sure that we could see some examples of things that were not achieved are outcomes that are not achievable under sexual violence policies as currently written.

Deborah: And there are potential motivators not expressed in policy as well, so there may be an implicit punitive objective. Back in 2002, Last Second Miller came out with a theory that most sexual offenders are serial offenders. So if they've been caught in some sort of sexual offence, they have likely done it an average of seven times before. That assumption will absolutely colour what kind of sanction or outcome is chosen in this kind of thing because you think that if you just get rid of the bad apples then campus will be safe. So, you remove those individuals. It's really a way to consider it as an individual problem, and you've removed those individuals and then the campus is safe.

You know, since then – since 2002, the method and conclusions in that article have been called into question. So it is an important thing to make sure you're up on the latest research on this kind of thing as well. But their motivator of that might be that someone wants to avoid having their decision appealed. So they might want to – especially if it's a complex or you know a time consuming process, they might just want to be a little bit more lenient to see if maybe they can avoid appeals.

Same thing with lawsuits, they might decide you know if there's a lawyer involved, if they you know come up with a more lenient sanction then maybe they will avoid a lawsuit. A grievance as well if we're talking about a unionized environment. And consider also that those concerns might lead to people being treated unequally if they have access to a lawyer versus if they don't. So that's a really important consideration.

And then there might be just some typical general practices in the institution that are also enacted in making a decision about outcome. So, for example, what if in your institution you have a general practice that says we will never give academic sanctions for non-academic offences.

So an academic sanction might include a suspension or an expulsion because it removes them from their academic program. And when you think of that practice, for example, that could result in a student who commits plagiarism. Incurring a much more severe consequence than one who commits an act of sexual violence. So those kinds of practices and assumptions also do need to be interrogated.

Joanna: So, we've listed some of the types of measures that can be imposed. I'm sure that everyone who is listening to this webinar is familiar with the types of measures. We've separated them into categories aligned with the categories that we say are reflective of the various purposes of outcome measures or sanctions.

So measures can be protective, they can be punitive, they can be remedial, they can be educational, or they can be restorative. And those

categories are not watertight. Some orders may be both punitive and protective at the same time. Even, for example, a suspension.

So we tend to think of traditionally a suspension as being punitive, but it may very much in fact be driven more by a restorative and human rights framework set of considerations for the Complainant. If she says, we're both in our third year, if the finding of misconduct was serious and her input is I'll drop out, I won't finish my degree if I'm back in class with him, it may well be that a suspension is an appropriate outcome. And the reason for that would be driven perhaps even more by restorative and human rights considerations than punishment of the Respondent.

If you go to the next slide, some examples of remedial measures are counselling or behavioural contract. Educational measures include training or a reflective assignment, or even community service and restorative. In addition to, I think more generally, the sorts of restorative considerations that arise in almost every case of sexual violence, which is the question of how to ensure that the learning environment is safe and will support the flourishing of the Complainant student. For some others a more traditional restorative measure could include an apology, if it's genuine, because a not genuine perfunctory apology causes harm, or monetary compensation or replacement of property if that's an appropriate response or issue in that case.

Deborah: So, as decision makers, we need to think about what kinds of tools do we have at our disposal. Because as you can see this is a complex undertaking and it requires you know a lot of factors to be considered.

So one of the things that you could use is a rubric. And rubrics can be great guides or they can be overly restrictive. So if you use a rubric, make sure you're not mapping just a particular sanction onto an offence.

Because rubrics – the use of rubrics can also fetter your discretion, again remember I talked about that as a fairness issue. The idea of using combinations of outcomes. So you might have safety considerations, plus you want some sort of educational or remedial outcome. So looking at what combination of sanctions or outcomes can be chosen to meet those objectives.

Educational programs are available, sometimes internal and sometimes external. But they are often offered to the general community. And maybe would be more required for some or mandatory for someone who has gone through this process.

You know, I think, really, in every case you're going to be thinking about individualized responses. So you need to meet the Respondent where they're at, you know. What do they need in order to meet the objectives that the institution has for you? You know, what does the Complainant need? What are the community needs? Where is the Respondent in terms of accountability? Are they acknowledging responsibility, are they denying it ever happened? What do you need in order to make this

particular situation – bring it to the point where it does meet the institutional objectives?

