

A Comprehensive Guide to Campus Gender-Based Violence Complaints:

Strategies for Procedurally Fair, Trauma-
Informed Processes to Reduce Harm

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LAND ACKNOWLEDGEMENT

We would like to begin 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 colonialism that is used to marginalize and dispossess Indigenous peoples from their lands and waters. Our work on campuses and in our communities must centre this truth as we strive to end gender-based violence. We commit to continuing to learn and grow and to take an anti-colonial and inclusive approach to the work we engage with. It is our intention to honour this responsibility.

DEDICATION

We dedicate this Guide to every person who has been harmed as a result of their involvement in a campus complaints process.

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ABOUT POSSIBILITY SEEDS

We are a leading project management and policy development social purpose enterprise that works alongside communities, organizations, and institutions to cultivate gender equity. Courage to Act is a national initiative by Possibility Seeds to address and prevent gender-based violence at post-secondary institutions in Canada. The project builds on key recommendations from the vital 2019 Courage to Act report. Connect with us at www.possibilityseeds.ca.

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Glossary of Terms

We recognize that there can be more than one term used to describe a given concept or role. While some of the terms defined below have broader meanings in different conditions, we are defining terms in the context of post-secondary institution complaints processes. For the purposes of this Guide, we will use the following terms and definitions:

ACCOUNTABILITY MEASURES

An umbrella term for sanctions, disciplinary actions, outcomes, and other remedies imposed by the post-secondary institution as a result of a determination that a member of the post-secondary institution community committed a breach of the gender-based violence policy.

ADVERSARIAL HEARING

A hearing in which parties make their submissions (including evidence and arguments) to a decision-maker, who relies on them to decide whether there was a breach of policy and what the outcome should be. Adversarial hearings resemble court trials and can involve cross-examination.

See also Hearing; Oral Hearing.

ADJUDICATOR

See Decision-Maker.

ADVISOR

Any person in an advisory or guidance role that provides support to the involved parties in making decisions about their academics, workplace, and health and well-being during an investigation. Can include (but is not limited to) staff members from campus sexual assault centres, ombuds personnel, academic advisors, medical professionals, or lawyers.

ANONYMOUS REPORTING

“[P]ractices that allow a person affected by GBV [gender-based violence] to provide the institution with information about an incident without revealing their identity” (Khan, Rowe & Bidgood, 2019, p. 125).

ANTI-OPPRESSIVE PRACTICE (AOP)

Individual and institutional strategies, theories, actions and practices that seek to dismantle the effects of institutionalized power and privilege – particularly of white European experiences and structures – and ultimately to equalize power imbalances (Simmons University Library, 2021). Anti-oppressive practice includes being anti-racist, sexist, ableist, ageist, classist, colonial, as well as actively working against homophobia, transphobia, and religious discrimination.

APPEAL

A procedural mechanism for a respondent or complainant to challenge a decision made under a post-secondary institution's policy.

See Chapter 10: Adjudication, Outcomes, and Appeals.

CIRCLE OF SUPPORT

A group of identified individuals that a person relies on to provide support when they have been subjected to harm. A circle of support can include family, friends, or professional support persons.

CIRCLES OF SUPPORT AND ACCOUNTABILITY (CoSA)

An evidence-based approach to reintegration of persons who have committed sexual offences whereby a network of support and accountability is created to assist the person who has caused harm to “lead responsible, constructive, and accountable lives in their communities” (CoSA, 2021).

COMPASSION FATIGUE

“[A] state of exhaustion and dysfunction biologically, psychologically, and socially as a result of prolonged exposure to compassion stress and all it invokes” (Figley, 1995). It is sometimes referred to as secondary traumatic stress.

See also Secondary Trauma; Trauma Exposure Response; Vicarious Trauma.

COMPLAINANT

The person who reports an incident of campus gender-based violence with the intent of pursuing the institution's formal complaints process, in most cases the person who was subjected to the incident of gender-based violence.

See also Party.

COMPLAINT

When an individual provides information regarding a potential gender-based violence policy violation to the appropriate post-secondary institution official with the intent to initiate an investigation.

COMPLAINTS PROCESS

Any post-secondary institution process begins with a formal report to the institution of potential sexual misconduct, which leads to an investigation, findings, and possible accountability measures, outcomes, or remedies under the gender-based violence policy. This process is governed by administrative law, which is separate and distinct from civil or criminal law.

CROSS-EXAMINATION

“The examination of a witness who has already testified in order to check or discredit the witness's testimony, knowledge, or credibility” (Merriam-Webster, n.d.a).

DECISION-MAKER

The individual or individuals designated to make findings and/or impose outcomes in a complaints process, including appeals. Investigators, adjudicators and tribunal or panel members are all examples of decision-makers.

DIRECT TRAUMA

A traumatic event that a person experiences first-hand.

DISCLOSER

The person who shares that they have been subjected to gender-based violence without necessarily intending to pursue, or prior to initiating, the institution's formal complaints process.

DISCLOSURE

When a person shares that they have been subjected to gender-based violence, often for the purpose of accessing support or resources.

GENDER-BASED VIOLENCE (GBV)

An umbrella term that includes sexual violence and other forms of “use and abuse and control over another person” that are “perpetrated against someone based on their gender expression, gender identity, or perceived gender” (BCFED, 2018, as cited in Khan, Rowe & Bidgood, 2019, p. 10). Forms of gender-based violence include: physical violence; online violence/technology-facilitated violence; sexual violence including sexual abuse, sexual harassment, sexual assault and sexual exploitation; spiritual abuse; financial abuse; harassment including stalking; and emotional and psychological violence including put-downs, bullying, threats and intimidation.

GRIEVANCE

“[A] violation of the employee's rights on the job – whether under the collective agreement or under legislation. Not all complaints are grievances. They need to clearly violate either the contract or the law” (Canadian Labour Congress, 2015).

HARM

In the context of addressing sexual violence on campus, harm refers to negative consequences of GBV, the PSI complaints process as a whole, or specific elements of the process, experienced by the involved parties. The institution can introduce measures to reduce or mitigate harm throughout its complaints process or offer non-adjudicative options specifically designed to address the harm resulting from gender-based violence. *See Chapter 3: Introduction to Harm Reduction.*

HARM REDUCTION

A recognition that the processes designed to address gender-based violence in post-secondary institutions can themselves cause harm; and a series of practices that, wherever possible, seeks to limit and reduce the negative consequences of gender-based violence and gender-based violence complaints processes on the involved parties. *See Chapter 3: Introduction to Harm Reduction.*

HEARING

An event or series of events in which a decision-maker receives and considers all of the information necessary to make a fair decision. A hearing could consist of written submissions, a meeting or meetings with a decision-maker, round table discussions, a hearing with all parties in the room, or any combination of the above.

See also Oral Hearing; Adversarial Hearing.

HISTORICAL TRAUMA

Historical trauma is commonly referred to as the “cumulative emotional and psychological wounding spanning generations, which emanates from massive group trauma” (Yellow Horse Brave Heart, 1999 as cited in Wesley-Esquimaux & Smolewski, 2004, p. 54). Historical trauma can also be described as a previous trauma of gender-based violence, one that may have happened prior to attending or working at a post-secondary institution.

The “cumulative emotional and psychological wounding spanning generations, which emanates from massive group trauma” (Yellow Horse Brave Heart, 1999 as cited in Wesley-Esquimaux & Smolewski, 2004, p. 54).

See also Intergenerational Trauma.

INDIVIDUAL ACCOUNTABILITY

An accountability model that views behaviour and responsibility as individual matters, with less regard for those affected. Individual accountability often results in sanctions against a person who has been found to have breached policy.

See also Institutional Accountability; Interpersonal Accountability.

INFORMAL MEASURES OR INFORMAL RESOLUTION

See Non-Adjudicative Processes.

INSTITUTIONAL ACCOUNTABILITY

Institutional accountability is an administrative responsibility to: prevent harm before it occurs; accommodate involved parties after it occurs; address institutional gaps that enable harm; and design an action plan with benchmarks to remedy gaps and foster cultural change.

See also Individual Accountability; Interpersonal Accountability.

INSTITUTIONAL BETRAYAL

“Feelings of treason that occur when an institution fails to prevent or respond appropriately to wrongdoings committed within the context of an institution” (Linder & Myers, 2018).

INTAKE WORKER

The person who provides information about and receives complaints under the gender-based violence policy.

INTERGENERATIONAL TRAUMA

“[W]hen the effects of trauma are not resolved in one generation. When trauma is ignored and there is no support for dealing with it, the trauma will be passed from one generation to the next” (Aboriginal Healing Foundation, 1999, as cited in Wesley-Esquimaux & Smolewski, 2004, p. 2).
See also Historical Trauma.

INTERIM MEASURES

“[N]on-disciplinary conditions or restrictions placed on a person who is alleged to have committed GBV [gender-based violence]” (Khan, Rowe & Bidgood, 2019, p. 127).
See Chapter 8: Interim Measures.

INTERPERSONAL ACCOUNTABILITY

Interpersonal accountability is both the willingness to accept responsibility for one’s actions and a shift in behaviour to refrain from causing similar harm in the future. It recognizes and considers the impact of a person’s actions on others, which may include the complainant and/or the community.

See also Individual Accountability; Interpersonal Accountability.

INTERSECTIONALITY

A term coined by Dr. Kimberlé Crenshaw, intersectionality is the acknowledgement that an individual can occupy a number of political and social identities and that this has an impact on that individual. Those identities and social categorizations can be understood under racial, gender, sexual, religious, disabled, class, and religious lines, to name a few. The overlap of any of these identities creates a complex system of

discrimination where individuals face multiple oppressions. Any policy, procedure or support should adopt this lens, so as to be mindful and delineate who is being excluded from such processes.

INVESTIGATOR

In reference to the PSI context of sexualized violence reporting process, an investigator is an individual who gathers relevant information, interviews the complainant, respondent, and witnesses, and provides the investigation report to the decision-maker. In some cases, the investigator also makes a finding on whether a policy violation occurred.

INVOLVED PARTIES

See Party.

MITIGATE

Used in the plain language context, mitigate means to “to cause to become less harsh or hostile; to make less severe or painful; extenuate” (Merriam-Webster, n.d.b).

MULTI-GENERATIONAL TRAUMA

See Historical Trauma; Intergenerational Trauma.

NON-ADJUDICATIVE PROCESSES

An umbrella term to refer to any post-secondary institution’s resolution, response, or accountability process available in response to a disclosure of gender-based violence that does not involve a disciplinary decision by the post-secondary institution.

See Chapter II: Non-Adjudicative Options for Gender-Based Violence Response.

ORAL HEARING

A hearing that provides the opportunity for each party to make statements, ask and answer questions, and provide evidence in the presence of the decision-maker. An oral hearing can involve both parties together, or separate hearings for each party.

See also Hearing; Adversarial Hearing.

PARTY

A person who brings or is the subject of a complaint, who participates and is accorded procedural fairness rights in a complaints process. Parties can include respondents, complainants, or post-secondary institutions depending on the type of complaint.

