

## **National Skillshare Series - Complaints Processes, February 24th 2021**

Transcription is provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

Anoodth: Thank you everyone for your patience, and a very warm welcome to the National Skillshare Series on Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada. My name is Anoodth Naushan, and I'm the Project Manager of Courage to Act. We are so thrilled to welcome you to our Skillshare session today with the Complaints Processes Community of Practice. And before we begin, a quick note on language and accessibility. Attendees can turn on and off captioning in Zoom as needed by clicking Closed Caption on the controls bar at the bottom of your screen. You can also listen to the session French by selecting the French Language Channel using the Interpretation Menu.

Today's session is being recorded and will be available on our website along with a transcript of the session, and a graphic recording will also be created from today's presentation by Drawing Change. Their role is to listen deeply and translate our ideas into visuals, and this graphic recording will be available along with all the other Skillshare session graphic recordings on the Education tab of our website, and when they're released, as part of the Community of Practice Tools with the Courage to Act Knowledge Centre.

All right, and Courage to Act is a two year national initiative to address and prevent gender-based violence in post-secondary campuses in Canada. It builds on the key recommendations within Possibility Seeds by the report, Courage to Act, developing a national framework to address and prevent gender-based violence at post-secondary institutions.

Our project is the first national collaborative of its kind to bring together scholars, experts, and thought advocates from across Canada to end gender-based violence on campus. A key feature of our project is a National Skillshare Series where working groups, communities of practice, and keynote speakers discuss tools, trends, and strategies that will shape how we dress and prevent gender-based violence on campus.

Through the Skillshare Series we're so pleased to introduce you, and offer insight into the development of tools and resources created by gender-based violence experts across the country which will officially be launching in August 2021. There will be a chance to sign up for piloting opportunities via the Courage to Act Knowledge Centre in Fall of 2021, when attendees join a connected network of experts and advocates across Canada who are exploring urgent issues and promising practices. These Skillshare sessions also

recognised learning opportunities because attendance at 10 or more live webinars and our National Skillshare Series counts towards an online certificate. And our project is made possible through generous support and funding from the Department for Women and Gender Equality, Federal Government of Canada.

Great. And so before we begin today's session, we begin by acknowledging that this work is taking place on and across the traditional territories of many Indigenous nations. We recognise that gender-based violence is just one form of violence caused by colonization to marginalise and dispossess Indigenous peoples from their lands and their waters. And our project strives to honour this truth as we move towards decolonising this work and actualising justice for missing and murdered Indigenous women and girls across the country.

I now invite you to take a deep breath with me because 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. So a gentle reminder here to be attentive to our wellbeing as we engage these difficult conversations. You can visit the self-care section of our Skillshare page, or visit our self-care room by visiting the link in the chat. You can also follow along on Twitter with the hashtag #GBVNationalSkillshare.

And you are welcome to enter questions and comments into the chat box throughout the session. At the end of this hour, you will find a link to the evaluation form, and we'd be grateful if you take a few moments to fill this out and share your feedback. This is anonymous. Following this session, I will also email you with a copy of the evaluation form and a link to the recordings so that you can view it again and share it with your networks.

Now I'm so excited to turn it over to our Complaints Processes Community of Practice. Thank you.

Dawn:

Hello. Hello, and thank you for the warm welcome and the excellent troubleshooting. My name is Dawn McDermott, my pronouns are she and her, and I am pleased to introduce my collaborators that will be speaking with you today for the next hour or so. Andrea Clark, Amie Kroes, Cassbreea Dewis, Diane Crocker, Irene Jansen, Laura Hoff, Lise Gotell, and Karen Busby.

Next slide, please.

We are so very excited to be with you today to share the results of our rather long and very gratifying collaboration. Before we get started, I just wanted to share with you our presentation format, so you know what to expect for the next hour. We've created a very brief 10 to 15 minute PowerPoint presentation that gives you an overview of what we set out to do and how we got to where we are today. For the remainder of our time together, we have created a number of what we are hoping to be thought provoking questions

that deal with the more contentious or complicated nuances of complaint processes.

We are really hoping for your participation, and we know that the richness in presentations comes from shared experiences and perspectives. So as the Community of Practice, of Complaints Processes Community of Practice, we are hoping that our work will bring value to investigators, conduct officers, human rights service workers, administrators, lawyers, student leaders, student affairs professionals, and all those people who are investigating and adjudicating gender-based violence.