Joanne: Deb, for some reason you've muted.

Deborah: I'm so sorry, OK. So I wanted to just draw attention to this one tool.

ATIXA is the association for Title Nine Administrators. And they put together this sanctioning guide, which includes a range of acts that constitute sexual violence. And of course we know that most of our policies include a pretty broad range of acts. We need to then make sure that our options for outcomes are also appropriate and proportionate and include also a range of options.

So, this particular guide goes over sanctions and factors to take into account in the specific circumstance of the case at hand, so severity and egregiousness of the offence, prior history, patterns of behaviour, whether or not the Respondent took responsibility and so on. And for each type of offence, the guide provides a range of possible sanctions taking into account the specific factors. So this is a good one. If you do want to make use of a guide, this is one that is very helpful. And the principles can also apply for staff policy breaches.

Again, I say principles not the details of sanctions, you know, that has to come from whatever policy and law and collective agreements that are in place.

And those of you who know me, know I will always try to slip in a little of [Stealth RJ]. So there might be situations in which the complaint process simply doesn't meet the needs of any of the players involved. And so considering the possibility that there might be other needs that could be met in other ways of meeting those needs.

So, things like restorative options, transformative options, circle options for example, for setting norms or resetting norms. Thinking about – I call it an occupational health and safety type investigation. So it could be an occupational health and safety investigation or it could be one that sort of mirrors that notion of looking at sexual violence or gender-based violence as a hazard and assessing the environment for what kinds of elements are there that are conducive to sexual violence and removing those elements, or fixing those things.

There are also non-disciplinary measures, voluntary measures, things that could be undertaken that don't require a complaint and full-on investigation and finding.

So there might be situations where these could be a better alternative.

Zanab: So, one of the remaining question marks in conversations about not just decision-making but the complaints process as a whole is that regarding the compatibility between trauma informed approaches and procedural fairness. It's not uncommon to see institutions treat trauma informed

approaches to the entirety of the complaints process from the initial onset of the investigation all the way through to decisions and outcomes as being separate from the process or even at odds with procedural fairness.

Across the country and across post-secondary institutions there's this increasing awareness that we need trauma informed approaches and trauma informed care when supporting people who are involved in reporting processes. But at the same time, there is this heavy opposition usually based on the misconception that anything more than the requirements of procedural fairness are extraneous or excessive to the process.

When Phase One of the Courage Act was carried out, we heard from students all over the country that they wanted more attention and care invested in designing processes that were trauma informed.

Similarly we've heard from all members of PSIs who had been involved in investigations that the process itself can be really draining, hurtful and even worsen the trauma they've already experienced as a result of the gender-based violence itself.

In Phase Two, keeping these considerations in mind, the Complaints Processes Group of Courage to Act wanted to design a guide on strategies for procedural fairness that were trauma informed. And applied a harm reduction lens to all aspects of the complaints process from the initial intake all the way through to decisions and outcomes like we are discussing here today.

And we began building this tool by understanding the concept of harm reporting processes in PSIs, harm in the context of PSI complaints processes can generally be understood as any negative impact that is experienced by an individual while making a complaint or seeking a resolution and also participating in the process itself.

We recognize that engaging in any process surrounding adjudication of sexual violence or gender-based violence is going to cause harm to those involved. And this is outside of any critique relating to the design of the process or the process holders themselves. Instead this is just a very simple recognition that incidents of sexual violence cause deep trauma and any time we are asked to talk about it or discuss it or go back and review details of it, is going to be difficult and painful. So one of the strategies we are looking to implement is a harm reduction lens to the design of all aspects of the complaints process. Including the delivery of decisions and outcomes.

The importance of harm reduction and trauma informed approach to all aspects of the complaints process can be better understood when we really break down what it means to be a party that is involved in an investigation. For Respondents and Complainants whom we're referring to here as involved parties, both individuals or groups have a role to play as providers of information. We are looking to them to provide us with

the necessary details and evidence that only they have access to. We need them to fulfil these roles so that investigators and decision makers can fulfil their roles as receivers of information and determine a decision based on the information that is received in a fair way without bias and so on.

