

**Transcript for Technology-Facilitated Sexual Violence: What Rights to Students Have?
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CYNTHIA KHOO:

Thank you so, much. Can everybody hear me OK. Great. Thank you. Well, welcome, everyone. For those who attended our part one of this webinar, thank you for returning. For those who are joining us for the first time, welcome. Just so, you have some context. This is part two and so, we will be jumping straight in. Based on the premise that people have attended part one but part one is recorded online. So, you're welcome to consult that after this webinar. My name is Cynthia Khoo, I'm an associate at the Center on Privacy Technology at Georgetown Law in Washington, DC, which is located on the ancestral lands of Anacostans, Piscataway and Pamunkey peoples. Here in Canada, I'm a licensed technology and human rights lawyer in Ontario as well as a research fellow at the service lab at the University of Toronto which sits on the traditional land of the Huron-Wendat, the Seneca and the Mississaugas of the credit. My co-facilitator today is professor Suzie Dunn an associate, an assistant professor at the Schulich School of Law at Dalhousie University. She's also an associate member of the Centre for Law, Technology and Society at the University of Ottawa. And on the tech facilitated by the Advisory Committee of the Women's Legal Education and Action Fund, aka.

So, today we are talking about technology facilitated gender based violence, abuse and harassment, as well as technology facilitated sexual violence, all of which will be using with compressing into the acronyms TFGBV or TFSV. Specifically, what rights the students have. What legal recourse do students have if they are experiencing this type of violence [...].

To start off with, this is a list of types of tech facilitated abuse and violence that we went over in the first presentation. So, this is just to make the point that the law fits very messily over these types of activities because they span such a spectrum of behaviours and the categories of behaviours does not always line up with the categories of law available to address them. So, if you imagine this image here as a web of nodes with each node representing a type of activity, someone who is targeted by TFGBV Can be targeted by one or more of any combination of these activities, and they basically form a web of abuse around that person.

Now, if you imagine this overlapping layer representing the law and each node representing discrete areas of law that provide recourse theory, you can see you know, some nodes overlap exactly where the behaviour does fit in. There is a law for that, some kind of partially overlap and somewhat fit it at all because the law is not yet equipped to handle that activity. And so, all of what you say, even though obviously the laws are essential to addressing this issue, it cannot start and end with the law. And that's why our first presentation focused on non, on extra legal ways to support students experiencing this type of violence.

So, with that said, what are the laws that apply to tech facilitate violence? We split it into four categories for you. I'll be going over the first two, the first one is civil law, which is basically private lawsuits if you want to sue the abuser. What can a student sue them for? Then I will very briefly touch on digital platform liability. Not so, much because that may be a form of immediate recourse to a student, but it's

one of the first questions that comes up in these issues, which is can we go after the social media platform? After that, Suzie will take over going through that section of criminal laws that are applicable, as well as going through the rules and best practices around evidence when it comes to documenting, collecting evidence of this kind of violence and abuse for the purpose of a legal case.

So, starting off with civil law or private lawsuits, I hope, again I'll split these up into multiple groups and categories just because to be honest. Quite a long list of disparate laws. So, to try to provide some structure to them, I split them up. So, the first group are the intentional torts. Tort is basically just a fancy law word for wrongdoing that is recognized as illegal. So, the intentional torts are kind of your grab bag of deliberate, intentional, malicious behavior. So, it's not negligence, it's not an accident. It's somebody set up to harm someone so, that's tort such as defamation of someone spreading lies about you all over Facebook and Instagram. And it meets the bar for defamation. Then that is something that you could go after them for.

There's also a tort of intentional infliction of mental suffering, which is essentially what it sounds like, but it's quite a challenging one for victims and survivors to rely on because there's a really high bar to establish the threshold for this harm. You essentially have to have a visible, provable mental illness with medical evidence supporting it. Then there's the tort of intimidation, which is again what it sounds like. But specifically, if someone has threatened you with intent to injure you, and as a result of that intimidation, you have taken action or skipped out on something that then resulted in a loss that can amount to a tort of intimidation. A specific example being, if a student was threatened and because of that threat, they passed up a job interview or they missed a shift at work or speaking engagements, they may be entitled to damages for that, at least from a monetary perspective. And finally, we have the brand new tort of Internet harassment, which is only available in Toronto, sorry in Ontario and came out last year.