Again, as individuals working indirectly or directly with Complaints Processes, we recognise there's a real appetite for enhanced resources that will guide us in creating roadmaps for our individual institutions in the creation of policies and procedures. We also understand that not only could administrators and investigators and policy writers benefit from knowing about sound complaint processes, but everybody who is working with people whose lives are touched by sexual violence could benefit from knowing about procedurally sound, trauma-informed, anti-oppressive complaints processes, what they look like and what they should be like.

We engaged in our work, went through phases. So initially we started with an environmental scan that was shared with the working group. We then went to a needs assessment process whereby we reached out to practitioners and other relevant partners including people who support survivors to help gain a really critical perspective on needs and wants. We engaged in a gap analysis and identified really promising excerpts from materials that we reviewed. And finally, we created what we now know to be The Learning Hub.

Laura, can you take it over?

Laura: Absolutely. Thanks Dawn. Hi everybody. So this is it, this is our big reveal, is that we've created The Learning Hub, a one-stop shop, per se, a compilation of resources on topics such as trauma-informed practices, anti-oppressive frameworks, equitable investigative procedures, and our favourite topic, procedural fairness. And so we took this compilation of resources and we put them into a document now known as The Learning Hub. The resources themselves emerge in the format of publications, a list of professional organisations, training opportunities, videos, articles, and guides, just to name a few things. So this is, again, our big reveal, The Learning Hub, a compilation of resources. Over to you, Lise.

Lise: Thanks, Laura. The premise of our work, and the argument of the guide that's being prepared by the Complaints Process Working Group is that PSI processes can and must be trauma-informed, anti-oppressive, and procedurally fair. In order to respond to the pervasive problem of sexual violence, we need to be fair to respondents, and we also need to ensure that processes are fair

from the perspective of survivors whose human rights need to be respected.

It's often argued that procedural fairness is intention with trauma-informed practice, but we argue that these principles can be reconciled. That one, in fact, can inform and strengthen the other. So for example, recognising and removing discriminatory thinking from complaints processes is trauma-informed, and also enhances procedural fairness. So the resources, these are just a few select examples of the resources that we've collected in The Learning Hub that we've curated to assist PSIs, practitioners, investigators, and adjudicators to work towards this balancing.

As I said, these are just a few of the resources. There are a mix of paid and freely available resources in The Learning Hub, but in our view, PSIs need to invest in excellent training and resources. These are complex questions. PSIs are under threat of judicial review, lawsuits, and human rights complaints, but more importantly, when we fail to deliver on the promises of procedural fairness, trauma-informed, and anti-oppressive processes, we risk causing harm to survivors and to all participants in these processes.

So over to you, Cassbreea.

Cassbreea:

Thank you. And so I'm here kind of just to talk about learning from the journey, and I loved how Dawn said it, that this has been a journey for all of us. And overall, I think we confirmed what we knew at the start that this is really complex and difficult work, that all of us doing the work are looking for more information that confirms a systematic, or systemic, or standard approach that we can engage in across institutions. And we're, at the same time, while we're looking for those common practices or common tools, very little information and standards exist, and there's some real good reasons for that because we are across Canada working group.

But we took away from this work that we really need to encourage and engage conversations like the ones that we were having through the course of this work, where we can talk to investigators and practitioners, and bring those folks together to continue to engage in conversations, that we need investigator training, it could be tailored to specific contexts, but at the minimum we need to pull in that synergy between procedural fairness and trauma-informed practices for our investigators, and hopefully have some standardised and even accredited training that could be available and be at a mandatory minimum requirement for investigators.

So for those of us who engage investigators, or are investigators ourselves, we know that we are adhering to the standard practices. When things are not done well, you know, people, survivors, respondents, witnesses, and I would even hazard to say those who are leading the processes are very harmed by work that's done poorly or work that isn't done with all the best knowledge that could be brought to the table.

And just as we lead into the next bit of our programme, this is really complex work, and when we go in doing it, we don't know what we don't know until we learn that that was something that we should have known. So taking time, and part of this project is really encouraging folks to take time and think about what are those standard practices, engage in The Learning Hub as a resource, and hopefully continue to add and engage because as the next part of the programme I'm going to lead into will really interrogate kind of where we're coming from as individuals and institutions in our perceptions around how the work should be done and the type of work that is being done out there, and the different policies that are at play. So over to you, Karen.