See also Complainant; Respondent

POST-SECONDARY INSTITUTIONS (PSIs)

Includes (but not limited to) colleges, universities, Indigenous institutes, technical institutes, collèges d'enseignement général et professionnel (CEGEPs), trade schools, and other institutions outside the K-12 systems, that fall under provincial or territorial legislation.

PROXY REPORTING

Proxy reporting refers to when a person(s) who was not subjected to gender-based violence makes a complaint about an incident(s) of gender-based violence they witnessed or learned about.

POST-SECONDARY INSTITUTION (PSI) OFFICIAL

A person who acts in an administrative, leadership, or management capacity in a complaints process.

RESPONDENT

The person alleged to have committed gender-based violence on or off-campus, in other words, the subject of the complaint(s). A respondent can be any member of a post-secondary institution (student, staff, faculty, librarian, administrator, employee).

See also Party.

RETRAUMATIZATION

Retraumatization occurs when someone re-experiences or re-lives a previous traumatic event. This can occur if a survivor of campus gender-based violence lodges a formal complaint to their institution. They may then have to “re-tell” their trauma story multiple times to different campus members (ie., administrators, investigators, campus police, residence dons, counsellors, support staff and potentially others). “Re-telling” of such traumatic events can set off a range of symptoms such as flashbacks, nightmares, sleeping issues, anxiety, withdrawal from school/social

settings, intense emotions, and more. Retraumatization can also be brought on by environmental factors such as being in the same place where the violence took place, a similar scent, taste, or sound.

Occurs when the methods used to discuss, debate and analyze the original trauma cause triggering symptoms related to the incident itself, or reliving moments from the original trauma (Valpied et al., 2014).

RULES OF EVIDENCE

The legal and regulatory framework for evidentiary issues, including provincial, territorial, and federal laws, and precedents from case law.

SANCTUARY TRAUMA

“Occurs when an individual who suffered a severe stressor next encounters what was expected to be a supportive and protective environment and discovers only more trauma” (Rose, n.d.).

SECONDARY TRAUMA

“[N]atural and consequential behaviours and emotions resulting from knowing about a traumatizing event experienced by a significant other (or client) and the stress resulting from helping or wanting to help a traumatized or suffering person” (Figley, 1995 as cited in Rauvola et al., 2019).

See also Compassion Fatigue; Trauma Exposure Response; Vicarious Trauma.

SYSTEMS NAVIGATOR

A person that explains intra-post-secondary policies, as well as internal and external, processes and procedures to involved parties, and offers guidance, referrals and coordination of support throughout the complaints process.

TRAUMA EXPOSURE RESPONSE

“The experience of bearing witness to atrocities that are committed human against human. It is the result of absorbing the sight, smell, sound, touch and feel of the stories told in detail by survivors who are searching for a way to release their own pain...the impact of working directly with individuals who have experienced or been affected by trauma” (Klinik Community Health Centre, 2013).

See also Compassion Fatigue; Secondary Trauma; Vicarious Trauma.

TRAUMA-INFORMED/TRAUMA-INFORMED PRACTICE

Trauma-informed means acknowledging the harm endured by complainants and survivors along with having awareness of the impacts that trauma has on an individual's emotional, cognitive, physical and sexual wellbeing. Such acknowledgement and understanding should guide the creation of processes, procedures and support. Adopting such a lens should serve to not re-traumatize individuals further; it should maintain their dignity throughout the process, procedure or support they receive. In addition to processes, procedures or support that are infused with trauma-informed principles, trauma informed also implies that those individuals charged with creating processes, procedures or documents need specific training in trauma-informed practices as well.

See Chapter 2: Introduction to Trauma-Informed Practices.

TRIGGER

“A stimulus that sets off a memory of a trauma or a specific portion of a traumatic experience” (SAMHSA, 2014). Survivors of gender-based violence may experience triggers at any time, for example, “a survivor attending a seminar hears a joke about rape” may trigger a trauma response such as flashbacks, anxiety, panic, flight, fight or freeze.

VICARIOUS TRAUMA

“Vicarious traumatization (VT) refers to harmful changes that occur in professionals' views of themselves, others, and the world as a result of exposure to graphic and/or traumatic material. VT can be seen as a normal response to ongoing challenges to a helper's beliefs and values but can result in decreased motivation, efficacy, and empathy” (McCann & Pearlman, 1990 as cited in Baird & Kracen, 2006). Vicarious trauma can occur to those working with survivors of campus gender-based violence. The “transformation in the inner experience of the [worker] that comes about as a result of empathic engagements with trauma material” (Pearlman & Saakvitne, 1995 as cited in Rauvola et al., 2019).

See also Compassion Fatigue; Secondary Trauma; Trauma Exposure Response.

Acronyms

BIPOC

Black, Indigenous and Person(s) of Colour

CoSA

Circle of Support and Accountability

CRT

Coordinated Response Team

FETI

Forensic Experiential Trauma Interviewing

GBV

Gender-Based Violence

NDA

Non-Disclosure Agreement

OHS

Occupational Health and Safety

PSI

Post-Secondary Institution

RJ

Restorative Justice

SCC

Supreme Court of Canada

TCC

Transformative Community Conferencing

TJ

Transformative Justice

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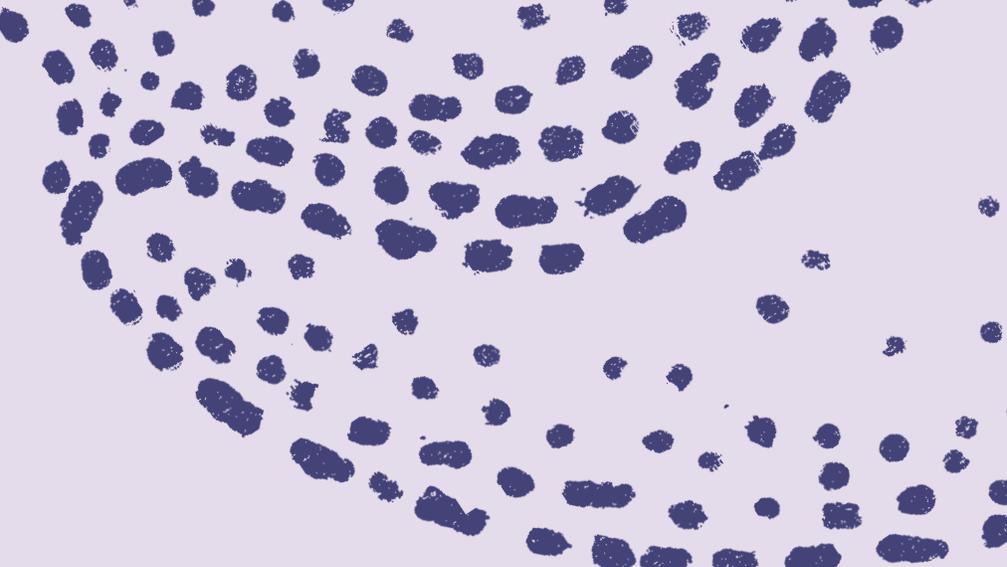
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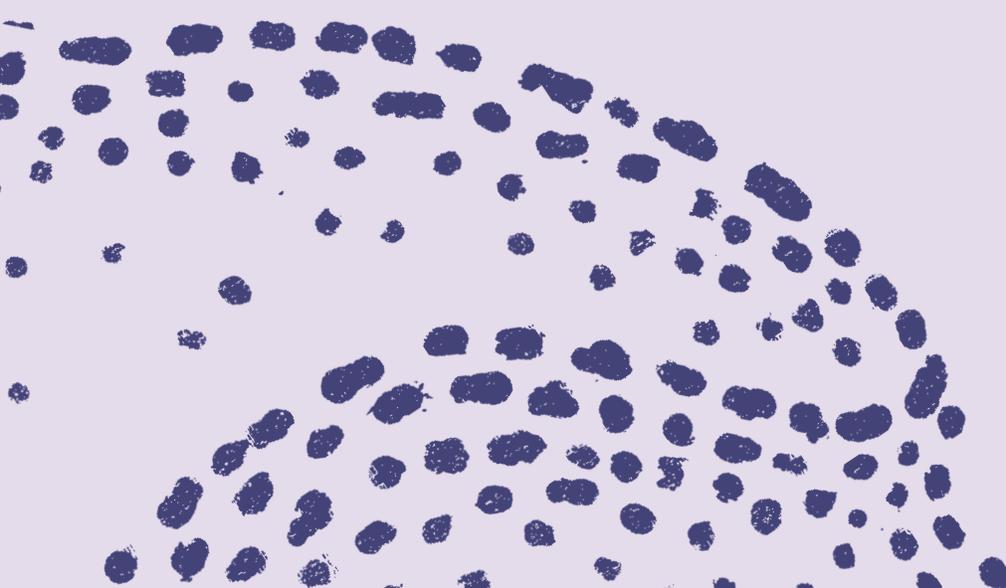
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SECTION I:
Introduction



Purpose of the Guide

This Guide has been developed in response to the calls to action in *Courage to Act*, a national draft framework to address and prevent gender-based violence (GBV) at post-secondary institutions (PSIs) in Canada. Specifically, it is a resource to inform the reporting, investigation, adjudication, and appeals processes for complaints made to a PSI about an incident or incidents of GBV (Khan, Rowe & Bidgood, 2019, pp. 114-143).

Until very recently, there were few, if any, resources for PSIs crafting their complaints processes for GBV. Several provinces enacted legislation requiring GBV or sexual violence policies, but without specific guidance on how to do so. Policies and procedures across the country varied widely and often reflected misunderstandings about the administrative context and complex regulatory environment in which these policies exist. Additionally, there is a common misconception in PSI processes that procedural fairness only applies to respondents, trauma-informed practice only applies to complainants, and the two exist in opposition to each other.

GBV is often thought of as a crime because sometimes it is a crime. However, in the context of institutional responses to GBV, it is important that complaints processes do not mirror criminal processes. PSIs are authorized to create and enforce their own policies, and to address GBV *only as a policy violation*. To that end, we draw on case law mainly from administrative law, human rights tribunals, and labour arbitrations. In order to minimize confusion, we have limited our criminal case law references to those cases that are instructive in the administrative context as well.

IT IS OUR POSITION THAT PROVIDING TRAUMA-INFORMED PROCESSES WITH AN AIM TO REDUCE HARM IS A NECESSARY ELEMENT OF PROCEDURAL FAIRNESS.

Throughout the Guide, we make the case that the three facets of an institutional response to GBV – procedural fairness, trauma-informed practice, and harm reduction – are neither mutually exclusive nor intended to serve the interests of one party over another, or the parties over the institution.

On the contrary, we argue that it is incumbent on PSIs to provide appropriate procedural fairness measures, understand trauma and its effects, and take intentional steps to reduce harm *for all parties*. Doing so strengthens and reinforces the institutional response and contributes to healing, learning, and resilience. It reduces long-lasting negative effects of both the GBV itself and the institutional processes for addressing it and ultimately mitigates institutional risks.

We also argue that the imperative to prevent and appropriately respond to GBV is based in human rights. Courts have established that GBV is a form of gender discrimination, prohibited under human rights law.