And so, this entire process is reliant on creating an environment where information can be provided fairly and received fairly. However, the impacts of trauma often get in the way of creating such an environment.

Trauma impacts on involved parties may limit their ability to recall details, inhibit the strength of their memory, prohibit them from describing triggering moments that are relevant to the investigation, lack trust in the people who are talking to them about the investigation and feel reluctant to even continue with the investigation. All of these things will reduce the quality of the information that is being provided from the involved parties.

And so, what trauma is doing is preventing both the Complainant and Respondent from fulfilling their role as providers of information and preventing decision makers from hearing all the information that is relevant to the decision that they determine.

And so, the question is then raised; can involved parties fulfil their roles when limited by all of these impacts? And are institutions receiving this information in an optimal way? Are they hearing everything that they need to hear? Is the investigation optimised and fulsome in its attempt to understand the incident that took place?

Our position is that by using trauma informed approaches in the process itself we are enhancing overall procedural fairness because we are limiting the impacts of trauma that compromise the involved party's ability to fully partake in the investigation process and act as providers of information. We are creating an environment where the providers are delivering information in the most optimal way possible. And decision makers are receiving pertinent information as optimally as possible.

So in summary, by using trauma informed approaches to limit trauma impacts and harm reduction strategies to reduce overall harm experienced in the complaints process we enhance procedural fairness by lifting some of the limitations faced by Complainants and Respondents resulting in a fair and more effective overall process.

We can see some of these strategies in action when we are looking at the delivery of outcomes in the final stages of the complaints process. For example we can inform involved parties of the date of release for the decision letter well in advance so they are able to surround themselves with support. We can provide a heads up 24 hours before the news goes out so they're not shocked when the decision is delivered. We can ensure news is not delivered on a Friday. So involved parties can seek supports on campus during business hours. We can ask if involved parties would like support persons or advisors to receive a copy of the letter so they can read it with them.

And whenever possible, we can encourage a Respondent to respect the Complainant's wishes. Even where they were not explicitly enforced in the decision maker's decision. And while this does not eliminate or completely compensate for the anxiety involved parties may experience during the complaints process. All of these strategies, among others, work to reduce the overall harm that they face when engaging in complaints and resolution procedures.

Anoodth: OK. Wonderful, thank you Karen, Joanne, Deb and Zanab.

And now I'd like to invite our attendees to share questions and comments. And you can do so by typing these into the Q&A box at the bottom of your screen.

I can see we have a few questions already. So, my first question is, is the suspension punitive or restorative? And what if it's a first offence for the Respondent but the Complainant will dropout if the Respondent returns to class?

Joanna: Karen, do you want to answer or –

Karen: Well I'll answer the first one, a suspension is punitive I think. It's going to have you know significant impacts on a Respondent's ability to continue in their educational program, so clearly it's punitive.

Joanna: But I just don't think it's purely punitive. I think that it functions simultaneously in – you know in the right case, in the appropriate case of both having a restorative and punitive consequence.

But you know even if the restorative approach for the Complainant would dictate a suspension if the underlying conduct or the finding isn't of sufficient seriousness then it's not going to be justified.

Anoodth: OK. Thank you Karen and Joanna. Our second question is, many sexual violence policies commit to responding seriously to reports of sexual violence. So do or can outcomes in individual cases send messages to the community?

Joanna: Yeah, the simple answer to that is no. So, on the one hand, institutions should and do commit to responding seriously to reports of sexual violence. But that commitment then doesn't translate into public dissemination of the fact that a student has been severely disciplined to show or express the institution's commitment to those principles. Because of the privacy rights of that individual student.

So it's a real tension and a real challenge for PSIs and particularly on campuses where there's a student advocacy there's a real sense of dissatisfaction that the institution's – and rightly so, the institution's hands are tied. You'll see in the book not in respect of students but in respect of particularly faculty Respondents that Karen and I have suggested that to make it clear that institutions can make public that a faculty member has been for example terminated because of a finding of

sexual violence. That there ought simply to be an amendment to privacy legislation. Because of the importance of being able to communicate that a finding has been made when that person is in a position of power and trust.

Anoodth: Great. Thank you Joanna.