Karen: OK. I couldn't hear what Diane said. Something's happening with my screen, I guess. So I think as Diane said, we want to look at some of the contentious aspects of complaint processes and some promising practices. And we wanted to use our time today to be interactive, and one of the ways we thought we could be interactive with you was just give you a series of polling questions and then discuss some of the aspects of those questions that related to the answers that you give.

So can you put up the first question please?

So here's the first question. A formal sexual violence complaints should only be available where the conduct complained of on campus is on campus, or it has the direct link to the institution such as a field trip. So I'll just give you a minute for everybody to answer that question and then we'll talk about it.

Karen: OK. So let's see. That's interesting. So we have strongly disagree, 40, and disagree, 30, but some people 20, almost 25%, so a quarter of people said that it should only be when it occurred on campus or has a direct link to an institution.

Now I have to say that if this was the rule in most Canadian institutions, then the policies would be very narrowly construed. This is largely because we don't have many highly residential campuses in Canada, it wouldn't include private parties, it wouldn't include private residences, and it might not even include electronic transmission because it's hard to link that to a campus or have a direct link to something like a field trip. So in my view, having a narrow policy like this can be very problematic.

I would mention though, that this is the American rule. The American Department of Education, because this is regulated Federally in the United States, has a requirement that it has to occur on campus or have a very direct link to campus.

OK. The next slide please.

Diane: And just a quick intervention there, Karen. We're going to take questions in the chat. So I'm going to keep an eye – I'm Diane, and I'm going to keep an eye on the chat, and if there's particular

questions as Karen addresses the issue, pop them in the chat, and I've been given permission to interrupt Karen to bring questions to her attention.

Karen: OK.

Diane: Oh, one of the questions already, Karen, is are we answering based on our policy or our personal opinion?

Karen: Based on your own opinion, your own opinion for this question. So the second question, formal sexual violence complaints should be available where it can establish that the conduct complaint may have an effect on the working, learning, and living environment of the institution.

Karen: OK, so here we see a much more of a consensus that – a very high degree of consensus, 88% of people, think strongly agree or agree that it should be available when it has an effect on the working, learning, and living environment of an institution.

Now, empirically I can't tell you which is more likely across Canada, whether or not this kind of policy is more likely, or the other policy which has a narrow jurisdictional focus, is more likely. But I would just mention that this type of policy has an effect on a working, learning, or living environment is consistent with the Human Rights Code of Standards for sexual harassment. So in my view, this is a much better policy, a much better jurisdictional approach to jurisdiction than the other approach.

OK. Next slide please. Or next polling question, please.

Now we're going to get into some things that are quite a bit more contentious. So one issue ...

Diane: Oh, your sound's gone out, Karen. Your sound has popped out again.

Kelly: Diane, maybe you'd like to take over reading the question.

Diane: Yeah, I'm just trying to see where Karen has gone. Yeah. Karen, can you hear us?

No. Well I'll read the question.

Sexual violence complaints should be suspended if the respondent leaves the institution. So this is, as Karen said, one of the more contentious ones.

Karen, can you hear me. Do you just want to nod or shake your head? You can hear me; we cannot hear you.

Karen: OK, can you hear me now?

Diane: Yes, yes, you're back in the room.

Karen: OK, great. OK.

Karen: So this is interesting. One of the things that I would observe, based on having reviewed a number of policies thoroughly across Canada, is most actually are silent on this question of what should happen if a respondent leaves the institution. So, you know, and they're silent on other questions, like can they transfer, can they graduate, you know, what happens while the complaint is ongoing. And given that sometimes complaints take months to resolve, the suspension can last for a long time. So this is something I think that many policies need a lot more clarity on, so I just want to put that on the table for you.

I also want to tell you about a recent case out of Saskatchewan that I find quite surprising, and I think institutions should be aware of it, and this is a case where a volleyball coach became aware of the fact that a student had been suspended from a smaller college in Saskatchewan, and the student, he knew the volleyball coach. The student approached the volleyball coach and asked if he could join the volleyball team at that institution, and the coach said "sure," even though that student was facing criminal sexual assault charges, and the coach knew that he was facing criminal sexual assault charges.

Ultimately the student pled guilty a year and a half later to the sexual assault charges, and then when it came to the attention of the media, the question was, how did he play volleyball for a year and a half on the volleyball team with nobody knowing that he was facing a sexual assault charge. So he was terminated for failing to exercise good judgment in making the decision to invite the student onto the team.

The coach grieved his firing, and he was successful in his grievance. They found that he did not breach any University of Saskatchewan policy, rule, or guideline when he allowed the student to join the team and didn't advise anybody of the student having joined the team.