So, I should say that one of the differences you'll find between civil law and criminal law is while criminal law is federal and applies across Canada, civil laws are province dependent. So, where I haven't mentioned, we've defaulted to BC, some of these I will mention are only in Ontario or Alberta or other provinces. Just so, you're aware that they're out there and perhaps one day the reason they might also, but to also apply or create them in BC. So, the tort of internet harassment came out of the case where the behaviour was just so, far beyond the pale, just years of harassment of non-gender based harassment, this case, but a lot of internet based persecution of a particular individual that the judge just said that this reaches a level of harm that pre-existing laws don't quite capture in this day and age. And so, now we've established this part of internet harassment, which is a course of behaviour that's intended to harass, [...] And molest by repeatedly serial publications, defamatory material, not just of the primary victim survivor, but their friends and family as well.

So, that's the first of a kind of general malicious behavior. Next, we have invasion of privacy. So, privacy invasions are also torts. But because there's so, many of them and privacy is such a prominent issue in this particular area, it seems to make sense to put all of them into their own category. So in BC, of course, we have the Privacy Act, which provides a statutory tort. So, it's an illegal wrongdoing that's provided by legislation, not just the court, which said that would create the tort. Whatever somebody willfully and with all the claim of right violates the privacy of another, and that could happen in multiple ways. There's also another section of the Privacy Act that says it's a tort to use someone's portrait without their consent, but that's narrow to commercial purposes. So, for example, if someone happened

to sell a nude photo, then perhaps a case can be made elsewhere but it might be a little bit more challenging. In addition, there is the generic which are confidence talk.

So, if somebody conveyed information such as private sexualized information and it was communicated in confidence but afterwards misused, that might amount to a bit of confidence. And then finally, there's a set of common law privacy torts that it actually originated in the United States and have gradually been making their way up here to Canada. So, far just in Ontario, there's one in Alberta as well. And I'm not going to detail on these ones, but just know that they're for common law privacy torts that are available in Ontario that essentially protects you in against slightly different ways of somebody interfering with your private life or with your public image or your ability to control how you represent it publicly. And that's the basic chord, the difference slightly subtle ways. So, for example, public disclosure of private facts and public representation in the whole slate. Both involve offensively representing someone publicly, but one of them is you are, you have exposed them through apps that are true, just happen to be very private information to do with her private life.

And the other way is offensive representations, but in a way that's actually false and misleading. And that can apply when it comes to things like NCDII, for example, intimate images. It was an intimate, nonconsensual distribution of intimate image case that resulted in the tort of public disclosure of private facts In Ontario. Which then leads us to the whole category of laws that specifically address non-consensual distribution of intimate images. So, with this, there has multiple provinces have enacted legislation to protect students against NCDII, you can see them all listed here. In progress. I believe BC, recently finished a consultation on enacting potential legislation to address and NCDII, New Brunswick has already introduced some legislation and I believe is currently making its way through committee. And what these do is they basically make it a tort to nonconsensually distribute an intimate image of someone. One thing to know about NCDII laws is that there is a uniform non-consensual disclosure of intimate images act created by Professors Emily Laidlaw and Hilary Young and is a really forward looking intersectional piece of legislation, the uniform legislation Institute of Canada.

That particular institute actually recommended as Uni [...] legislation. And what it does is it actually creates two separate torts. It creates two tracks of recourse for the student. The first track is a fast track. It's an expedited track where all they care about is taking down the image. And that's really important because the vast majority of these cases, that's really all the person cares about. They just want the images or video to come down as quickly as possible. They don't necessarily want to go through the whole litigate story process after that. But for those who do, there's the second track that has a slightly higher bar, but that you can get full damages with it. And it's not simply about getting the image taken down as fast as possible. So, something you might notice with these particular three categories and why I started with these is because they all have a direct connection to the harm.

And when it comes to sexualized violence and sexualized photos, for example, one thing that is worth pointing out is the idea of sexual privacy, which is a concept coined by Professor Danielle Citron in a foundational paper sexual privacy, which is a distinct privacy interest that protects the behaviors, expectations and choices that manage access to information about the human body, sex, sexuality, gender intimate activities.

It's not just like any other privacy harm when your sexual privacy is violated because, as it says here, cornerstone for sexual autonomy and consent, foundational to human dignity and intimacy, and it's

denial results in the subordination of marginalized communities. So, the violation there compounds when it comes to the intersectional harms combined with historically marginalized communities.

Having said that, there are still some remaining civil laws to go over. This is the last slide, two out of two. So, the final, the next section is family law. There are also some options if it is somebody's partner or spouse or the violence that they're experiencing is in the context of intimate partner abuse. So, one option is you can get protection orders through family court if you meet the criteria of a family member engaging in abusive actions. And I believe Suzie makes more to that from an evidentiary perspective. The other thing, speaking of new tort, is that just last week the court in Ontario introduced the tort of family violence.