So, our next question is really interesting, it's about privacy law and confidentiality versus enforcement and the safety and confidence of the Complainant. So how would you balance maintaining the privacy of a Respondent with the Complainant's expectation that they can tell people about the outcome as part of the enforcement of it?

Joanna: Karen, I've talked a lot – don't – I'm happy to, but –

Karen: It's you know – it's a really tricky question to answer. And one of the places that I'll start with is kind of a dark place, and that is that if a Complainant does talk more broadly about outcomes. So, let's say the policy is interpreted in such a way at her institution that she gets to know what the outcomes are, and if she talks about the outcomes more broadly she risks civil action by the Respondent for breach of privacy or defamation. And there are a number of lawsuits across the country against women who have participated one way or another, say on social media you know giving support to a Complainant for example that are now facing actions for defamation or for breach of privacy.

So the fact that a Complainant might be given notice of what outcomes are doesn't mean that she can spread those outcomes as she wishes. She – you know if you – I would probably encourage caution, which is keep the outcome to yourself and don't put it out there. Because this – and I'm not saying these lawsuits are going to be successful but they are extremely disruptive if you are sued by a Respondent. And the consequence can be just devastating.

Joanna: Can I just jump in to add to that? And Deb may want to as well.

That…

So, two things. I'm actually quite conflicted around this. In terms of – I mean there's something about putting the outcome on social media for the whole world to know. But you know one of the things that question was asking was, well how is the Complainant supposed to have any sense of safety if no one is allowed to know what the measures were that were imposed on the Respondent; like how does that work?

And so, that's you know, that's one of the tensions between privacy law on the institution, the confidentiality obligations that the Complainant has said or imposed on her which if she breaches. Quite apart from potential common law remedies, she could possibly be disciplined by the institution for not following their confidentiality provisions.

But at the same time, let's say he's got a campus ban where he's not allowed to be in the gym, so she's not allowed to tell her friends that he's not allowed to be in the gym? She's not allowed to tell the front desk? I mean, what institution is it?

And then, Deborah can tell me what you do – you know what institutions will do is say well, we've told – don't worry we've told everybody who needs to know.

But that doesn't really give a great sense of security and safety to many Complainants. So there is the discretion involved that they ought to be able to tell those who need to know, so that they feel safe, so that the restorative purpose of the remedy – or the sanction is respected. Deb.

Deborah: Yeah. And you know carrying on from that – it should never be up to the Complainant to enforce any kind of sanction. It is the institution's responsibility to do that. So whatever we can do to let the Complainant know we have given these particular people the information they need to have in order to make sure that you're safe, that's a really important piece of information. It's not just, don't worry we've got this. It's more specifically who have we told.

And under privacy law, we can disclose the required information on a need-to-know basis. So let's take the example of a laboratory for example, where a student has been banned from this lab, the instructor or the lab coordinator needs to know that that student has been banned. They don't need to know why; they don't need to know the details of it. They just need to know what to do if that student shows up. So that's the kind of detail that you give.

Not here's – you know the entire situation, let's play it out for you so you understand it, no. Here are the details you need to know. So that's on the one side.

On the other, for the Complainant, you know to completely muzzle them and say you can't say a word to anyone is not trauma informed. And it isn't fair. Because we need them to be able to seek support.

So, you know, yes, don't put the decision up on social media. But if you have a counsellor, if you have a close circle of supportive people, friends and family, you can talk about your experience with them. Your experience is yours.

And so making sure that's clear that you know any kind of confidentiality order is not preventing them from seeking the support they need in order to move on is really also very important.

Joanna: Can I say two last things on this quickly?

From a trauma informed perspective – so first of all, I thought what Deb just said is really helpful and right. And there – and there's a very big

difference between ‘we’ve told everyone who needs to know’ as opposed to the trauma informed approach, which is ‘here is who we’ve told’.

And we don’t forget that for many Complainants they don’t want people to know, right. They don’t want the lab instructor to know that they’ve been sexually assaulted and that’s why this other person is now you know banned from the lab at certain times. So, respecting their dignity and privacy is also part of the process. And yes, of course the institution bears the ultimate responsibility for enforcement and ensuring that the Complainant feels safe.