So I find this kind of a troubling case. It seems to me again that one of the things that we need to watch for in sexual violence policies are what are reporting requirements, so reporting requirements across a whole range of topics. So for example, you know, if you know a student has made a complaint, is talking about sexual violence, what are the reporting requirements for professors, what are reporting requirements for administrators, what are reporting requirements for coaches, what are reporting requirements – you know, there was a recently a situation in the Maritime Provinces where a student left one institution, joined another institution, and, again, was facing charges and, again, ultimately, was convicted.

But the institution that he joined, that he transferred to, knew nothing at all about the charges that were outstanding against him. So does

there need to be some kind of system whereby this information can be communicated and what should be the effect if a student is suspended at one institution, should other institutions have ways of finding out that information. Right now, policies are very weak on this point, and I think are vulnerable on this point, so ...

Diane: We just have one question, Karen, about clarifying the terminology, "respondent." And so –

Karen: Respondent?

Diane: - respondent, yeah.

Karen: So when I use the term respondent, I mean I use it in a very open and general way. Someone who has an allegation against them, either formal or informal, of sexual violence contrary to policy.

OK, so that's sexual violence complaints should be suspended. And, again, what I'm trying to encourage here is a discussion on what should happen. Should they be allowed to withdraw, can they transfer, can they graduate and so on. And I can see that most people believe that a complaint should not be suspended if a respondent leaves an institution.

OK. Next polling question please.

Karen: So here, what we're trying to get at, is some issues around reasonable apprehension of bias issues, and the way we're tackling that question is we're asking this. PSI should avoid I Believe You campaigns because they give rise to a reasonable apprehension of bias on the part of the institution. What do you think about that question?

Diane: There's a question here about what is reasonable apprehension of bias, that terminology.

Karen: OK, great, so I'll start with that. So reasonable apprehension, let me step back two steps. When we talk about procedural fairness as a legal concept, we're talking about the principles that a decision-maker must follow when making a decision. And there are two branches to the rules of procedural fairness. The first is that you have to have a fair hearing, and a hearing that is appropriate to the nature of the decision that needs to be made. So, the first branch is the right to a fair hearing.

The second branch is the right to an unbiased hearing. That's the second branch. And often we merge them together, and we talk about the right to a fair and unbiased hearing. So a reasonable apprehension of bias is – so what the rule against bias prohibits is any actual bias, so, you know, a relationship with a party, financial transaction being involved, animus towards a party and so on. So is there a real bias, or is there an apprehension of bias that arises out of some other kind of relationship or activity that's going on.



So, for example, if someone was a counsellor to someone on a sexual violence complaint then it would be inappropriate for them to be an investigator because of the nature of their personal relationship, or their professional relationship, with a complainant.

So reasonable apprehension of bias is about avoiding the perception of bias, and it's a really important part of procedural fairness. So here, the question is, should PSIs avoid I Believe You campaigns because they give rise to a reasonable apprehension of bias on the part of the institution.

And one of the things that we discovered when we were writing the book is many institutions have dropped their I Believe You campaigns because they've been criticized as being too much on the side of complainants, that what they're doing is they're favouring complainants by having I Believe You campaigns, and they're expecting investigators and they're expecting administrators to come to the process with their minds already partly made up. That I believe you, and unless you really do something to displace that, I believe you, and the complaint will be sustained.

I think this is a draconian approach that's unnecessary. I think you can have a much more nuanced approach to reasonable apprehension of bias on the part of an institution. And it begins, of course, with any time a disclosure is made, it's the responsibility of the person receiving the disclosure to receive it openly and without judgment, and without a starting place of trying to test the credibility and the veracity of the complaint. The complaint should be taken at face value, and there's nothing that gives rise to a reasonable apprehension of bias when that kind of approach is taken.

Reasonable apprehension of bias requires everybody who's charged with fact-finding and decision-making to approach their task with an open mind. It doesn't require them to take the traditional kind of defence counsel approach to these questions.

Now it also, as I think Lise mentioned a little while ago, ADMs are – Administrative Decision-Makers are still required to use trauma-informed approaches, and there's no inconsistency between using trauma-informed approaches and reasonable apprehension of bias. So I just remind you of the three ways in which trauma-informed approaches should affect investigations and administrative decision-making.