So, this the cases, Ahluwalia and Ahluwalia. And what's important about this tort is that the judge found that pre-existing torts did not quite again capture the scope of the harm because they tended to address specific actions, whereas when it comes to family violence, it is more about a pattern of coercion and control, a long term harmful pattern that does like to control or terrorize, and that how that relates back to have facilitated gender based abuse. In fact, for those who came to our first seminar, you might recall that one of the names of tech facilitated violence and abuse used in the context of intimate partner violence is technology facilitated coercive control, which is coined by Australian scholar Molly Dargiewicz. And so, you could see a lot of this tech facilitated abuse fitting within the definition of a tort family violence. Next is, since we're talking about students in a post-secondary education context and flagging the potential liability of higher education institutions.

I will say openly that the specific obligations of post-secondary institutions to their students are not something that has been within the scope of my research expertise. So, I'm mostly flagging it as something that you will probably want to look into. For example, whether there's a matter of vicarious liability if you have preexisting obligations to cultivate a safe space for students or a space that is free from gender based discrimination, including tech facilitated, gender based discrimination. Beyond that, I think what I would mostly emphasize from our perspective as tech law experts is to review whatever policies and obligations you know of that are already in place and make sure that they are up to the task of also handling the tech facilitated version of whatever they do. Now, whether that is actually revising them, because they're not currently equipped or whether they don't actually require revisions, but just making sure that whoever is responsible for interpreting and applying them is technologically literate but is familiar with how the harms that students are supposed to be protected from today, now manifest in technology, facilitated ways that should still be captured by pre-existing law if it's interpreted and applied correctly and in a technologically savvy and literate way.

So, finally this section to wrap up the section, I thought I'd go over some considerations in why a student might pursue or not pursue a civil lawsuit in the first place. So, of course, it gives you control over the case because it's the victim or survivor who is making the decisions in consultation with their lawyer. It's not the state who has control, which is the case in the criminal case. They may get monetary compensation, which of course is nowhere near sufficient to do justice, but may still assist in a material way. However, downsides, of course, there's financial costs, there's physical and mental health costs of going through that litigation process. And then another thing that is worth that's worth that, worth noting is the dignity and the principle of the matter. Just for some people, it is enough and it's necessary just to have that sense of justice, of the legal system officially recognizing that wrong has been done here and this is not acceptable in a society. The other option that happens when it comes to

torts of civil lawsuit is depending on the circumstances, there may be the potential for a class action or some sort of collective redress, again, obviously, depending on the circumstances.

So, as I said I'm starting to hit my time, but I just wanted to highlight essentially the existence of the slide digital platform liability for technology, facilitated gender based violence and sexual violence. Again, because is the first question that comes up oftentimes when this issue is, can we go after Facebook, can we go after Instagram? They're making so, much money off of this abuse. And it's their algorithms that are encouraging people to engage in these outrageous ways. And so, this report looked at this question exactly, which is, can you hold a digital platform liable in Canada for the actions and words of its users who are engaging in tech facilitated gender abuse against other users. And what I found is that there's a section of laws with a corresponding section of liability from you cannot find the platform liable. but you can have a court order them to help the victim or survivor all the way up to the platform may be liable under the right circumstances. And there is ongoing consultation process right now or consideration process for a potential federal online harms legislation being considered by the Department of Canadian Heritage and the Department of Justice.

So, with that said, I am going to pass it over to Suzie.

SUZIE DUNN:

Great. Thanks for that, Cynthia. Yeah. And I think it will be a really interesting thing to keep an eye on this online harms bill because one of the challenges that comes with law and many of the issues that we're dealing with, one of the more constant complaints that we hear of is that people who've been targeted by tech facilitated violence often need a swifter response in comparison to other types of crimes. And so, often it's threatening content, private content that needs to get taken down. And we all know that the law is a slow process and for many good reasons you know, in criminal law, we wanna maintain innocent until proven guilty. And, you know, in civil law we wanna make sure that we're seeing all the evidence and getting all the facts right before any decisions are made. But the challenge with that is that often content is left to languish in digital spaces for a long time, and the harm that people experience is amplified and duplicated the longer that, that content stays up.

And so, some of the proposed legislation, depending on once it's put forward, may hold social media companies more responsible and have potentially again, it's all still in consultation now, but have some options for [...] Takedown. And we're also seeing, you know, in the civil law proposals for the sexual privacy material, we're also seeing proposals to have fast track options there. But I think one of the challenges with the law is that it is slow for people. But regardless of whether it's slow or not, I think people understanding what their rights are and knowing what laws exist can be helpful for multiple reasons. When someone knows what the rights are, they can tell that to people who are harming them. And in some cases that can help stop behavior. It can embolden people to look after their own rights, which can be very helpful. It can change societal norms. And for many people, you will need support of the state in order to stop some of this behavior. And so, criminal law and civil law can be useful for many communities.