And then, just in case that there’s no misunderstandings, the Complainant herself does not – if she’s a student, does not have any obligations under privacy legislation. So she can’t breach privacy legislation. Privacy legislation applies to what the institution can share. Just so that’s clear.

Anoodth: That’s really helpful thank you.

So, our next question for our panelists is what do we do then if a Complainant does not want a Respondent punished and what does survivor-driven mean in this instance?

Deborah: So, I guess I’ll jump in on that one.

So, we know one of the known barriers to reporting is when a survivor is dealing with an issue where the person who committed harm against her or them is someone within their social circle, someone they know. And they don’t want to be held responsible, they don’t want to feel responsible for getting that person in trouble or for having the negative consequences to that person.

So, one of the things is that it’s really not fair to put the burden of deciding the outcome onto the Complainant, clearly. And Joanna I think you mentioned that earlier, the authority rests with the post-secondary. And we cannot cede that authority to the person who has experienced the violence, and it’s not fair to do that to them. And it’s not fair to the Respondent to do that. So, to be survivor-driven means that you listen to and hear the needs and desired outcomes of the survivor, of the Complainant. And give them first priority.

But also align the decision with all of those considerations. Like, you know the authority to act, what are the human rights requirements, what is the – what do you need in order to have a safe environment that’s conducive to learning and working, and where is the Respondent in terms of acknowledging responsibility and that kind of thing? So, yes, survivor-driven, survivor-centered but not completely handed over to the Complainant.

Karen: And this is Karen. I just want to briefly respond to that.

I actually think that in at least some, and perhaps many cases, what the Complainant really wants is a sincere apology and acknowledgement of wrongdoing. And if she can get those two things, a sincere apology and acknowledgement of wrongdoing, then she probably doesn't want anything more to happen.

You know she's – especially if the person is in her social circle, because that you know has other implications.

So I want to just reiterate what Deborah said, I think that you know we need to be open to restorative processes and to not let the inquiry into breach always be the primary enquiry, you know. That if it's possible you know to have an alternative remedy that we should be looking at those. Because I do think that in many cases that's what the Complainants want.

Joanna: Zanab, what do you think of that – or, I mean the question not Karen's response.

Anoodth: Well the – the question – and you're saying the question is what do we do if the Complainant, Zanab, doesn't want the Respondent punished.

Zanab: Oh I'm sorry I've been muted this whole time, OK.

Joanna: I wondered if that was the problem.

Zanab: I am – you know in my line of work when we're with Complainants, from the start of whatever resolution process, complaints process, and then our stance will always be that if that is what the Complainant needs in order to feel better, in order to move towards healing, that we respect that. And that our ideology is that this is also in the betterment – is for the betterment of the whole institution as well. Because the institution is a community. So it's the community member who has been harmed saying that they no longer want the Respondent punished, or from the get go that that's not what they're looking for, that we respect that.

Anoodth: Thanks Zanab. And there's actually a question for you, another question. And it's harm reduction, Zanab, it's a term that originated in the sphere of addictions and mental health. And folks were wondering if you can explain more about its role in sexual violence prevention and support?

Zanab: Yeah absolutely. So when we talk about harm reduction and its origins we're of course referring to practices and strategies that were implemented in reaction to individuals and communities that are engaging in harmful and unsafe drug use. So we're using strategies to take an unsafe situation and try to make it as safe as possible.

We're recognizing that it's not 100 percent safe, that we're not going to eliminate all of the danger but we're doing our best to reduce the harm that is already present.

When we are applying those principles from the sexual violence complaints process perspective, we're recognizing that any process regardless of who is involved, regardless of what the incident is, who the decision makers are. Any process that has to do with discussing the details of something as painful as sexual violence for all parties is going to harmful and potentially traumatizing. So we're trying to implement strategies as much as possible to limit the harm that is inevitably going to be caused during these processes.

In short, we're inviting institutions to recognize that when we ask involved parties to participate in these processes that we should feel a sense of responsibility in compensating for the resulting harm that's caused.

Anoodth: Great thank you. And this next question is for everyone perhaps. So it's what training might you recommend for decision makers?