So the first point that's really important is you need to avoid re-traumatization and avoid creating more harm. So it's really important for investigators and administrators to avoid victim blaming and accusations of lying, or the use of an incredulous tone. And this often results in eschewing cross-examination because cross-examination is so re-traumatizing. So that's the first key element of a trauma approach from a procedural fairness perspective is avoid re-traumatization and avoid doing more harm.

Secondly, those who are involved in decision-making should understand aspects of the neurobiology of trauma, so they should understand effects of sexual assault on perception, memory, affect, and so on. That should be just part of the toolkit of any investigator or administrator making a decision under these policies.

And the third aspect of trauma-informed approaches that's important, I think, for procedural fairness is that decision-makers need to understand why complainants act in ways that they act that might seem unusual to an investigator or an administrator. So, for example, a typical or an easy example of this is many complainants maintained friendly relationships with respondents, and they do that because it's safer to keep them – to know what they're doing and how they're thinking and how they're acting, rather than act in a hostile way towards them which might result in some kind of retaliation. So it might seem inconsistent to maintain a friendly relationship with the respondent, but anybody who's worked with complainants knows that this is often a strategy of a complainant to maintain friendly relationships.

Another strategy of complainants is to blame themselves for what happened. In fact, most counsellors I think would say at some point every complainant blames themselves for what happened. And one reason for this is, of course, is because it's the survival strategy. If it was my fault, I can control things in the future so it won't happen again. So it's a way of coping with what has happened to them. So, again, I really want to stress there is no inconsistency between trauma-informed approaches and procedural fairness. In fact, in my view, procedural fairness requires trauma-informed approaches, so again, avoid re-traumatisation, understand the neurobiology of trauma, and understand that complainants might act in ways that might seem counterintuitive to other people.

Diane: I've got a quick question as well, I was thinking as well, so some of the policies are around investigation of complaints, some of them are around education, awareness, and prevention. Sometimes those are in the same policy, sometimes they're separate. So the question, I'll ask you to speak a little bit about the intersection of those policies then.

Karen: Yeah. Well I think most of those policies are actually quite separate on their educational pieces, and on their counselling pieces, and their support pieces, and on their formal complaints process pieces. And the place where you need to be careful on reasonable apprehension of bias is at the end, is in the complaint process. And, you know, so I don't even think you need to be all that careful in the reporting process. You know, like a report from someone who's making an allegation of sexual violence, or a complaint, or telling the story should be a responsive belief and encouraging that person to talk about what happened to them, or whatever it is that they want to talk about. Actually most of the time they don't actually want to talk about what happened to them, they want to talk about how they are reacting to what happened to them.

So the only time you really need to be careful is, you know, when you have an investigator and then the administrator making a final decision. They have to approach the matter with an open mind. So if they come in saying "I've already made up my mind, clearly a sexual assault occurred in these circumstances, nothing can change my mind," then you're going to have a problem with reasonable apprehension of bias. But I don't think you can talk about a whole institution having a bias through their counselling programmes, their educational programmes, their support programmes, and so on.

Diane: Great. That's really helpful. I think some universities are nervous about that, obviously.

Karen: Yeah. OK. so our next question, please.

Karen: So which statement do you agree with? Procedural fairness requires that respondents have the right to an oral hearing, including the right to cross examine the complainant; procedural fairness does not require that respondents have the right to an oral hearing as issues of credibility can be thoroughly canvassed before an investigator.

Karen: So that's interesting. Eighty-six percent say procedural fairness does not require that respondents have the right to an oral hearing as issues of credibility can be thoroughly canvassed before an investigator. And I think that's a defensible response, and as a lawyer, that's as much as I can give you at this stage, is it's a defensible response.

I remember about a year and a half ago, I was in a meeting where we were working on an institutional policy, and we were discussing whether or not it would be possible to not have any form of oral hearing at all, and to make it clear that cross-examination was not possible. And there were three administrative law specialists in the room, and all of us said, "yikes, I don't know if that's possible. I don't know if that's possible." We were really nervous about that.

There's only one Canadian case, mind you it's from 1996 or something, so it's an old, old, old case, where it was clear that in a sexual violence complaint there needed to be the right to cross-examine a complainant so there needed to be some process for that. I don't think that's necessarily good law going on today.

Now what's happened in the last two or three years in Canada, well at least in the policies that I've reviewed, is there's a definite trend towards eliminating an oral hearing. And now I can't tell you for sure how many institutions have – you know, if all the institutions across the country, that would be a massive research project and it's just not worthwhile. But if 25 institutions whose policies I've studied closely, and I watched the ways in which those policies have been changed in the last few years, we see a clear trend to eliminating the right to an oral hearing. So there is no right to. And of course, if you don't have an oral hearing, then you don't have the right to cross-examination.