We note, however, that the intersections of other protected characteristics in addition to gender (including gender identity and expression) – namely race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, class, genetic characteristics, disability (Canadian Human Rights Act, 1985), and citizenship status – can work together to exacerbate the risks for, and effects of, GBV on those who experience it. Therefore, throughout this Guide, we also approach the issue of GBV with an intersectional, anti-oppression and decolonizing lens.

Additionally, human rights law introduces “an obligation [on employers and service providers] to adjust rules, policies or practices to enable [employees and service users] to participate fully.” This obligation is called the duty to accommodate and while this duty is most commonly understood in the context of disability, it applies to needs related to *all* Code-protected grounds (Canadian Human Rights Commission, 2020). PSIs are required to provide accommodations for students, faculty, and staff to the point of *undue hardship* – “the limit, beyond which employers and service providers are not expected to accommodate,” often tied to unsustainable economic or efficiency costs, as well as health and safety factors. Understanding what would be considered undue hardship is case-dependent, and while there is no precise formula for balancing the needs of the person seeking accommodations and the costs to the institution, the bar to be able to demonstrate undue hardship is high, particularly for large institutions (Canadian Human Rights Commission, 2005).

Throughout this Guide, we recommend that you provide accommodations wherever needed to meet your obligations under human rights laws, but also as an important measure to reduce harm for those subjected to GBV whether or not they make a complaint.

Human rights law is quasi-constitutional and paramount, meaning it permeates all other legislative requirements and, where there is a conflict, it takes precedence. The strategies proposed throughout this Guide reflect the fact that **aligning institutional policies, procedures, and practices with human rights is not optional**, and it requires careful attention to the complexity and nuance in the legislative and regulatory framework in which PSIs exist.

Finally, we seek to situate GBV squarely in the PSI context. The structures of PSIs set the stage for GBV; in particular, the hierarchies between, among and within the communities that make up PSIs. These structures are also conducive to effective and often invisible forms of retaliation, which create barriers to reporting for those who have been subjected to GBV.

Audience

This Guide is intended, primarily, for those who make decisions about and within PSI complaints processes: administrators, lawyers, policy-writers, intake workers, investigators, and adjudicators. Our goal is to be inclusive of all GBV complaints, whether they involve students, staff or faculty, and all types of PSIs, whether large or small, urban or remote, technical or research-based, across all provinces and territories.

We hope that it is equally useful for those involved in the processes, to assist in understanding what is required, what is possible, and what the limitations for PSIs might be. In this group, we include disclosers, complainants, and respondents, as well as their advisors, advocates, lawyers, union representatives, counsellors, and circles of support.

This Guide is not intended for those who are seeking an understanding or framework for complaints made against an institution, such as through a grievance, judicial review, or other mechanism. While we do indicate where a specific strategy may help to protect against the possibility of a complaint made against the institution itself, any discussion on such complaints is beyond the scope of this Guide.

Language

In taking an anti-oppressive approach to this work, we recognize the “power of language to shape identities and opportunities” (Amadasun & Omorogiwa, 2020) and have therefore been intentional in our language choices.

Throughout this Guide, we have chosen to use the terms *systemic oppression* and *systemically oppressed groups* as an umbrella term to highlight how our institutions, governments, and social processes create an interconnected and reinforcing system that disadvantages or harms certain groups, while advantaging others based on intersecting identity factors (National Equity Project, n.d.). In the context of GBV at PSIs, systemically oppressed groups include Black, Indigenous, and People of Colour (BIPOC), those from persecuted religious, ethnic and cultural communities, 2SLGBTQQIA+ people, those subjected to systemic poverty, people with disabilities, and women. These groups are disadvantaged by systems of oppression including: colonialism, racism, sexism, misogyny, homophobia, transphobia, ethnoreligious discrimination, classism, and ableism.

However, we also recognize that the use of broad terms can obscure the ways that specific systems of oppression operate and the unique impacts on specific groups. Therefore, where necessary, we refer to specific groups or systems of oppression.

We also say that a person has been *subjected to GBV*, rather than saying that a person has experienced GBV, to highlight the role of power in this violence.

Additionally, we refer to *myths and stereotypes* as a kind of shorthand for the many sexist, misogynist, or racist assumptions that can poison a complaints process and lead to unfair and unjust decisions.

The following are some of the countless myths and stereotypes that must be actively challenged at all stages of the complaints process:

- A person who has been subjected to GBV will report it immediately.
- Many reports of GBV are just indications of remorse for consensual sexual activity after the fact, a means to get revenge, or a way to get attention.
- Failure to run, scream, fight, or leave when being subjected to GBV means the person probably consented.

- Complainants who act in unexpected ways or don't seem traumatized probably gave consent.
- If a person who was subjected to GBV was using alcohol and/or drugs at the time, they probably gave consent and just don't remember.
- If a person who was subjected to GBV remains in a relationship, maintains contact, or goes on another date with the person who subjected them to GBV, there was probably consent.
- Sex workers don't have to give consent because it's their job.
- Most people are subjected to GBV by a stranger.
- Men can't be subjected to GBV.
- Men are unable to resist their urges and just can't control themselves.
- A person's choice of clothing, behaviour, etc. causes them to be subjected to GBV.
- A person cannot be sexually assaulted by someone they are in a relationship with.
- People who observe religious clothing, such as headscarves, hijabs or cloaks and abayas are *less* likely to be assaulted.
- Racialized men are more likely than others to commit acts of GBV.
- Those who subject others to GBV, and those who are subjected to GBV, fall within certain recognizable types based on race, gender, and class.

FINALLY, FOR EASE OF READING, WE USE A NUMBER OF UMBRELLA TERMS AS FOLLOWS:

- To capture various roles within the complaints process, we use *intake worker*, *decision-maker*, and *advisor*, rather than listing all of the possible individuals who occupy different positions, but who may fill those roles. We invite readers to explore these in more detail in “Chapter 6: Personnel, Roles and Training.”
- Throughout the Guide, we use *outcome*, to stand for any potential consequence of a complaint or resolution process, including sanction, punishment, discipline, remedy, agreement, or resolution.
- We use the term *non-adjudicative option* to refer to any process for addressing GBV which does not include an investigation, finding and possible outcome relating to a policy violation. Readers can explore further in “Chapter II: Non-Adjudicative Options for Gender-Based Violence Response.”

Filling Gaps Identified in the *Courage to Act* Report

The *Courage to Act* framework discusses the Reporting, Investigation and Adjudication of complaints of GBV at PSIs, and recommends actions to fill identified gaps (Khan, Rowe & Bidgood, 2019). This Guide addresses the following identified gaps:

- **GUIDELINES FOR PROCEDURAL FAIRNESS (KHAN, ROWE & BIDGOOD, 2019, P. 121)**
The Guide as a whole provides guidelines for procedural fairness, offering a framework for the level of fairness owed in a PSI complaints process;
- **ROLE AND RESPONSIBILITIES OF THE PSI (KHAN, ROWE & BIDGOOD, 2019, P. 123)**
“Chapter 14: Historical Complaints” discusses the roles and responsibilities of the PSI in cases of delayed reporting, exploring a PSI’s obligations when the person under allegation is no longer with the institution;
- **CONSULTATION WITH AFFECTED PARTIES ON INTERIM MEASURES (KHAN, ROWE & BIDGOOD, 2019, P. 128)**
“Chapter 8: Interim Measures” includes strategies for consulting with affected parties on interim measures to ensure a respondent’s procedural fairness rights are respected;
- **ALTERNATIVE RESOLUTIONS (KHAN, ROWE & BIDGOOD, 2019, P. 131)**
“Chapter 11: Non-Adjudicative Options for GBV Response” offers strategies to ensure alternatives to the complaints process are available, recognizing that complaints processes may not serve all survivors or address their needs;
- **ALTERNATIVE TO DERIVATIVE USE IMMUNITY (KHAN, ROWE & BIDGOOD, 2019, P. 134)**
“Chapter 13: Concurrent PSI and Criminal Processes” outlines the challenges and opportunities related to the potential use of statements made by parties in a PSI complaint in concurrent criminal proceedings;

- **INFORMATION SHARING WITH COMPLAINANT AND RESPONDENT (KHAN, ROWE & BIDGOOD, 2019, P. 137)**

“Chapter 12: Privacy and Disclosure” identifies this as one of our “Unsettled Questions” and offers recommendations for how much information can and should be disclosed to the complainant within the limits of procedural fairness;

- **CROSS-EXAMINATION (KHAN, ROWE & BIDGOOD, 2019, P. 139)**

“Chapter 6: Policy Strategies for the Complaints Process” and “Chapter 10: “Adjudication, Outcomes, and Appeals” offer strategies for providing the right to challenge adverse evidence without cross-examination, and applying trauma-informed and harm-reducing practices when cross-examinations are deemed necessary.

The *Courage to Act* report identified a number of other areas for further research that were beyond our capacity and/or the scope of this Guide. Specifically, this Guide does not address the need for further research in the area of risk assessment as this is an area requiring significant development and extends well beyond the realm of complaints processes (Khan, Rowe & Bidgood, 2019, p. 40). Other identified areas for further research include the need to study the value of immunity clauses in policy and the need for further work on how PSIs can be supported in training or finding skilled investigators (Khan, Rowe & Bidgood, 2019, pp. 124, 136). We have highlighted these in Chapter 15 “For Future Research and Leadership”.

How to Use this Guide

We have organized this guide into four sections:

SECTION 1

We offer introductions to the procedural fairness requirements for PSIs (Chapter 1), understanding trauma and trauma-informed practice (Chapter 2), and strategies to reduce harm when the optimal or ideal is not available (Chapter 3). These three tenets are woven into the strategies throughout the rest of the Guide.

SECTION 2

We discuss strategies for designing a system to address GBV complaints, including choosing a model and creating a comprehensive policy framework (Chapter 4), policy strategies for the complaints process (Chapter 5), and considering personnel, roles, and training (Chapter 6).

SECTION 3

We trace the *practices* involved with moving a complaint through the entire process, starting with a disclosure (Chapter 7), and proceeding through interim measures (Chapter 8), investigations (Chapter 9), and decision-making (Chapter 10). To round out this section, we also acknowledge that complaints processes are limited in their capacity to attend to those who have been subjected to, and the communities affected by, GBV, and we propose strategies for equally legitimate options centred around meeting their widely variable needs (Chapter 11).

SECTION 4 - "UNSETTLED QUESTIONS"

We grapple with three topics that continue to pose significant challenges for PSIs, and for which there is currently no judicial guidance or established best practice. In Privacy and Disclosure (Chapter 12), we make recommendations for reconciling the tension between procedural fairness and non-discriminatory processes on the one hand, and protection of privacy on the other. We address the problematic interplay between potential criminal complaints and PSI processes in Chapter 13. Finally, we discuss the PSI's responsibility to address historical complaints (Chapter 14).