Deborah: I guess I can start with that one. Obviously, I think we want our decision makers to really understand the dynamics of sexual and gender-based violence. And to you know, not buy into those myths that the courts and other decision makers have been subject to for so long.

We also want to make sure that they understand the effects of trauma. Understand what it is, what it's not, how it can affect a person's processing and communicating of information. And also, those behaviours that could look like a person is lying could also potentially be behaviours that are indicative of trauma. And so making sure that there is a clear understanding of that.

Basic administrative law, basic understanding of procedural fairness, you know having access to legal counsel when necessary is really important. We can't have people who know absolutely everything but you know having access to those supports and those experts when we need them is really important. Understanding human rights requirements. Understanding student development theory, there's so much. There's so much. So you know we can't have people who understand everything but there are those very basic things that I think have to be sort of non-negotiable.

Karen: This is Karen. So, obviously this is in place for a pitch for our book. Our book is written for administrators, students, Respondents, Complainants, lawyers, arbitrators, people who are involved in unions, people who are involved in student discipline, students who are involved in student unions. So, it's a book that is good for lawyers but it's very written for – it's written very much with a non-lawyer audience in mind.

And what Joanna and I tried to do in the book is go through and answer all the questions that we get over and over again. So questions on credibility finding and sexual assault cases, and what is sexual violence, and how does privacy work, and who makes decisions and how can these decisions be reviewed, and what is procedural fairness and how do you layer trauma informed approaches on top of procedural fairness.

So, you know one training tool really is our book I think.

Zanab: I have a question, not just in the context of PSI but I think globally, we are like trying to understand the impacts of sexual violence and how it can alter peoples' lives. How it can alter people's academic careers. I would highly encourage anybody – but of course especially decision makers, to really understand like Deborah was saying, the impacts of trauma on people's behaviours to learn how to give people benefit of the doubt. To learn how to, yeah, interact with compassion with people who've experienced sexual violence and are having these really difficult conversations.

I can drop a link in the chat to some books that I think might be useful, short reading materials that might be useful.

But trauma and recovery obviously comes to mind. And I think that would be a good resource for people to begin to start to understand how trauma really unusually impacts people in their behaviours.

Deborah: And maybe we could throw on top of that we want to make sure that any decision maker also understands intersectionality. And that is how various forms of power intersect, or lack of power intersect to you know compound a person's experience of sexual violence and the processes we use in order to deal with it. That needs to be part of our understanding of what happens in our processes.

Anoodth: OK thanks.

Joanna: That was a little bit of a way to address one of the questions in the chat, which was how can we help or ensure our approaches to outcome decisions are intersectional?

For instance, recognizing that people hurt people. That you know that people of colour, black indigenous people of colour are more likely to face allegations.

And earlier in the chat, there was a comment about, oh so we're also talking about a trauma informed approach to Respondents. And the answer is yes. Especially in an educational institution where the Respondent is a student.

So that should carry throughout and then in the outcome decision, those sorts of considerations. A trauma informed approach to that Respondent, an intersectional Respondent, in understanding [axis] of power are all important.

But this is where we started off this webinar, by saying that making the decision about outcome is extremely difficult and complex, it's hard.

Anoodth: Absolutely. And I think we've got time for perhaps two or three more questions.

So, our next question is from [Lawrence]. And they're wondering how to respond to findings of sexual violence between a professor/researcher and their personnel or students that they hire as assistants. Should a faculty member, in your opinion, lose access to their funding even if the employment isn't terminated to protect students? And particularly, what happens when that funding might be from a federal source or a different jurisdiction? Because losing funding may protect students but it will also penalize students who depend on that resource, assistantship as a source of income.

Karen: That's a complicated question that I don't think many of us have thought about that much. But you know if – I mean, I think the reality is in more situations now where you find a breach you know any kind of significant breach of a policy by a professor then they're going to be terminated. You know they're going to. They're not going to stay in that position, so the question would be a moot question.

If for – if they were left in the position so it wasn't a serious violation of the policy whatever that means. I think that's really tricky to tie the funding question to staying in their jobs. If you don't maintain your funding as a professor then you might as well have been let go, you know if you're not eligible for funding then you know then you're not going to be able to continue on in a professorial position in many situations, so I think that's really tricky.