And the reasons for this, obviously, are because you could have this beautiful policy that had trauma-informed, and survivor centric, and had participatory rights, and was anti-oppressive and all of that, but all the good work of that policy could be undone if, in particular, the matter could be subject to a fresh hearing before a Student Discipline Panel. And there still are institutions that the final step in the process is a fresh hearing before a Student Discipline Panel. And there were all sorts of consequences of this. For example, it takes time, you know, it might take six months before you can get everybody together for a student disciplinary hearing. The panel has no expertise in sexual violence so they don't – sometimes these panels are made up of two students and a faculty member, so it can be a real disaster in terms of trying to ensure that some of the stereotypes that have invaded the law for forever in this area creep back in.

You can face the prospect of a respondent actually cross-examining a complainant directly about what happened to them, which is just a nightmare thing to imagine. So universities have taken it – PSIs have taken it upon themselves to move away from this process, and I think now that the process is defensible. So as long as you have a properly trained investigator, an investigator who does a thorough job, an investigator who will ask hard questions – so there's nothing wrong, for example, with an investigator saying to a respondent “what questions do you want me to ask the complainant,” and then ask those questions as long as they're not asked in a way that is non-trauma informed, so, you know, designed to create harm, or has the potential to create harm.

So increasingly what we're seeing is that the investigator is the final decision-maker on facts. The investigator makes the decision as to whether or not the sexual violence policy has been breached. In some situations the investigator will make a finding of fact, but the final fact determiner is the administrator. The policies are a little bit split on that point. Under most policies, the administrator is the body that determines what the sanction might be, and under some policies, the question of sanction can also go to a Student Discipline Panel in situations where you're involving a student respondent.

Now having said this, this is the trend, I think, in Canadian institutions, and my advice to any institution would be to move in this direction, to move in the direction of eliminating a full oral hearing, because it just undermines policies in so many ways, and I don't think it's absolutely required by procedural fairness. But it's a risky strategy, and I do think that some time in the next year or two we will see a judicial review application, so we'll see a respondent going to court saying that it's unfair not to have a full oral hearing and not to have the right to cross-examination. So, at best we can say now that it's a defensible policy. I think there's some chance that the policy will be upheld by courts, but there's also some chance that it won't be. So it will be interesting to see what happens in the next few years around this, but I really strongly encourage institutions, including my own institution which finally is going to move in this direction, to get rid of oral hearings altogether.

Diane: So there's a question about what an oral hearing exactly means, and whether it's everybody in attendance at an oral, with a conversation between all the parties, representatives, supports, I guess –

Karen: Yeah. Great question. OK.

Diane: – or one-on-one conversations with the adjudicator and the investigator.

Karen: Yeah, OK, so in procedural fairness we use the concept of a hearing, that everybody has the right to a hearing. And hearing is really deceptive, because hearing can be – you can have a hearing by filing a one page application for something. That can be a hearing. You can have a hearing by having a telephone conversation over a phone. You can have a hearing by giving written responses to questions. You can have a hearing by an in-person interview, one-on-one, where questions are asked.

You can have a hearing that's a roundtable discussion with parties around the table talking about what happened in a very informal kind of way. And then you can have the full trial type hearing, sometimes called a fresh hearing, or a hearing de novo, where everything is very formalised, so it looks like a courtroom, you've got the judge or the decision-maker at the end of one table and the parties on either side, and you have formally called people to give their evidence and then you cross-examine on that evidence. So that's a full oral trial type hearing.

So when I'm talking about what might be problematic about polic- – what I'm advocating for policies is a good investigation, that you have one-on-one interviews that are iterative, so you can go back and ask questions and follow-up on new information received, so it's iterative, it's not just one time only. So in my view, an iterative investigative process should satisfy the rules of procedural fairness, having regard to all of the interests that are at stake in these cases.

But having said that, some will take the position that you have to have all parties in attendance for a synchronist hearing, where all of the evidence is heard at the same time by everybody, and you might have to meet on repeated days in order to get all of the evidence in.

So a full trial type hearing in my view is not required, but having said that, I could be wrong. I could be wrong, and we'll see what happens when this matter ultimately goes on judicial review which I anticipate will happen within the next couple of years.