In the final chapter, “For Future Research and Leadership,” we identify questions and gaps that arise in the context of complaints processes that are beyond the scope of this Guide. Specifically, we raise the need for additional research and action on risk assessments, opportunities for a national registry of investigators, and the value of immunity clauses in GBV policy. Additionally, we believe PSIs across Canada would benefit from national conversations around personal relationships between persons in differing positions of power, as well as the nuances of information-sharing. While we do not make specific recommendations on these questions as we have in the previous three chapters, we do highlight them as needing attention and recommend that PSIs and provincial, territorial, and federal governments take a leadership role in conducting research or facilitating difficult conversations.

Throughout the Guide we identify where questions and gaps may come up in the complaints process using the following symbols:

 **Learning from Case Law/Legislation**

 **Reflection**

 **Further Research Needed**

 **Available Tools**

DISCLAIMER

This Guide does not constitute legal advice. PSIs writing or revising policy or facing case-specific legal questions should consult a lawyer for advice on their particular issues.

In addition, this Guide does not purport to be a manual on how to conduct investigations, adjudicate cases, design processes or write policy. The strategies are provided as a way to weave procedural fairness, trauma-informed practices, and harm reduction into the process.

The opinions and recommendations included in this Guide, and especially the errors, are those of the authors alone and do not reflect the views of our funders.

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Chapter 1: Introduction to Procedural Fairness

Complaints processes are governed by a complex web of legal and administrative obligations, including human rights, labour relations, privacy, occupational health and safety (OHS), and interrelated institutional policies and procedures. Procedural fairness is commonly understood as a non-negotiable requirement within a complaints process and, while that is true, it can sometimes eclipse other obligations, for example, to provide a safe and harassment-free environment, human rights, non-discriminatory practices, understanding the balance between privacy and disclosure, and adhering to institutional policy and collective agreements. While this chapter focuses specifically on procedural fairness, post-secondary institution (PSI) policies and procedures must reflect all other legal obligations as well.

Procedural fairness, or natural justice (a term from Administrative Law in England, but still familiar or in use in many PSIs) is “a term of art in law” (Busby speaking in Busby et al., 2020) that describes the procedural protections required when an agency is authorized by statute to make a decision that affects an individual’s rights, privileges, or interests (Swaigen, 2010). Throughout this Guide, we will refer to procedural fairness, which is based on two pillars:

- 1) The right to a hearing; and
- 2) Impartiality (Swaigen, 2010).

Right to a Hearing

The right to a hearing involves a number of components, including the reasonable disclosure of the case to be met, and a reasonable opportunity to be heard.

The parties affected by a decision must have *reasonable disclosure of the case to be met*. Some procedural fairness practices designed to meet this principle include:

- transparent and accessible policies and procedures;
- providing a summary of the allegations and evidence;

- indicating the jeopardy faced (i.e., what are the possible sanctions and/or consequences?); and
- timely notice:
 - providing involved parties sufficient time to prepare;
 - setting reasonable timelines and deadlines; and
 - ensuring notice timelines align with respective collective agreements, when relevant.

Procedural fairness also requires that involved parties have a *reasonable opportunity to respond*. Some procedural fairness practices and policy decisions designed to address this principle include:

- participatory rights – the opportunity to provide additional information, propose lines of inquiry, suggest additional witnesses, and challenge adverse information:
 - providing both parties with the opportunity to submit statements and evidence, or suggest sources of further information;
 - providing both parties with the opportunity to respond to evidence or statements that contradict their own;
 - choosing whether to allow cross-examination;
 - offering choice of oral hearing vs. document exchange;
 - offering choice of an adversarial (court-like) or inquisitorial (separate meetings with decision-maker) process; and
 - including advisors or legal representatives.
- a timely process:
 - ensuring extensions and delays are reasonable;
 - recognizing that students, in particular, may only be a member of the PSI community for a short period of time (i.e., months or years, depending on their program); and
 - ensuring timelines are clear for all parties.
- written reasons:
 - providing a description of what evidence was considered and how it was assessed;
 - giving reasons for the finding; and
 - giving reasons for the choice of outcomes, if applicable.

Impartiality

The first principle of impartiality is that a decision must be made by an *impartial decision-maker*, understanding that the reasonable apprehension or the perception of bias is as important as actual bias. Some of the procedural fairness practices designed to address this principle include the following:

- The decision-maker has no personal or professional conflicts that could sway their decision one way or the other, including:
 - business or financial relationships;
 - conflicts of interest related to academic or career benefits; and
 - a personal relationship with anyone involved in the complaint or those close to them.
- The decision-maker refrains from any presumptions or pre-judgments by:
 - not presuming the respondent is innocent;
 - not committing to believing the complainant as a starting point;¹ and
 - making all decisions based on the evidence presented and careful assessments of credibility.
- The decision-maker approaches a decision with an open mind, giving due consideration to the evidence and circumstances of the case, free from preconceptions or stereotypes. The decision-maker:
 - understands the social context of gender-based violence (GBV) and its intersections with systemic oppression;
 - demonstrates knowledge of systemic oppression relevant to the complainant, respondent, or witnesses (e.g., gender, racial or other biases and stereotypes);
 - has a track record of challenging the common myths, assumptions, and stereotypes that must be abandoned; and
 - recognizes signs and symptoms of trauma.

¹ Believing survivors of gender-based violence is important and has a place in PSIs in order to provide support, remove barriers to reporting, and allow survivors' needs to drive the PSI response as much as possible. However, once a complaint is made, those involved in decision-making must remain unbiased and base all conclusions on evidence. See "Strategy 5: Approach every decision with an open mind and avoid bias" in "Chapter 10: Adjudication, Outcomes, and Appeals" for a more detailed discussion on "believe" campaigns in the context of institutional complaints processes.

Secondly, impartiality entails an *independent decision-maker* to prevent institutional bias. This means that:

- investigators and decision-makers must be independent –and be seen to be independent – and free from any kind of institutional pressure; and
- investigators and decision-makers are tasked with conducting a good and fair process and are allowed to determine the steps necessary to do so without interference.

North American PSIs have, especially in the student context, evolved progressively more elaborate procedural protections, but at significant cost to both the institution and the complainants. Lewis, et al. (2014), described the evolution of student conduct processes as “castles of due process, often looking to criminal courts as analogous processes for what due process was supposed to look like. Judicial affairs policies and procedures expanded rampart-style around the due process castle to ‘protect’ the accused” (Lewis et al., 2014). They noted that, although relevant case law in the United States – including *Dixon v Alabama State Board of Education* (1961) – required minimal protections, many PSI administrators decided that they should provide more robust measures.

An opportunity to be heard became a hearing. A hearing became a panel. A panel required a chair. The panel afforded presumptions of innocence, rights to attorneys, rights to remain silent. Rights, rights, rights. But, we forgot about victims along the way. (Lewis et al., 2014)

Ultimately, we argue that when all of the rights are accorded to one party, the process is inherently discriminatory, and therefore a breach of human rights.

✓ Learning from Case Law

The British Columbia Human Rights Tribunal recently heard a case – *University of British Columbia Okanagan v Hale* (2021) – that speaks to whether PSI processes themselves can be discriminatory. At the time of the complaint, the University of British Columbia Okanagan (UBCO) used a court-like model that treated the complainant as a witness only, without standing in the process. UBCO has since changed their policy and procedures and applied to have the application dismissed. The application to dismiss the complaint was denied, with the following observation:

It seems to me entirely possible that a nexus could be made between the adverse impact of having to withdraw from one's studies or place of work due to fear or anxiety arising from having to confront or interact with one's alleged attacker – even absent a non-academic misconduct finding – and both sex and disability. A finding of non-culpability of an accused in a proceeding such as the [NonAcademic Misconduct] Committee hearing does not give license to ignore or otherwise delegitimize an accuser's trauma. Ms. Hale has framed part of the adverse impact as exactly that – not being able to return to her studies because of having to navigate frequent encounters with the alleged source of her trauma – namely [the respondent]. That Ms. Hale was initially told she would have to disclose the alleged assault to each of her professors individually in order to avoid or otherwise navigate how to deal with [him] in her classes is a compelling example of this. (*Hale v University of British Columbia Okanagan* (No. 2), 2019, para. 67)

UBCO sought judicial review of that decision; however the British Columbia Supreme Court concluded “that the Tribunal's decision to decline to dismiss the complaint under s. 27(1)(d)(ii) was not patently unreasonable” (*University of British Columbia Okanagan v Hale*, 2021, para. 195). After another application to adjourn, the matter was scheduled for a two-week hearing on May 10, 2021 (*Hale v University of British Columbia Okanagan* (No. 3), 2021). As of the writing of this Guide, no decision has been released.

It is worth examining the relevant case law in Canada to consider what is required by law, and what PSIs have potentially unnecessarily layered on in their quest to provide more robust measures. **We note that many PSIs**

have adopted the view that procedural fairness applies to the respondent only; however, the complainant is also entitled to fairness as a matter of human rights and non-discriminatory practice, as we outline throughout this Guide.

✓ Learning from Case Law

LESSONS FROM BAKER V. CANADA

In the Supreme Court of Canada's decision in *Baker v Canada (Minister of Citizenship and Immigration)* (1999), the question of procedural fairness rights was explored in depth. In 2020, this decision continues to be the authority in contemplating and evaluating procedural fairness requirements. Below, we consider what we in PSIs can learn from *Baker* as we address GBV. We will also refer to *Baker* and other legal decisions throughout this Guide.

Very briefly, Mavis Baker was facing deportation and separation from her Canadian-born dependent children. The Immigration Officer deciding her case determined that there were insufficient grounds to warrant an exemption in her case. The matter went to (a limited) judicial review, the Court of Appeal, and ultimately the Supreme Court of Canada. One of the issues at stake was the claim that Baker did not receive procedural fairness. Baker argued that she was entitled to an in-person interview with the decision-maker and that the immigration officer's disparaging remarks about her mental illness and the number of children she had, indicated bias. The court ultimately allowed the appeal on the basis that the decision was found not to be free from bias and stereotypes, and that it did not demonstrate a reasonable use of discretion. In addition, the decision provided instructive information about elements of procedural fairness within administrative decision-making.

In the decision, Madam Justice L'Heureux-Dubé, identified a non-exhaustive list of factors affecting the content of procedural fairness across the whole span of administrative decision-makers. The overall message from *Baker* is that there is no one "right" way to provide procedural fairness, but that processes must be flexible and variable and reflect the context in which the decision is made. This principles-based approach provides significant flexibility and discretion to adapt procedures to specific situations.

To be clear, the principles raised below relate to procedural fairness – that is, the choice of processes used to ensure that parties’ right to an unbiased decision-maker, right to know the case, and right to respond are met – not to the substance of specific decisions.

Nature of the Decision and Process Followed

PRINCIPLE: Both the nature of the decision being made and the process followed in making it will affect the duty of fairness.