Whenever I'm speaking about criminal law, I always wanna spend a bit of time putting a bit of a caveat on it and recognizing that the criminal justice system is not always a safe space for all people. And many communities might not have a lot of trust in police. For example, we've seen missing and murdered, indigenous women report here out of Canada that documents that the police have not been as responsive to violations of those people's rights, their physical safety, their sexual safety as they should

have been and so, there's some lack of trust and some legitimate lack of trust in many communities about engaging with the criminal law system. But regardless, the criminal law exists and it is a tool in the toolbox for people and people should be aware of it. And it is an effective tool in some circumstances. And we're thinking about technology, facilitated violence. People are often looking for tech crimes. And so, they wanna know, is there a specific crime or criminal law provision that applies to the scenario that's being presented in front of you.

But often as a victim service workers, as many of you will be providing supports to students. Often laws already exist on the books that can be applied to the experiences that they're having. So, for example, some of these fear based crimes, when you think about them, things like harassment, threats, intimidation, impersonation. These are crimes that have existed for ages and can be applied regardless of whether they're happening in digital spaces or non digital spaces. And so, we often have laws on the books that exist already, particularly in the context of sexual or gender based violence that can be applied, whether they're happening online or not. And one of the double edged sword benefits of having crimes be committed on the Internet is that you can collect evidence of those threats, you know, rather than having someone just threaten you and you have to say, I heard this, you would actually have a text message or an email that would show the threat. So, in some ways, it can be helpful for having crimes be prosecuted because it's in some ways easier to collect evidence about the experiences that people have had.

We have seen some specific crimes being introduced that have to do specifically with technology. So, in early days we had child pornography laws introduced and you need a camera or the Internet in order to engage in that. And so, those were some of early days crimes against tech facilitated violence. As miniature cameras became more common on cell phones we saw the crime of voyeurism be introduced which criminalizes secret sexual filming of individuals. And more recently, we've seen the introduction of the non-consensual distribution of intimate images and the term that many people use for that that's kind of socially well known is revenge porn. But that term is a very problematic term for many reasons. And you can watch the previous video to see a discussion on that. But we do see some examples of criminal law that directly addresses these tech facilitated crimes. And then there's some other crimes that are tech specific but aren't always a form of violence or gender based violence. And so, you know, the interception of private communication mischief, using data, there's quite a few crimes that are tech specific but can also be used by abusive people.

So, you know, an interception of a private communication that may not always be done in the context of a violent relationship, but it also can be. And so, there's a wide variety of criminal laws that can apply to the harms that we're speaking about today.

And we're starting to see the courts and the justice system really recognize the impact of tech facilitated violence, because what we see, especially with computer based crimes, is that if someone's having their phones monitored, you know, this is something that's ongoing. It's always happening. The amount of content that you can get if someone stalking you through your phone or through your computer is significant and it creates extraordinarily severe harms. When someone has had their intimate image shared on the Internet, it can be shared by an extraordinary amount of people. And so, the harms experiences can be quite severe. And although there's still a long way to go in the justice system, to have people recognize that crimes and harmful behaviors that are occurring online should be taken as seriously as ones that are happening in real life or in the in the physical worlds.

But we're seeing decisions that, like the one we see up on the screen here where judges are recognizing, you know, this trauma, the fear or the intimidation that goes with this course of harassment and harms and how computers can be used in a really significant way in order to disrupt people's lives and cause significant harm. And I think as people who are listening to students who may be victimized, it's important to remember some things may seem unreal. When a student is telling a story, they might say, this person always knows where I am. This person knows everything that I'm saying, everything that I'm doing. And you might listen to a student and think they're sounding paranoid, but with technology that is possible that someone can be tracking someone's location, they can be tracking everything that they're doing on their cell phones in some technology allows people to turn cameras on, to turn audio equipment on through someone's phone so, you can have someone who's a whole life is being tracked.

And when you hear stories from them, it's important to listen and to recognize that this technology exists and the impact on their lives is quite serious.

One of the resources that I'll point you out to and we'll share a link in the chat later. You can see the website address down here is from the eQUALITY Project, which is a larger funded project that looked at young people's experiences in digital spaces. And one of the branches of that project was to do, was to create a large criminal law database that looked at different forms of technology facilitated violence. So, we went through searching for particular search terms and coming up to see what crimes were being prosecuted that had to do with tech facilitated violence. And so, this is a chart that you can find on this website that shows many of the crimes that we identified. It's not necessarily an exhaustive list, but many of the ones that we found, the ones that are surrounded in pink are ones that apply to minors. And so, some university students will be minors there will be 17 year old students there.