Diane: This move is certainly in line with many of, at least, my readings of some of the student advocacy groups saying we shouldn't have these open hearings where people can all scream, people get mad at each other, it's not a very trauma-informed way. So it certainly seems like the universities are moving in the direction that the students have been asking for, at least student advocacy groups.

Karen: Yeah.

- Diane: Yeah.
- Karen: Yeah. Well, it goes beyond not being trauma-informed. Not being trauma-informed is key, but also there's delays because you have to get all of the people in the room at the same time, that's a big problem. And there's also a serious lack of expertise, so we wonder sometimes about the expertise of investigators when it comes to understanding the myths that have informed sexual assault complaints since time immemorial.
- We know that those myths are really hard to displace, and we can also think – believe – that those myths will operate at the level of a student disciplinary hearing where the people who are sitting on those panels have no experience at all, no training at all, no education, nothing that displaces those stereotypes, and so those stereotypes can be operating.
- Diane: Mm. Absolutely. Yeah.
- Karen: OK. Any other questions on that?
- Diane: I'm not getting any in the chat. I have a quick question then, you know, how does it work in human rights complaints? How is that, the hearing, defined in the human rights complaint for the human rights?
- Karen: Well in a human rights situation in most provinces – it's a little bit different in every province – but you have a trained adjudicator who hears the case. So it's set up for an adjudication.
- Diane: Right.
- Karen: Yeah. OK, so I think we have one more question.
- Diane: And I'm getting lots of thank yous in the chats for your helpful explanations.
- Karen: OK, so here what we're trying to look at are what are some of the different ways in which respondents have fought back. And we're trying to get a little bit of a sense of how common we see various things going on. So here, our question is, which of these events have happened at your post-secondary institution? Indicate by checking all the answers that apply. So a respondent has sought judicial review to overturn a decision under a policy; a faculty member has filed a grievance; a respondent has filed a formal complaint; a respondent has threatened to sue the institution; or the respondent has sued an institution, a complainant, or a complainant's supporters.
- So we're curious if these things have happened at your post-secondary institution.
- Diane: We probably have about five minutes left to –
- Karen: Yeah.

- Diane: Someone is confirming that these responses are anonymous.
- Karen: Yes, they're anonymous. Yeah.
- Diane: Although if everybody in attendance is from one university that will bias our statistics.
- Oh, and someone has said the problem is with confidentiality rules. We don't actually know if some of these things have happened.
- Karen: Yeah, that's absolutely right.
- Diane: You don't have a number, yeah.
- Karen: Yeah. So what I was hoping to do with this question was generate – at least get some sense about what's going on up there, because the privacy rules are so incredible that we have very little information on so many questions about what's happening under these policies and the reporting requirements. Ontario's the only province that has reporting requirements, for example. Maybe Quebec does, I stand corrected, but even then, the reporting requirements in Ontario are so thin that at best you know the number of complaints and the number of investigations, and it's hard to find that information.
- So sometimes I've found that the matters being discussed, for example, on a Board of Governor's agenda, but I can't find the report in the materials that are placed on a Board of Governor's website. So it's really hard to get the reports even when you expect to find them.
- So let's just look at these results a little bit. So, a respondent has sought judicial review, so almost 20% of the people who are on this call, their institution has faced a respondent who's sought judicial review. So again, I just want to stress that that's a very real likelihood with the policies in situations where policies don't require an oral hearing. Almost 50% of faculty members filed a grievance related to a formal sexual violence complaint, so a high degree of aggrieving. Eight percent complaint with the Privacy Commissioner. Now this is one that would be really difficult to know because the Privacy Commissioner is very careful about anonymising. So at best, you know what province that case is from, but you don't know anything about if the respondent is a student, you don't know if the respondent is a professor, you just don't know anything about what's going on with privacy.
- The other problem with privacy – well, there's lots of problems with privacy, I won't get into that right now – a respondent has threatened to sue an institution and administrators, so 63%. That's high, that's very interesting, so the threat of a lawsuit, it seems, is not uncommon. And a respondent has sued the institution and administrator, a complainant, or complainant's supporters, and 27% of people said that they know this has happened at their institution.

I'm not sure how many people are aware of the Steven Galloway case in UBC, but he has sued almost 30 complaint defendants, including the complainant herself, her friends, her allies. Pretty much anybody who's Tweeted about the case has been sued by him, so a real radical attempt to close down discussion and to undermine avenues of support for complainants.

OK, any questions or comments or thoughts?