HOW PSIs MIGHT UNDERSTAND AND/OR APPLY THIS PRINCIPLE:

GBV complaints are a serious matter. They are immensely complex, situated at the intersections of safety, equity, confidentiality, institutional risk, and ethical or moral obligation. They involve being alive to a number of legislative requirements, including administrative, human rights, privacy, labour, and OHS law. The seriousness and complexity of a GBV complaint might be misunderstood to call for procedures that are more like those used by judges in criminal courts. However:

The more the process provided for, the function of the Tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness. (*Baker*, 1999, para. 23)

In practice, a PSI should be intentional and cautious in designing procedures to address GBV. Applying procedures that look trial-like creates a number of risks, including:

- setting the bar for procedural expectations higher in the event of judicial review by requiring more stringent procedures in policy;
- creating costly and time-consuming processes where they may not be warranted; and
- sacrificing the right to a timely process in favour of one with excessive procedural measures.

On the other hand, processes with insufficient procedural fairness – such as failing to provide reasonable disclosure to the parties, or not allowing

them sufficient opportunity to provide a response – bring considerable risks as well, for example:

- making a decision made without all of the relevant information;
- having a decision overturned on judicial review; and
- sacrificing fairness to the parties in favour of expediency or convenience.²

Statutory Scheme

PRINCIPLE: The decision-maker is subject to the enabling statute regarding procedure.

HOW PSIs MIGHT UNDERSTAND AND/OR APPLY THIS PRINCIPLE:

The statutory scheme in which PSIs operate provides a starting point to consider this principle. All PSIs are given the authority to make and enforce policy through provincial, territorial, and federal legislation. That legislation varies by province and territory, and the type of PSI. In most cases, the powers are broad and general, such as by giving the PSI authority to address student behaviour through discipline. Where legislation is silent, the PSI has general discretion to choose their own procedures, provided they are fair. However, where the statute stipulates a certain procedure, it must be followed.

Some provincial statutes specify, for example, whether or not an appeal is available. Some require stand-alone sexual violence policies. Cases involving employees will be governed by enabling statutes such as provincial/territorial labour laws, OHS legislation, and so on. Each PSI will be governed by **legislation** in its own province or territory; this must be the starting point for any policy development.



PSIs are also workplaces, subject to the relevant provincial and federal laws, including human rights, employment standards, and occupational health and safety. In addition, where unionized, collective agreements also apply.

Whether a statute requires a decision to be subject to appeal or review should also inform the level of procedural fairness afforded in the process.

² See “Chapter 4: Creating a Comprehensive Policy Framework” and “Chapter 5: Policy Strategies for the Complaints Process” for guidance on providing procedural fairness in policy without mistakenly taking on unnecessary trial-like elements.

Complaints processes typically include internal review of disciplinary decisions by providing appeal mechanisms for students, a grievance route for union employees, and some form of review or appeal for non-union employees. In addition, both student and employee discipline decisions are subject to judicial review. According to *Baker* (1999): “Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute or when the decision is determinative of the issue and further requests cannot be submitted” (para. 24).

Importance of the Decision to those Affected

PRINCIPLE: The greater the impact a decision has on the individual(s) affected, the higher the expectations for procedural protections will be.

HOW PSIs MIGHT UNDERSTAND AND/OR APPLY THIS PRINCIPLE:

There is no doubt that an allegation of GBV and its potential consequences have a significant effect on a respondent. It may affect or end their academic progress or their career and livelihood. This weighs in favour of a high level of procedural protection: “The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated” (*Baker*, 1999, para. 25).

However, it is important to put those potential consequences into perspective. The most serious outcome of a complaints process for a respondent is a severing of the relationship between the individual and the institution (i.e., expulsion for students, termination for employees). The implications of removal from a PSI are undoubtedly serious; however, the considerable negative effects are somewhat attenuated by the following:

- PSIs are required to keep the matter confidential – there is typically no public record created in relation to a person who has been found in violation of policy.
- PSIs have no authority to award civil damages to a complainant.
- PSIs cannot incarcerate an individual based on a finding of policy violation (that is, the PSI does not affect the right to life and liberty).
- While an expulsion or termination might be a barrier to moving to another institution or employer, it is not usually insurmountable.

Thus, while PSIs certainly owe a high level of procedural fairness, the jeopardy faced by the respondent is considerably less than it might be in a criminal matter and, therefore, reproducing criminal trial-like procedures is not necessary. In fact, doing so increases the risk of being held to criminal trial-like standards, is potentially traumatizing to the involved parties, and is unfair to the complainant.

It is also necessary to consider others who might be affected by the decision. In *Baker* (1999), Madam Justice L'Heureux-Dubé wrote, "...the claimant and others whose important interests are affected by the decision in a fundamental way must have a meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered" (para. 32).

Up until recently, many PSIs have reasoned that procedural fairness applies only to a respondent, while complainants have been treated mainly as witnesses without any participatory rights. However, it is clear that complainants can also be significantly affected by a decision and should be entitled to procedural fairness. For example, a person who has been subjected to GBV may subsequently be subjected to unacceptable proximity to the person who committed the violation. The impact of having to continue working with, attending classes with, or living in the same residence as the individual who caused them harm may be considerable, making their working, learning, and/or living environment toxic or unsafe. Given this kind of impact, it is important to accord procedural protections to the complainant as well.

Additionally, in *Baker* (1999), the interests of the dependent children were also considered, although they did not have participatory rights. Baker was provided with the opportunity to put forward information about the effect that her deportation would have on her children's emotional well-being in written form.

In the PSI context, decisions about GBV may also affect the safety of the community – in the educational, residential and workplace environments, as well as related social or extracurricular contexts. It may be important to consider the community's interests even if they are not parties to the matter.

Clearly, not all parties are affected equally, a fact that should be reflected in the choice of procedures and the procedural fairness accorded to each of them.

The social locations of parties involved, and the context in relation to systemic oppression, also affect the nature and severity of impacts. Choice of procedures must take into account how power and privilege are operating with respect to gender, race, disability, and other social locations – and how systemic oppression affects procedural fairness in a particular situation. GBV always involves multiple dimensions of power and privilege, not only gender. All systems of oppression play a major role and must be considered throughout the process.

Legitimate Expectations

PRINCIPLE: Legitimate expectations must be considered in the provision of procedural fairness.

If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness...Similarly, if a claimant has a legitimate expectation that a certain result will be reached in his or her case, fairness may require more extensive procedural rights than would otherwise be accorded...
(*Baker*, 1999, para. 26)

HOW PSIs MIGHT UNDERSTAND AND/OR APPLY THIS PRINCIPLE:

Legitimate expectations can arise from our policies and procedures, promises made or implied by the PSI (or any person reasonably understood to be representing the PSI), or even typical practices or standard operating procedures that are not codified in policy or procedure. Where a PSI, or an individual acting on behalf of the PSI, has indicated to a party that a certain process will be followed, variation from that expectation might require more robust procedural protections.

For example, where a policy indicates that an adversarial-style hearing is the usual practice, it would be difficult to make the case for not holding such a hearing in a case of GBV, even when doing so would cause unnecessary harm. Such a policy creates a legitimate expectation that the institution would convene a hearing and that the respondent would have the opportunity to face and challenge the complainant.

Choice of Procedures and Expert Decision-makers

PRINCIPLE: A court's analysis of required procedural rights should respect the agency's choice of procedures and the expertise of the decision-makers.

HOW PSIs MIGHT UNDERSTAND AND/OR APPLY THIS PRINCIPLE:

Choice of Procedures

The procedures chosen by a PSI reflect its own culture, context, and expertise. PSI procedures will likely be different from those used in land claims or workers' compensation matters, for example. This is where it becomes critical for a PSI's GBV policy and procedure to be explicit about the values of the institution, the purpose of the policy and the goals of the procedure. For example, a PSI might identify in policy that procedures should be educational; have the goal of maintaining a positive working, learning and living environment; aim to create space for accountability rather than punishment, and meet legal obligations to provide a harassment and discrimination-free environment.

PSIs may be in the unique position of functioning as a place of higher learning, teaching, research, job training, and public engagement, a residential community, and a workplace, all at the same time. Issues like academic freedom and tenure might be in play. In addition, PSI communities are diverse, and different individuals have different relationships to the institution. PSIs commonly feature hierarchical structures and pronounced or implicit power imbalances. All of this can and should be reflected in the choice of procedures for investigating and adjudicating complaints.

In addition to reflecting the institutional context, a process addressing GBV must address the social context, not just of sexism and misogyny, but the other intersecting dimensions and power imbalances at play based on systemic oppression. Human rights law prohibits discrimination on protected grounds – it is important to recognize that deeply held and common myths about behaviours and systems related to GBV, trauma, those subjected to violence, and those who cause harm *are* discriminatory. The choice of procedures must challenge the attitudes that lead to unfair and discriminatory processes.

Decision-makers as experts in procedure

...the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances. (*Baker*, 1999, para. 27)

In designing procedures for any disciplinary process, PSIs have significant discretion in how they do so, provided that those procedures are fair. Emblem and Lamont (2016) concluded that “... administrative governing bodies will continue to be afforded significant deference in their choice and execution of procedure... so long as the actions could be justified under a *Baker* analysis.”

In chapters 2 and 3 we introduce the principles of trauma-informed care and harm reduction, as a means of meeting not only the requirements of procedural fairness, but the obligations to provide equal access to education and campus life for students, and a safe and harassment-free workplace for employees.

It is our position that the human experience of engaging and working within PSI complaints processes has been unnecessarily harmful and can be improved significantly by applying an anti-oppression lens and infusing procedurally fair processes with trauma-informed care. Doing so does not interfere with procedural fairness. On the contrary, it contributes to the PSI’s ability to meet the many obligations surrounding GBV complaints.

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Chapter 2: Introduction to Trauma-Informed Practices

A trauma-informed approach recognizes how violence and trauma are connected, and requires attention to the signs and symptoms of trauma – specifically acknowledging how it can impact behaviour, communication, and memory (Khan, Rowe & Bidgood, 2019; American College Health Association, 2020). It is an approach to processes, procedures, and service provision that understands and responds to the impact of trauma (Alberta Justice and Solicitor General, 2018).

Trauma-informed practices are increasingly being recognized as essential elements when addressing and responding to gender-based violence (GBV). One of the key recommendations in *Courage to Act* is to use a trauma-informed approach to support services, education, and the complaints process (Khan, Rowe & Bidgood, 2019). A trauma-informed approach is also identified in *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) as a necessary principle to inform effective and meaningful strategies to end GBV against Indigenous people. In this Guide, we recognize the importance of applying a trauma-informed lens to all aspects of institutional complaints processes to ensure such processes are procedurally fair, protect against discriminatory treatment of complainants, mitigate institutional risk, avoid retraumatization, and reduce harm.

There is a multitude of frameworks for defining trauma-informed practice based on established and emerging research, as well as promising practices from those who engage in GBV response and investigation work. Each framework defines its own principles for trauma-informed practice, and all overlap under the following two overarching themes applicable to institutional complaints processes:

1. Knowledge of trauma and its impacts must be integrated into all policies, procedures, and practices to support procedural fairness, allow for evidence to be collected in a fair and impartial manner, and fair and just outcomes.
2. A trauma-informed lens must be applied to all policies, procedures, and practices to avoid retraumatization and mitigate harm to any person engaged in the complaints process, including involved parties, witnesses, and personnel.