So, some of those may apply to them. And then the ones with the black around them apply to all people. But if you look at this list, you can see that there's a wide variety of crimes that that do exist. Defamatory libel, hate propaganda, which is hate speech, identity fraud, which is something we're seeing happen more and more where people are creating fake accounts of other people and other students in order to pretend to be them or to purposely embarrass a person, uttering threats. Again, this is a crime that can happen in person or online. But but it's applicable here. Extortion is a crime that we're seeing more commonly that's being used through technology. And so, people will often engage in sexual communication. And when one person gets photos or embarrassing, potentially embarrassing content or private content about a person, they'll use that information to try and coerce the other person into either staying in the relationship. So, this often happens in intimate partner relationships where one will have a nude photo of the other and say, unless you stay with me or keep having sex with me, I'm gonna publish this picture all over the Internet.

So, we see it in that context, we see it in the context of young people who someone will get one photo of them, either having the person send it to them or taking a screenshot of an activity that's been happening. And then use those images to ask for more images or to make a person do something that they don't want to do. And this comes up across board. We've seen politicians in Canada have gotten trapped by this behavior. Young children in Canada, young girls. Many people are familiar with the amount of Todd case that was a case where there was a predator who was preying on young people and extorting them for nude photos. And so, it happens across board. But that's an interesting one to pay attention to. Intimidation, mischief in relation to data, the unlawful use of a computer, criminal harassment. There's a wide variety of crimes that can apply to technology facilitated violence. And if

you're interested in learning more about what each of these crimes are, you can go on this website and you can click on one of the boxes.

And if you click on one of the boxes, it'll bring up the events elements.

And so, for example, in the case of extortion, you wanna read through this definition of the criminal law provision to see what you will need to help this person collect if they want to pursue a criminal law case. So, in the case of extortion, you'd read through this and you'd see it says everyone commits extortion who without reasonable justification or excuse and with an intention to obtain anything by threats, accusation, menaces or violence induces or attempts to induce a person and whether or not they're threatened to do or cause anything to be done. So, in this case, you'd wanna be collecting, asking the person to collect evidence on any threats that they received, any ways that they've been pushed or forced to do something that they don't wanna do. So, collecting text messages where the person says, unless you give me more photos or unless you do this or do that, then I'm going to release these photos or embarrass you in other ways.

You'd wanna make sure that that person's documenting what's happening to them so, that if they pursue a criminal case, that they will have the evidence that they need in order to have the police take their complaint seriously. And then also, if they ever get to court to have the evidence that they need in order to prove the crime against them.

And so, that's a very easy thing to say and a much more difficult thing to actually do. So I worked on a project with The BC Society of Transition Houses over the last few years. They've been doing incredible work for almost a decade on this work. Rhiannon Wong has really been a leader in this area and they've been working on what's called the tech safety toolkit. And so people who are experiencing tech facilitated violence can go onto this website or people who support them and learn about the rights that they have. You know, how to collect evidence, how to submit evidence to court. It's quite a detailed website and it's BC specific, which is very helpful for those people who are on the call from British Columbia. And one of the the pieces of their toolkit is this Digital Evidence Toolkit. And so the Digital Evidence Toolkit helps anti-violence workers and people who've experienced tech violence understand what evidence they need to collect, how to collect it, and what some of the laws around evidence are. And we obviously only have about an hour today, so I'm not going to go through an in-depth lecture on evidence law, but I'll cover a few things that are important to pay attention to if you're speaking with someone and helping them collect evidence about the crimes that have occurred against them.

And you can go to this website and it will lay this out in greater detail as well.

So things that are important to do is to create a document log. So making sure the person who's being abused is recording every incident that occurs. So if they're being harassed over time, they'll want to document each time that someone has sent a harassing tweet towards them, about them. Or if they're getting abusive text messages, making sure they're taking screenshots of all of these. So learning how to take a screenshot and properly record this content is important to know. And also collecting contact information. And so one of the problems that comes up with digital evidence in court cases is that people might screenshot a set of text messages, and so you'll be able to say, see, you know, that it comes from Person A and is sent to person B and you can see they're having this ongoing

communication. But what we know with phones is that you can put anyone's name to have it be associated with a phone number.