You know if the decision has been made that you should be able to stay, then it's hard to tell – it's – this is my preliminary view on this, to say that funding should be cut as well.

Anoodth: OK. Thank you Karen.

So, our next question is from Jordan. And Jordan is wondering, because they're role at their institution has them taking disclosures of sexual violence and turning those into reports shared with the Outcomes Panel to make their decision. And, normally, Jordan doesn't ask survivors probing questions as they disclose trauma as part of their trauma informed practice, but for a report it would be very important for them or for the Outcomes Panel to know the details, so the question is what kind of questions should they be asking in a trauma informed and supported way? And what would be helpful to someone making this decision?

Karen: I think Joanna is probably best capable of answering this question because she works directly with so many Complainants. But I think there is a real danger in not asking questions. Because if you don't ask the questions then someone else is going to ask the questions in an unsupportive environment, and then you're going to be in trouble.

So, I think, for example, a question like, "What contact did you have with the Respondent after the incidents giving rise to the complaint". You know, there are many reasons why Complainants have contact with a Respondent after the events giving rise to a complaint. One of them is it's better to keep the devil close than far away. Another is, you hope you

were wrong and you hope he's a nice guy, and you hope he'll apologize. And you know there can be lots of reasons.

But if you don't have those conversations you know with a Complainant, about why you were in contact, you know she might deny that she was in contact. And then she's going to have a credibility problem. So I don't think you're doing a good service to your clients if you don't ask some of the hard questions. Joanna.

Joanna: Well, I'm just confused, I have to say. Because I don't know the institution this is coming from. So the intake person, or the person at the sexual violence office, takes the report and I guess what you're saying is that you collect the information on the breach allegation at the same time and then you forward that to an outcome panel.

I guess – I think what Karen was responding to was, well what do you ask a Complainant in the course of an investigation on whether or not there was a breach of the policy. And, as you know well, the person who asked this question you know is in a very skilled and sensitive position to be the person who is taking that information. If what your role is doing is not just intake and informing that Complainant about the process but actually moving into gathering of the information, which is an investigative function.

But you know, the bottom line is, that a sexual violence reporting process, as opposed to disclosure – disclosure to receive accommodations and support report, so that the – there's some consequence meted out on the Respondent and the kinds of measures that we've talked about in this webinar. The bottom line is that although we work very hard to make this process trauma informed, it's not a healing process, right. I mean it may be at the very end of it, if the outcome is consistent with the Complainant's expectations, and she feels empowered or she feels safe, but the process itself is not – is kind of antithetical to healing and to respecting trauma. So, all we can do is be as trauma informed as possible.

But the bottom line is, if you're in an investigative position where you're gathering the details and the information, you're going to have to ask the questions that are necessary to be able to get the facts to – for a decision maker to decide whether or not the event happened or not. And Zena is probably going to jump in; I hope she does.

But then, the question is are you gathering that information in a way that is not informed by [rapemess], where you're not asking judgemental questions, where you're not blaming the victim, where you're just asking open-ended sometimes hard but open-ended questions with that person in front of you. Understanding why it is that you need to ask those questions.

Zanab: And I will jump in to say – to bolster a point that Karen was making earlier. That, for example, there may be a number of reasons why a Complainant stays in touch with a Respondent. If you're trauma informed

you might know, for example, that in any domestic violence situation, the statistic for how long it takes a Complainant to leave a Respondent for example can be five to seven attempts.

So they may be in a situation where they're heavily connected to the Respondent for a very, very long time. If you're trauma informed, you might be able to ask questions that probe further that get the fuller picture of why something is happening. Instead of what's happening in writing that down.

Anoodth: OK. Great thank you everyone, we've had a really great discussion today. I want to honour our one and a half hour commitment and Karen, Joanna, Deb, Zanab, thank you so much for sharing your time and expertise with us today. We've learned a lot and the recording will be available on our website in a few days.

I also want to thank our participants for joining us and for sharing with us today. We appreciate and take inspiration from your commitment to addressing and preventing gender-based violence on your campus and we feel very lucky to be able to work alongside each and every one of you. So thank you again everyone and a kind reminder to please complete the evaluation forms and we will see you at the next webinar on October 21st.

Thank you everyone, bye.