This chapter provides more detail on both principles and uses them to frame an introduction to trauma-informed processes and practices as they apply to institutional complaints processes. The information in this chapter will provide a foundation for better understanding the strategies for procedurally fair, trauma-informed practice, offered in chapters 4-11 of this Guide.

Principle 1: Incorporate knowledge of trauma and its impacts into all policies, procedures, and practices

Incorporating a recognition and understanding of trauma into all policies, procedures, and practices creates the necessary foundation for a complaints process that is procedurally fair, protects against discriminatory treatment of complainants, and mitigates institutional risk. Integrating knowledge of trauma into all aspects of the complaints process allows evidence to be collected and assessed in a more fair and impartial manner, leading to more just decisions and outcomes (Khan, Rowe & Bidgood, 2019, p. 118; Haskell & Randall, 2019). A more fair and impartial process helps to build trust in the complaints processes and the institution as a whole, which in turn supports more survivors to engage the complaints process, mitigates the likelihood of survivor advocacy criticism, and ultimately protects institutions from reputational harm, liability, and risk.

Integrating knowledge of trauma into policies, procedures, and practices does not imply that the existence of trauma is evidence of an incident (Lonsway & Archambault, 2019). **Existence of trauma is not in itself evidence of an incident of GBV, nor is absence of trauma evidence that an incident of GBV did not occur.** Rather, recognizing the existence of trauma should be used to guide how to approach the process, and never to establish a determination of fact.

A trauma-informed process allows for an investigator to collect evidence in a manner that accounts for trauma's impact on memory and behaviour, but does not suggest that the mere presence of trauma can act as "a substitute for the absence of evidence" (ATIXA, 2019; Lonsway & Archambault, 2019).

A trauma-informed process allows an investigator or decision-maker to assess credibility without relying on a complainant to display signs of

trauma in order to fairly assess the available evidence. This is a particularly important recognition as, despite the fact that GBV “is very often an experience of trauma”, not all persons who experience GBV will experience trauma, display behaviours commonly attributed to a trauma response, or experience and respond to trauma in the same ways (Haskell & Randall, 2019, p. 5; Alberta Justice and Solicitor General, 2018).

Integrating knowledge of trauma into policies, procedures, and practices does not mean treating trauma (Khan, Rowe & Bidgood, 2019; Clinic Community Health Centre, 2013). It is about focusing on the traumatic nature and effects of the incident, response to the incident, and complaints process, and understanding how a participant’s experience informs how they respond and behave in the aftermath of the events giving rise to the complaint.

To best recognize and understand trauma in the context of GBV and post-secondary institution (PSI) complaints processes, it is necessary to take an expansive view of trauma, which can help to encapsulate the range of experiences and subjectivities that influence whether a person will consider an experience to be traumatic and how trauma may or may not manifest (Wesley-Esquimaux & Smolewski, 2004; Peña, 2019). This requires:

- knowledge of emotional, psychological, and physiological responses to trauma;
- an understanding of how trauma responses are shaped by social, cultural, institutional, and historical contexts;
- an understanding of how trauma responses are shaped by a person’s past experiences, worldview, and position in society; and
- power-consciousness.

We discuss each of these elements in the context of PSI GBV complaints processes below. First, we provide an overview of psychological and physiological responses to trauma as understood through neurobiology of trauma perspectives. Next, we explain why a neurobiological approach is insufficient to fully understand the experience and impacts of trauma and discuss the importance of applying individual and social contexts, an anti-oppression lens, and a human rights perspective. Together these perspectives and approaches provide a more comprehensive understanding of trauma and its impacts that, when applied to institutional complaints processes, allow for fairer and more just processes and outcomes.

Trauma & Trauma Responses

Trauma is typically born out of “an event that combines fear, horror, or terror with actual or perceived lack of control” (Wilson et al., 2016). **Negative feelings or feelings of being overwhelmed or upset, on their own do not constitute trauma. It is the unique partnering of these feelings with a loss of control and (perceived) threat to security or survival that creates trauma.** It is well understood that “[s]exual assault is an experience of trauma”, one that may be particularly traumatic due to its sexualized nature and the fear of injury or death that often accompanies it (Haskell & Randall, 2019, p. 5).

To understand the psychological and physiological impact of trauma in some survivors, we begin from a neurobiological perspective. This approach allows us to recognize how trauma affects the brain and nervous system, and explains the psychological and physical implications of trauma that can influence how a person experiences, responds to, and engages with the complaints process (Haskell & Randall, 2019; Peña, 2019). This can help to contextualize seemingly contradictory behaviours and responses that complainants may exhibit (Smith, 2017). Incorporating this knowledge into complaints process policies, procedures, and practices allows for investigators and other decision-makers to avoid assumptions, biases, and discriminatory stereotypes that impede fact-finding and fair decision-making.

A traumatic event can have both conscious and unconscious effects. At the conscious level, a traumatic event can trigger feelings of fear and anxiety that can have a lasting psychological impact. A person may experience shock or denial in the immediate period following a traumatic event, and over time can have “unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea” (American Psychological Association, 2021).

For some, a traumatic experience can manifest as Post Traumatic Stress Disorder (PTSD); sexual assault has been shown to be one of the more frequently cited causes of PTSD, particularly in women. Women are twice as likely to experience PTSD as a result of an experience of sexual violence when compared to men, in part due to lower levels of support and validation (Haskell & Randall, 2019). A person may have PTSD if they “have experienced a shocking, scary, or dangerous event” and they do not “recover from initial symptoms naturally” (National Institute of Mental Health, n.d.).

There are four characteristics of PTSD:

1. flashbacks or persistent intrusive thoughts about the traumatic event;
2. avoidance of anything related to the event (e.g. music, pictures, people, locations, etc.);
3. negative thoughts leading to behaviours such as emotional numbing, addiction, detachment or disassociation;
4. increased or decreased arousal or reactivity, such as hyper- or hypovigilance, exaggerated startle response, irritability or outbursts of anger. (Peña, 2019)

Where a person experiences “repeated trauma over months or years, rather than a single event” they may develop Complex PTSD (C-PTSD; Gilles, 2018). C-PTSD can manifest in lack of emotional regulation, changes in consciousness, negative self-perception, difficulty with relationships, distorted perceptions of an abuser or person causing harm, and loss in systems of meaning (Gilles, 2018). Note that PTSD and C-PTSD are recognized as mental health disabilities meaning, under human rights legislation, persons with PTSD and C-PTSD are protected against discrimination related to their disability.

When a person experiences trauma they may also have a subconscious or autonomic response with or without experiencing conscious feelings of fear. At the subconscious level, a person’s protection mechanisms or “defence circuitry” are triggered, which results in a chain of automatic physiological and behavioural responses (Haskell & Randall, 2019). Having a basic understanding of how the defence circuitry works provides the necessary context for identifying some of the common signs, symptoms, and responses to trauma.

“The defence circuitry *dominates brain functioning once activated*” (Haskell & Randall, 2019), releasing a flood of chemicals and hormones and triggering the body’s fight, flight, or freeze response (Smith, 2017). This response is automatic and not a conscious decision by the person, which is why it may not align with how we might expect a person to act when analyzed outside the trauma context.

The release of stress hormones impairs the brain’s prefrontal cortex, the part of the brain in charge of executive functioning, managing reason, logic, problem-solving, planning and memory. This makes it difficult for a person who is under stress to respond rationally or in expected ways.

Understanding these complex yet common psychological and neurologically based responses to traumatic and threatening experiences such as sexual assault helps to explain why some sexual assault victims don't exhibit "fighting back," "yelling," "escaping," or taking some other kind of expected action for which they are later judged or blamed. (Haskell & Randall, 2019, p. 15)

Note that while we can identify some common responses to trauma, specifically as it pertains to behaviour and memory, every person reacts and responds in their own unique ways, shaped by their individual and social context.

BEHAVIOUR

The effect of trauma on the brain has implications for how an individual will behave. It is important to be cognizant of a complainant's possible experience of trauma and recognize that they may be exhibiting trauma response behaviours rather than assuming that they are acting irrationally or at odds with how you might expect a person who has been subjected to GBV to act. Some behaviours that a person who has experienced trauma may display include, but are not limited to:

- poor mental health, including anxiety and depression
- anger (at self or others)
- unhealthy relationship formation
- denial
- poor academic performance
- avoidant behaviours
- risky sexual behaviours
- self-medication through drug and/or alcohol abuse
- disordered eating (Haskell & Randall, 2019; Katz & Halder, 2016; McCauley, 2015)

A person who has experienced trauma may also behave in seemingly "counterintuitive" ways as a result of the ways the brain's defence circuitry impacts executive functioning and decision-making (Haskell & Randall, 2019). For example, they may freeze while experiencing the violence, begin or continue a relationship with the person who caused them harm, or engage in risky sexual behaviours. Without an understanding of how trauma influences a person's behaviour, these behaviours may reinforce common but inaccurate myths and stereotypes about survivors of GBV

in investigators and other decision-makers. This is not only harmful to complainants but also undermines the complaints process as a whole by allowing bias to go unchecked.

As introduced in the previous chapter, the first principle of procedural fairness is that a decision must be made by an unbiased decision-maker, one who approaches a decision with an open mind, giving due consideration to the evidence and circumstances of the case, free from preconceptions or stereotypes. Understanding how the brain responds to traumatic events allows investigators and other decision-makers to acknowledge the implicit biases that we all hold and better understand how and why a person may behave in confusing ways in response to a traumatic event.

MEMORY

Trauma also has a significant impact on a person's memory. "Traumatic events such as sexual assaults, are encoded (converted) differently than more routine, everyday experiences in life" (Haskell & Randall, 2019), which has significant implications in a complaints process where memories of the events are often relied on for evidence.

Understanding how memory is affected by trauma can support more accurate information gathering by allowing investigators and other decision-makers to ask questions in a way that supports a person who has experienced trauma to access more complete and accurate memories.

Like behaviour, the defence circuitry plays an important role in how a person encodes, stores, and accesses their memories. When a person is experiencing trauma, their brain registers a threat, which triggers "bottom-up attention": surviving the threat becomes the dominant focus; any details that the brain does not identify as important to survival in the moment do not receive attention from the brain, meaning there is less chance that it will be accurately encoded and stored (Wilson et al., 2016). Those details central to survival may not be the same details an investigator seeks, making the collection of reliable evidence challenging in the absence of a trauma-informed approach.

However, for a brief period of time, the brain will encode as much information as possible at the moment the defence circuitry is triggered (Wilson et al., 2016). These memories are sometimes called "enhanced memories" and typically focus on sensory information, rather than information about the order of events or time period (Haskell & Randall, 2019). New information that is captured at this time is encoded in

fragments, sometimes without contextual and sequential details. The brain then turns away from encoding to consolidate the information, which limits its ability to encode new information (Wilson et al., 2016).