And so you actually need to have whoever is being abused go back into their contacts to show that that phone number is actually associated with this person who is then saying these things to them. And that's the same when it comes to social media. But if you can find a space where a person's email is associated with their account, or some sort of evidentiary piece of evidence where you can connect the account to the exact person that it is. And sometimes you can't do that because it's anonymous or the person is hiding your information. But it's a really key piece, if you're helping someone collect evidence, making sure they're getting the contact information of the person that's been harassing them or abusing them. Encouraging the student that you're working with to back up evidence, to print copies and to store copies of them elsewhere. So physical copies are always helpful to have. But if you only have a digital copy, making sure that you have a replica copy of that saved somewhere else.

This is particularly important in abusive partner relationships where the abusive partner may have access to the device or the iCloud account because they might be able to go into that person's phone or cloud and just delete all the evidence. And once that evidence is deleted and lost, you can't get it back. With any technology, there's always a risk that someone will drop their phone in the water or they'll step on it or they'll forget it when they're out at a restaurant. And then boom! There goes all your evidence. So you want to make sure that it's backed up and stored in a safe place. So some of the advice that we give is to make a copy of it and give it to a friend who lives in a different house who a perpetrator might not have access to. And then once you've collected all of the information, often people want the content removed. So when you're working with students, you want to make sure that they collect all the digital evidence they can before they report the content. Because if you report it and it's taken down, then it's just gone and you have no evidence.

And then when you report to the police, they may not be able to move forward with a prosecution.

This again is from the BC Society of Transition Houses. They have these fantastic how-to videos. So if you want to do a screen recording, if you want to preserve a video as evidence, if you want to preserve an audio recording. So, for example, if someone's left a threatening audio message or is sending sexually inappropriate content via audio, they can go through the phone and find ways to record that. How to save a website. So if someone's made a website about one of the students to post up sexual content or other content, how to save a copy of that. How to preserve emails. Again, with emails, similar to text messages, you can often connect that to a particular IP address. And having the IP address as evidence is incredibly important. So knowing how to properly document evidence is key if you're working with victims who want to pursue a legal remedy. And in evidence law, again, this is very, very, very brief.

But there are these kind of key factors of things that you'll have to consider if you're helping someone collect evidence. So the first thing that the law often asks to do is that you need to authenticate what you're showing to the police or to the courts. And so that you need to be able to show that the document is what you say it is. And so some cases that we've seen that have had poor evidence collection, someone who's just kind of copy and pasted all the text messages they got into a word documents, and then tried to submit that as evidence saying, these were text messages. But then it was challenged because they said, how do we know these are even text messages if you just copied and pasted them onto a word document? So it's better to make sure that you're copying the actual page, the actual text messages and taking screenshots so it's much more obvious what it is. In court cases, the

courts often want to get testimony from the person who collected the evidence digitally. So if it's a friend of a friend or someone else who's actually the taking screenshots, that person might also need to come to court.

And so for yourself, as someone who's a victim service worker, you might want to consider that, because if you're the person who's helping them collect evidence and you're using your own phone or other devices on your own to collect the evidence, you may need to testify at trial. So it can be helpful to encourage the student themselves to collect the evidence on their own without you doing it unless you're comfortable testifying at the trial. Authorship is a major piece that comes up. So being able to prove who actually wrote the message and who made the post. So again, that's really being able to identify an email, a phone number or an IP address that affiliates the message or the post with something that can be tied back to a phone company, to an Internet company, to some sort of service that the police would then be able to investigate to figure out who's associated with that phone number officially or IP address officially. So again, that type of evidence collection is quite important.

And the best evidence rule, again, it's this rule where you have to try and make a direct copy, a clear copy. So that goes back to this authentication piece, making sure that you're taking really clear copies of the evidence that you're collecting. And in circumstantial evidence in the research that I've done has actually proven to be quite helpful in proving why someone would be the author of the content that's in question. And so circumstantial evidence is evidence around the particular piece of evidence that helps prove what happened or who a person is. So, for example, if someone's been texting with the same person for two years and they've, you know, texted, hey, let's meet up for coffee, and then they do go meet up for coffee. And then that same phone number, you know, text them something sexually inappropriate. That can be circumstantial evidence to say, I know that it's this person because they texted me, I met up with them for coffee and then that same phone number was the one that was harassing me or harming me.

And so sometimes having, like in that case, you'd want to have text messages captured back further in time in order to help prove using circumstantial evidence what the evidence is.