Diane: We only have a few more minutes. There's a few there in the chat. We need a "Problem with Privacy Community of Practice", which I think is a funny idea. Funny and useful. And one comment there, usually we see complaints to senior admin and the Human Rights Commission. So complaints go to the senior admin or Human Rights Commission, I guess is an observation.

Karen: Yeah, well, so sometimes complaints go to Human Rights Commissions on how the matters are handled, so I could have put that in there, I guess. I could have put that in there as one of the questions. What I was really trying to do in this question was show you the range of possible responses that one could have if they were unhappy with how a policy played itself out, and that there is a wide range of responses that a disgruntled respondent can have. And I left out two of them, obviously, a complaint to senior administration or a complaint to a Human Rights Commission.

Diane: Did you see there, the threat of suing though is happening a lot. That kind of has a chilling effect on administrators who are worried.

Karen: Yeah.

Diane: Yeah. Yeah. So there's Kelly just posted in the chat about any resources that people could share, so I hope people are seeing that. Resources that could be included in The Learning Hub.

Karen: So it'd be great, if you know of any resources, if you could just post them at this time. And now I'm supposed to turn it back over to Anoodth for closing.

Anoodth: I think we've got about a minute or two for any last questions.

Anoodth: Oh, I see another question in the chat. So the question for books, where they might have access to this Hub. And it's a really valuable resource, and so with the Courage to Act Community of Practice tools, some will be available for immediate download, whereas some institutions can sign up to pilot, and more information will be available on our website soon.

And then, Karen, we have one more question from Megan. So the question is, do you have any suggestions for translating some of these findings and best practices to decision-makers at PSIs?

Karen: That's a huge question. I mean, what I tried to break it down here was try to look at just some very discrete problems, you know, and some problems that I see have a real big effect on policies that have



been under-discussed in the literature. So the move towards – away from in-person hearings, which I just think is so, so important. You know, we've got jurisdictional questions. The questions on what happens if a student is suspended. I just don't think we've thought about that enough. So what I was trying to do in – what we were trying to do in putting together these questions is identify some areas where institutions needed to do a little bit more thinking in their policies.

So I see an interesting question here, is there any way to garner judicial input without a formal judicial review occurring? No, there isn't. So if what you want to do is run around a judicial review application, the best way to do that is actually have the legislation changed, or have the regulations, 'cause some provinces there are regulations that support the legislation. And if the legislation is clear, that you do not have the right to a full oral hearing, then you don't have a right to a full oral hearing. That's the best way to do that.

Now whether or not any provincial government will micromanage policies to that extent is an open question. I would be surprised if any province would be willing to do that, but I think it's at least something that's worth a conversation, is to put it in the legislation that a full oral hearing is not required.

Karen: So we've got a question from Robin. Can we change the legislation to protect complainants from being sued? It's a public health issue because it shuts down reporting and access to support and justice. Really hard to do that. It's really hard to get – and now there is anti-slapp legislation, you know, to prevent strategic lawsuits that are designed to shut down conversations and put difficult topics. But having said that, for the most part, I don't think that the anti-slapp legislation is working that well to perform the function that it's supposed to perform. And any complainant that gets sued is in a lot of trouble because you need to hire a lawyer, pretty much, in order to defend, and the case could hang over you for a long time, so it's very tricky, but I can't see any province really protecting a complainant outright from a lawsuit.

Anoodth: Wonderful. Thank you so much, Karen. And thank you to the Complaints Processes CP for taking part in this National Skillshare Series, and for sharing your time and your expertise with us. We've learnt a ton, and the recording will be available on our website in a few days. And if folks are interested in learning more about this tool, or learning more about the opportunity to pilot these tools at your PSI, please continue to follow the Courage to Act project, and you can sign up for piloting opportunities via the Courage to Act Knowledge Centre in Fall of 2021.

And don't forget that registration is also open for the rest of the Skillshare Sessions that are part of our National Skillshare Series, and this runs until August 18<sup>th</sup>, 2021.

And as mentioned, the Skillshare Series will highlight the ground-breaking work being done across Canada to address

gender-based violence on campus, and it will showcase the 15 tools and toolkits being developed by our 150-plus project partners, including our Communities of Practice, and you can sign up on the Courage to Act website.

And I also want to take a moment to thank our attendees for joining us today, and for sharing with us. We appreciate and take deep inspiration from your commitment to addressing gender-based violence on post-secondary campuses. We feel very lucky to work alongside each and every one of you. A kind reminder to complete the evaluation forms.

Thank you again everyone, bye.