Given the challenges inherent in encoding information during a traumatic event, how a person recalls that event is also impacted by trauma. If the person is experiencing stress when they are asked about the event, they will have a more difficult time recalling information (Haskell & Randall, 2019). This has implications for how information is best collected by investigators and other decision-makers.¹

Individual and Social Context

We recognize, however, that a neurobiological perspective, while a useful framework to understand the psychological and physiological impacts of trauma, must be supplemented by a broader approach to trauma. A strictly neurobiological approach offers an incomplete understanding of trauma and its impacts, risks pathologizing and individualizing what may be better understood as structural violence, and does not allow for the human rights aspect of GBV complaints, all of which undermine the ability to gather the most complete information without bias.

How a person experiences and responds to trauma will be influenced by individual and social contexts (Katz & Haldar, 2016). A person's past experiences, worldview, and position in society, along with social, cultural, institutional, and historical contexts, will shape their behaviour and must be recognized to avoid bias rooted in misunderstanding, stereotyping, or discriminatory beliefs.

It is necessary to understand that a person's behaviour may be shaped by the trauma of the GBV experience as well as their past experiences - this can include previous experiences of GBV; a history of trauma experiences; and/or childhood GBV, abuse, or neglect - and the ongoing systemic oppression upheld by institutions and inflicted on individuals and communities.

This requires a race and gender analysis, recognizing systemic and societal violence that is inseparable from the violence that, particularly, Black and Indigenous women, are subjected to (Garnett, 2016).

¹ See "Chapter 9: Investigations" and "Chapter 10: Adjudication, Outcomes, and Appeals" for strategies to collect evidence in a trauma-informed way.

The definitions of trauma and the meanings we make of it are historically constructed and defined, and are shaped by the intersection of structural factors, including our access to power and our experiences of oppression. Further, these constructions of trauma shape what we consider as violence, what kinds of violence are erased... (Clark, 2016)

Investigators and other decision-makers are best able to recognize and mitigate the impact of discriminatory stereotypes, avoid bias, and collect and assess more complete evidence on which to make decisions when they understand both the neurobiological impact of trauma and the ways in which it is shaped by individual and social contexts.

Principle 2: Apply a trauma-informed lens to all policies, procedures, and practices to avoid retraumatization and protect against discrimination

In addition to integrating knowledge of trauma and its impacts into all policies, procedures, and practices, a trauma-informed approach requires that each interaction be guided by this knowledge with the aim of avoiding retraumatization (Elliott et al., 2005). Taking this approach is critical to the safety of all involved in the complaints process (American College Health Association, 2020; Alberta Justice and Solicitor General, 2018; McCauley, 2015; Katz & Haldar, 2016). This approach reduces harm, allowing for a fairer, more compassionate process by avoiding stereotypical reasoning and supporting procedural fairness. Processes that perpetuate further harm and trauma can have negative effects on the quality of an investigation and an individual's ability to participate fully in the process (Khan, Rowe & Bidgood, 2019; Monahan-Kreishman & Ingarfield, 2018). It is equally important to apply a trauma-informed lens to protect against discriminatory treatment and ensure that human rights protections are upheld.

This principle applies to all involved in the complaints process, including: complainants who are likely experiencing the short- and long-term impacts of trauma as they navigate complaints processes; respondents and witnesses who may have past experiences with trauma, either directly or

as a result of historical, intergenerational, or multi-generational trauma; and intake workers, investigators, adjudicators, and administrators who are at risk of experiencing Trauma Exposure Response, secondary trauma, vicarious trauma, and compassion fatigue, in addition to potentially carrying their own historical trauma.²

- **For a complainant this means:** actively working against retraumatization; accommodating their physical, psychological, and emotional needs; emphasizing physical, psychological, and emotional safety; recognizing that they may be experiencing additional trauma due to systemic oppression; anticipating and avoiding potentially retraumatizing policies and practices; and recognizing survivors' autonomy and expertise in their own needs.
- **For a respondent, this means:** recognizing that those who cause harm may have been harmed themselves or are experiencing trauma due to systemic oppression and therefore they may also be navigating this process with their own trauma.
- **For witnesses, this means:** being alert to the complex nature of their task and referring to supports where possible and appropriate.
- **For investigators, administrators, and adjudicators this means:** recognizing that trauma is inherent in GBV work and actively working to avoid, and offer support to those who have experiences of Trauma Exposure Response, vicarious trauma, compassion fatigue, or secondary trauma which not only harms the individual, but can also impact their response to future trauma or the trauma of others. (American College Health Association, 2020; Alberta Justice and Solicitor General, 2018; Wisconsin's Violence Against Women with Disabilities and Deaf Women Project, 2011; Khan, Rowe & Bidgood, 2019).

For complainants, trauma-informed complaints processes are necessary to protect against the sanctuary trauma which occurs when those who have been subjected to GBV approach representatives of PSIs in search of support, guidance, and remedies, but are met with a response that fails to adequately meet their individual needs or becomes an additional source of trauma.³ Note that, “[i]t may not be possible to eliminate all stress in a complaints process, but a trauma-informed approach can support complainants by validating feelings of stress or fear as a result of the process” (McCallum, 2019).

² It is likely that any person involved in the complaints process may have past experiences of trauma: 33 percent of Canadians over the age of 15 report having experienced childhood maltreatment before 15, defined as physical and/or sexual abuse, and/or witnessing violence by a caregiver at home (Buczycycka & Conroy, 2017).

³ See “Chapter 3: Introduction to Harm Reduction” for more on sanctuary trauma and institutional betrayal.

A trauma-informed approach to complaints processes requires those facilitating the process, including intake workers, investigators, decision-makers, and administrators to understand the likelihood that the person who has experienced a traumatic event may be triggered during the complaints process. “A trigger is a stimulus that sets off a memory of a trauma or a specific portion of a traumatic experience” (SAMHSA, 2014, ch. 3) and can occur to anyone who has experienced trauma, at any point in the process. When a person is triggered, it is both retraumatizing in that traumatic symptoms are activated, and it impairs memory and recall (Bedera, 2021), making it equal parts harmful to the individual and detrimental for a complete and fair investigation. While it is possible to be attentive to potential triggers and avoid many obvious ones, it is also important to understand that not all triggers can be identified or anticipated (SAMHSA, 2014, ch. 3). It is therefore necessary to know both how to avoid anticipated triggers and how to respond to unanticipated triggers in a way that supports safety and reduces harm, but does not attempt to treat trauma. Having an understanding of trauma and its impact, and applying the strategies offered in this Guide can support this work.

COMMUNITY IMPACT

Trauma also has an impact on the broader community, and in the post-secondary context will impact campus climate and the campus community. There is evidence that up to three-quarters of college students in the U.S. have experienced a traumatic event (American College Health Association, 2020), highlighting the prevalence of trauma exposure in the post-secondary sector.

While this data does not exist in the Canadian post-secondary context, research on lifetime exposure to traumatic events reveals that the Canadian population more broadly experiences trauma at similar rates (Van Ameringen et al., 2008). The prevalence of trauma exposure reveals the extent to which students, staff, and faculty may be carrying trauma with them as they live, work, and study at their post-secondary institutions. It is therefore important to recognize that trauma has a widespread impact, and can manifest in a range of ways, including compassion fatigue, vicarious or secondary trauma, Trauma Exposure Response, and through the experience of another’s traumatic stress reactions (SAMHSA, 2014, ch. 3).

This impact must also be understood in the context of societal attitudes that condone and normalize GBV, by systems of oppression and power

structures that privilege certain groups over others. The presumption that trauma belongs to a single person after a single event puts the unbearable burden of healing back onto that person, and implies that they are somehow less than if they are unable to move on. Likewise, the presumption that GBV consists of single, unrelated incidents ignores the seemingly unshakeable culture of complacency and blame in which it is nurtured and protected. The oppressive nature and power imbalance inherent in an incident of GBV and the resulting trauma must also be considered in the context in which it is allowed to happen: attitudes and opinions fueled by systemic oppression that fuel racial violence, colonization, and hate crimes of all kinds.

In Chapter 3, we introduce the principles of harm reduction which, together with trauma-informed practice, attenuates the negative effects of the PSI complaints process on the involved parties, witnesses, and staff and administrators who work within it. We believe that PSIs have for too long kept a singular focus on procedural fairness, neglecting the human experience and causing significant harm. Throughout this Guide, we propose strategies to incorporate trauma-informed practice and harm reduction to strengthen procedural fairness and contribute to the PSI's ability to meet the many obligations surrounding GBV complaints.

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Chapter 3: Introduction to Harm Reduction

Defining Harm Reduction

For the purpose of this Guide, “harm” refers to the negative experiences faced by complainants and respondents in a complaints process, while “harm reduction,” as a guiding principle, serves to implement practices that mitigate or reduce the distress faced by the involved parties.

Harm reduction was originally established as a set of practices and principles directed towards reducing detrimental consequences of substance use (National Harm Reduction Coalition, 2020). These principles aimed to implement strategies and interventions that would prevent negative consequences by adding layers of safety to intrinsically unsafe situations. Harm reduction practitioners recognize substance use as an undeniable part of our world, and choose to “work to minimize its harmful effects rather than simply ignoring or condemning them” (National Harm Reduction Coalition, 2020). Organizations working within harm reduction frameworks work to align “professionals' and service users' understanding of the problems affecting service users' lives” (Hickle & Hallett, 2015; Pauly, 2008). As a movement, harm reduction has enveloped global communities of care working to reduce the public health risks posed by substance abuse.

In a testament to its success, the call to adopt harm reduction principles and their application to processes created to address GBV has long been discussed by researchers and academics in GBV fields, and advocates working with people affected by domestic violence. Tarana Burke, the founder of the international #MeToo movement, indicates that “we need to think about [sexual violence] in terms of harm and harm reduction,” in reference to addressing the widespread prevalence of GBV across the globe (Ciesemier, 2018). In this guide, we use the plain language meaning of the term, recognizing that processes relating to GBV investigation and adjudication have potentially harmful consequences to those who participate in them, and provide strategies to attenuate those consequences using harm reduction principles adapted for PSIs.

Harm manifests itself in different ways for participants in the complaints process; it may be unique, lack precedent, and only apply to the specific

situation at hand. One's social location, individual experiences and level of access will influence how they navigate adjudication systems, and therefore, how they experience harm within those systems. Given that the trauma and harm resulting from complaints processes is dependent on an individual's social location, as well as other unique factors, harm reduction methods must be constructed in a way that provides individualized attention to best support those affected.

Equally important is the recognition that the harm experienced by one party may influence or initiate harm to another party. As such, harm reduction as a guiding principle aims to reduce harm for *all* involved. In this context, we argue that harm reduction seeks to diminish the stress faced by involved parties, and to better facilitate adjudication and resolution by mitigating any factors that may compromise the integrity of the complaints process. Therefore, reducing harm for involved parties mitigates risk for the institution by facilitating procedural fairness using trauma-informed practices.

In this chapter, we review harm reduction principles for institutional complaints processes, providing a foundation for better understanding the strategies for a procedurally fair, trauma-informed practice that aims to reduce harm, offered in chapters 4-II of this Guide.