And so recommendations that we'll go over before we go to Q&A. This is exactly what you're doing right now for frontline support workers, for student support people, train, educate and raise awareness. So doing what you can to go to workshops to learn more about tech facilitated violence. We shared a really helpful worksheets at the last session, which I'm sure will be shared with this group as well, that has links to articles where you can learn more about tech facilitated violence and sexual violence on the Internet. It also talks about different responses, legal and non-legal, that you can help students with. And this type of training and awareness needs to happen with police, with educators, with lawyers, with judges, with everyone. We need a lot more education and awareness raising on this. The second piece, which is, again, not a legal response, but something that people who are supporting victims and survivors should be cognizant of, you should never suggest that the only solution is to stop using the Internet or to stop using technology, or to not use their cell phone or to not be on Instagram anymore.

That should be a choice that they make for themselves. And students should feel free to use that type of technology. And the responsibility of ending harm shouldn't be on them getting off the Internet. It should be on the abusers from stopping their behavior. The third recommendation is that we need to make sure that the tech industry is adhering to human rights obligations. Tech companies play a major role in facilitating this type of harmony to be a bit more responsible for the way that their products and

businesses impact vulnerable and marginalized individuals. And finally, whenever we're talking about tech facilitated violence, we need to make sure that we recognize that the root of the problem is not technology, it requires societal reform. So this is ending sexism, ending misogyny, ending homophobia, ending racism, really going to the roots of the problem is the most important and effective solution that we can have.

And so we'll be open to questions and comments after this. Also, our contact information is here on this side.

So if you have any follow up questions after the event, feel free to get a hold of us. But I think we have about 15 minutes left for questions from the audience that people have questions. And I'll stop sharing the screen and invite Cynthia to join me for the Q&A. And feel free to post questions in the chat or you can raise a hand. And maybe if we're not seeing any questions, Cynthia, do you want to talk at all about like the process for filing a civil claim. Like what somebody, like what are the initial stages for that. Or do we actually have a question?

CYNTHIA:

I'm seeing some questions coming. Someone is asking how is confidence determined in breach of confidence?

SUZIE:

Yeah. Do you want to take that?

CYNTHIA:

Yeah, sure. I can say, so in terms of I can tell you that there's a specific test. And basically what this is requires in the case by analyzing the specific factors that courts have considered to meet the factors of that test. So that specific analysis is not something that I've personally done. But if I look up, for example, if you look up kind of general legal resources and based in BC, that explain, they'll break down the elements of the breach of confidence. So basically what Suzie showed when it came to the criminal law database, there are equivalent resources for civil laws as well. They're not all compiled that neatly and amazingly the way like quality databases, but basically for every criminal offense where you saw that break down of these are the elements of the offense, here's what's required to meet each of them, that also exists for every tort that I listed. And so it would be a matter of essentially searching for the BC version of breach of confidence, and then the results will set out that particular test.

SUZIE:

One of the challenges that comes up with the breach of confidence is that it often has to be quite a secretive thing. And so in the United Kingdom, they still rely on breach of confidence quite often for their non-consensual distribution cases. And one of the challenges when it comes to sexual images is they're not always kept perfectly private. So even though there might still be some legal wrong that's occurring, if the image has been shared with a group of people rather than just one person, sometimes it might not meet the threshold for a breach of confidence, but essentially it's something that you've told someone in confidence in secrets and that they've been breached your confidence by sharing that more broadly, and that may be with one other individual or maybe with a larger group of people, depending on the circumstance.

CYNTHIA:

I'm also going to put in the chat here. So this is a blog post from a law firm, but one of the authors, Molly Reynolds, is also on the LEAF Tech Facilitated Violence Committee and was one of the people who reviewed the [...] report. And so this particular post talks about deepfakes, which is also one of the behaviors we discussed in our Part one webinar. Which is when artificial intelligence technology is used to create realistic looking videos showing somebody saying or doing things that they never actually did. And 91 to 99% of deepfakes that we know of have been used to create fake porn of women, essentially, which is also a form of sexualized violence. And so while this blog post goes through many, many of the laws that we discussed in this webinar as applied to deepfakes, I think you'll find a lot of similarities because of course, deepfakes fall under this umbrella of tech facilitated gender based violence. And breach of confidence is on there as well. So the other ones that we talked about.

And they go a bit into more detail into what the context of each of those are and how you would meet the test.

SPEAKER:

And then there was a, sorry, there was a question about training if you know of any training that folks can take.

SUZIE:

I think right now, well, I think the BC Society of Transition Houses is the best source right now to look at the content for figuring out what tech facilitated violence is. And it's got real practical how-tos. And goes over many of the laws. So I think you could probably spend a good month or two on the content that they've got in there. The other resources that we've shared are there's not a lot of Canadian organizations who are working on this area just yet, but there are quite a few in the United States where you can find really helpful tools on how to support people. And so the Cyber Civil Rights Initiative is an organization out of the United States that does a lot of work in this area. And even though the laws may be slightly different in the United States, often a lot of the support and process would be very similar. And there's also another organization, their acronym I believe is NNDV. I think it's the National Network to end Domestic Violence in the United States. And they also have a very practical and useful readings and trainings on their website as well that do deal with tech facilitated violence.