Purpose of Harm Reduction in Complaints Processes

PRINCIPLE 1: TACKLING RETRAUMATIZATION, INSTITUTIONAL BETRAYAL AND SANCTUARY TRAUMA

"Retraumatization" is an event that occurs when the person who has been harmed is subjected to processes that cause additional trauma or exacerbate existing trauma (Watson, 2016). Retraumatization can occur when the methods used to discuss, debate and analyze the original trauma trigger symptoms related to the incident itself, or lead to reliving moments from the original trauma. In this sense, the risk of retraumatization could be assumed in any situation where the person affected is required to retell their traumatic experiences. These processes, which require exploring in-depth the incident of GBV that took place in order to determine appropriate outcomes and sanctions, can easily become a source of retraumatization for the parties involved.

In particular, the following examples of retraumatization may occur during complaints processes:

- loss of control
- violation of trust
- shame and self-blame
- feeling guilty at coming forward
- loss of self-worth
- institutional betrayal/sanctuary trauma
- isolation
- suicidality
- material loss

In Elaine Craig's *Putting Trials on Trial* (2018), a complainant described the harm caused by the adjudication process as akin to having been "raped twice," once by the respondent, and again by the criminal justice system. The impacts of retraumatization can exacerbate and, at times, even exceed the devastation of the incident itself. Retraumatization in PSI environments is attributable to inadequately designed institutional processes intended to prevent, address and respond to sexual violence that do not compensate for GBV impacts – leading to a phenomenon otherwise known as "institutional betrayal."

Institutional betrayal occurs when people affected by GBV approach PSI administrators in search of support, guidance, and remedies, but are met with a response that fails to adequately meet their individual needs, and exacerbates their existing trauma (Smith & Freyd, 2013). The following statement made by an anonymous survivor read during a demonstration at the University of Alberta illustrates the harm of institutional betrayal:

Aside from the assault itself, the hearing was the most humiliating and degrading experience of my life...I chose this process because I felt the criminal justice system would do nothing to support me and would only victimize me further. I felt I had a better chance of being supported by my own university. This was not the case.
(Omstead, 2019)

While all incidents of trauma can have significant and debilitating impacts, harm caused at the hands of a trusted person on whom the survivor relies has uniquely detrimental effects.

Consider cases of familial abuse: survivors may maintain harmful relationships with family members they depend on so they can have access to shelter, sustenance, and other life-sustaining needs, or simply because they lack the power to make any alternate decisions. While harm caused by the institution is incomparable to harm caused within familial or other relationships, its overarching impacts and the conditions in which it is borne are similar to situations where the person impacted is dependent on the person causing them harm: students *need* institutions and institutional supports to succeed academically, gain access to housing and financial support, and therefore may be left feeling they must endure mistreatment at the hands of supervisors, professors, peers, or administrators because there are no other options, or that the options available are worse than the abuse they are being subjected to.

Similar to institutional betrayal is the concept known as “sanctuary trauma,” where people seeking safety, guidance and healing are harmed in exactly the spaces meant to support them (Rose, 2020). Sexual assault centres, counselling centres, student advisors and other student services promise to help and support students in need, but cannot change the nature of the complaints processes once engaged, leaving reporting parties vulnerable to the harm inherent to those processes. Additionally, these complaints processes, which largely replicate colonial, racist and oppressive systems of adjudication, such as the criminal justice system, will perpetuate systemic oppression by their very construction.

While the primary function of an institution is *not* necessarily to support people affected by GBV or provide access to services related to mental health, an institution cannot simultaneously present itself as a safe space by offering these services or writing GBV policies without assuming the responsibility of ensuring the well-being of the people who use them. This, along with the fact that complainants who trigger institutional GBV processes do so *in order to receive help* from trusted administrators, means sanctuary trauma as a concept can be understood to apply in the complaints context as well.



People who cause harm may have been victimized in the past (Groth and Burgess, 1979), and, as in the principle of procedural fairness as well as maintaining a trauma-informed approach, harm reduction must also be equitably applied for all involved parties.

Given the potential for retraumatization, institutional betrayal and sanctuary trauma within complaints processes, a trauma-informed approach is key in preventing harm for involved parties; recognizing

the impacts of trauma and embedding mechanisms to address it in the complaints process serves as a protective measure in this regard.

Largely, trauma-informed practices *are* a means of harm reduction in that they attenuate the negative impacts associated with complaints procedures. In integrating trauma-informed practices with the principles of harm reduction, we can address harm as it arises in all aspects of the complaints process, including when trauma-informed practices described in this Guide may be limited, unavailable, or inappropriate for the situation at hand.

Thus, while trauma-informed practices seek to *prevent* retraumatization, harm reduction seeks to *reduce* retraumatization and other kinds of harm that unexpectedly or unavoidably arise.

PRINCIPLE 2: PROMOTING ACCOUNTABILITY

A complaints process generally seeks a resolution or remedy for harm caused to the person subjected to GBV. It can be interpreted that the institution is making a commitment to address incidents in a way that produces a measure of justice for the complainant while offering accountability for the respondent, and preventing future harm for the rest of the PSI community. But how do we ascertain accountability from remedial sanctions? And do our institutional sanctions and practices promote accountability?

Certainly, punitive measures and sanctions are not synonymous with accountability or responsibility on the part of the person who has caused harm. It is entirely possible for a person to withstand a punishment without acknowledging or taking responsibility for the harm they caused. In this sense, punitive measures that did not promote accountability or prevent future harm would not meet the remedial aims of PSIs. Therefore, in contrast to punitive measures that may not, in fact, rectify harm, or deter (Bachman et al., 1992; Robinson & Darley, 2004) future harm, we propose that institutions apply the following *measures of accountability* for both the individual and the institution:

1. **Individual Accountability.** We define individual accountability as a model of accountability that:
 - views behaviour and responsibility as individual matters, with less regard for those affected;
 - often results in sanctions against a person who has been found in violation of policy.

2. Interpersonal Accountability. We define interpersonal accountability as:

- the willingness to accept responsibility for one's actions; and
- a behavioural commitment to refrain from causing similar harm in the future.

3. Institutional Accountability. We define institutional accountability as an administrative responsibility to:

- prevent harm before it occurs;
- accommodate involved parties after it occurs;
- address institutional gaps that enable harm; and
- design an action plan with benchmarks to remedy gaps and foster cultural change.

We recommend applying harm reduction principles with the intention of promoting interpersonal and institutional accountability, and argue that harm reduction for the respondents facilitates accountability to the complainant.

Examples of harm to the respondent might include:

- feelings of injustice
- isolation
- desire to engage in reprisal
- shame and reluctance to take accountability
- material loss
- suicidality

In promoting harm reduction principles and their application to PSI complaints processes we invite institutions to recognize pathways to accountability for the person who has caused harm, rather than punitive measures that are ineffective in encouraging critical self-reflection.

PRINCIPLE 3: HARM REDUCTION IS RISK MITIGATION

While investigations can include evidence, such as text messages, videos, or photographs, the nature of GBV often limits the type and quality of evidence that can be shared in an investigative setting. Statistically, incidents of GBV are most often committed by lone respondents that are well known and trusted by the complainant prior to the incident (Du Mont & White, 2007). As such, the complainant may not be able to refer to

“evidence” in the form of eye-witnesses, tape-recordings or other kinds of proof to investigators.

Additionally, given the painful, sensitive and traumatizing nature of GBV, it can take a significant amount of time before a person subjected to it decides to make a disclosure (Dewan, 2018). As a result, any physical evidence of the GBV incident will likely be compromised and may no longer be available. Because of these reasons, investigations into incidents of GBV rely heavily on the testimony provided by the involved parties. In this sense, the role of an involved party may be aptly described as a contributor of relevant information to the investigation. In many cases, this testimony is the sole evidence available to the investigator. It is the bedrock upon which the balance of probabilities is then assessed by the investigator, and deliberated upon by the decision-maker.

Arguably, this point alone indicates the incredible significance of testimony, and the ability to provide *useful* testimony, within an investigation. Furthermore, given how much time it takes for complainants to feel safe in disclosing their experiences and the impact of trauma on memory encoding and recall, the ability to remember the incident may also be significantly compromised (Buczynski, 2020). Thus, it can be said that memory recall, effective communication, and emotional regulation are assets to involved parties during sexual violence investigations. For those unable to remember crucial information, who unintentionally communicate inaccurate or faulty information, and who struggle to regulate emotional responses during complaints processes, there is a significant disadvantage from the very outset of an investigation.

As outlined in the previous chapter, the neurobiology of trauma manifests itself in a number of limiting ways for parties in a complaints process. Blocking out traumatic memories, or losing the ability to recall important facts alone presents a significant hurdle to participating fully in the investigation process. A traumatized party may struggle to articulate details of the harm they experienced, or have difficulty putting details into chronological order; they may be inconsistent, present as angry or frustrated, or they may become dissociative, or take long periods of time to recall bits of information (Haskell & Randall, 2019).

Due to the complex and varied nature of trauma responses, coupled with the many misconceptions that exist about people affected by GBV, the perception of an involved party as legitimate, or reliable is often called into question based on their ability to partake in investigations (Dewan, 2018).

Where the quality of an investigation may be defined as the degree to which facts, information and evidence are adequately collected and assessed, we argue that this quality is compromised when trauma is left unaccounted for. When testimony of traumatized people is collected in a way that does not understand, respect or compensate for trauma, it prevents them from participating in the process to the best of their ability (American College Health Association, 2020). Consequently, an investigation that relies on testimony without accounting for trauma is of lesser quality than an investigation that adopts trauma-informed principles.¹

For these reasons, we argue that upholding principles of trauma-informed practice and infusing harm reduction for involved parties into investigative standards facilitates procedural fairness.

When a process can account for the impacts of trauma for involved parties, it enhances the overall quality of the investigation as participants are better able to fulfill their roles as contributors of important information. Compensating for impacts of trauma, and tailoring investigations in a way that predicts or expects effects of trauma delivers a better process overall. Further, recognizing other harmful elements of the complaints process and taking steps to mitigate them reduces the potential for judicial review, human rights complaints, civil action or other complaints to external entities.

In chapters 4-6, we provide specific strategies for policy and process design that reduce harm for all participants to support a trauma-informed, procedurally fair complaints process. Throughout chapters 7-10, we provide more specific strategies for each step of a PSI process, as well as examples about how these principles have been applied in both student and employment contexts.

In general, PSIs must not only be mindful of the importance of reducing harm throughout the complaints process, but understand that this can help support trauma-informed practices necessary to meet requirements for procedural fairness as well as the requirement to provide equal access to education and campus life for students and a safe and harassment-free workplace for employees.

¹ See “Chapter 9: Investigations” and “Chapter 10: Adjudication, Outcomes, and Appeals” for strategies on collecting evidence in a trauma-informed way.

Finally, as we outline throughout this guide, **PSIs must consider the human experience of participating in complaints processes, which are difficult and complex for the participants as well as the institution. It is incumbent on PSIs to recognize and mitigate the harm those processes can inflict on the parties by applying an anti-oppression lens and infusing procedurally fair processes with trauma-informed care.** Doing so does not interfere with procedural fairness. On the contrary, it contributes to the PSI's ability to meet the many obligations surrounding GBV complaints.

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