But here in Canada, other than the BC Society of Transition Houses and a few other places like Cyber Scan, there's not a lot of training. And it's something that when it comes to the educational side of things, we need a lot more work here in Canada. There's also another organization. It's a government body in Australia called the E-Safety Commissioner. And they have a lot of helpful resources. Again, Australia specific but could be practical tools for people to learn more.

CYNTHIA:

Also, while people digest, I am going to populate the chat with a bunch of links. So if you enjoyed this webinar, if webinars are kind of a learning style that works for you, I'm going to post several videos in the chat that are, it's not specifically training. They will give you more information about this area of the law and of tech facilitated gender-based violence. So I'll start off with this is the part one webinar, and the recording of it is already up on this page. So you could watch it right now if you wanted to. Another thing is that Suzie was involved in organizing a conference entirely about tech facilitated violence last year. And this is, sorry, this is not the conference. This is actually a YouTube playlist featuring videos of speakers from the Equality Project, which is entirely about tech facilitated gender based violence. If you

go to that general user of the Center for Law, Technology and Society, you'll find more videos. It's kind of a mix of all tech law videos. But the conference related ones are also among them, I assume.

SPEAKER:

And looks like we have a question. Anna.

ANNA:

Hi everyone. Thank you very much for this very informative session. I just have a question in regards to any feedback or experiences that you can provide regarding managing concerns that span different countries. So we have a very highly international student population. How do you support students where we have different locations internationally and are experiencing this type of violence? What resources are there available internationally?

SUZIE:

Yeah. So depending on the country that you're in, there are a variety of support groups in other countries. So I know in South Korea they have a really excellent resource list for that. On my website, which is Suziedan.com, I have a few links to resources and help groups. And I've got a list of quite a few international groups that you can get in touch with to find support there. And often, even if the crime is occurring by someone who lives internationally, there can still be consequences. So for example, in the case of Amanda Todd, the person who was harming her was actually a Dutch citizen. And he was prosecuted in the Netherlands and served his time there and is now actually been extradited to Canada and will be facing trial here and will likely serve time here as well. So even if the occurrence happens by someone who doesn't live in Canada, sometimes there can be Canadian legal solutions using Canadian law. And we've seen that in British Columbia there was an online harassment case where a person's ex-husband was living in the United States and they were able to still investigate the crime.

But it can be very challenging when it's cross jurisdictionally.

ANNA:

Thank you.

SUZIE:

Cynthia, do you have anything else to add about the cross jurisdictional aspect of it? I know it's one of the more difficult aspects of this.

CYNTHIA:

Yeah. I think when it comes to fight like help, that's difficult. I know there's some NGOs some big NGOs in the US that actually do have Tech facilitated hotlines for people, which is something that Suzie and I have been building the lack of free years in Canada. So access now, for example, the Electronic Frontier Foundation and EVA. I can't remember the last name. But there's a person at the Electronic Frontier

Foundation who has kind of single handedly been championing the fight against Stalk Aware, in particular in the United States. Although I think she's based in Berlin. And they have. So if you look up access now or EFF, they'll have specific hotlines. Beyond that, what I think internationally is its mostly, I think, more a campaign based activism based scholarship rather than necessarily frontline oligarch support, particularly in Canada. So there's a lot of activity and exciting work happening in Latin America, for example, there's amazing feminist tech advocacy, feminist tech great work going on there.

But in terms of what we could immediately provide in the way of like front line resources step by step if you're facing it now, that's a little bit more challenging.

SUZIE:

And one thing that I think is important to recognize, even though social media companies are not perfect at getting content taken down, there are often technological and emotional solutions that you can provide to students that don't necessarily require legal intervention and can be useful regardless of jurisdictions. So I think becoming familiar with content moderation and content takedown on social media sites and understanding things like, even things like the US Digital Millennium Copyright Act can be very helpful in getting intimate images taken down. And so there's all sorts of, there's all sorts of interesting technological tools and supports that you can lean to. And ultimately, I think one of the most important things to do is just really recognizing the harm of what's happening to a person and believing them. Because many people minimize tech facilitated violence as a type of harm that doesn't really matter because it's just words on the Internet. And I think believing a person and being a supportive support person is one of the best things that you can do.

And knowing the language that you can say, what is happening to you is this. And it's a thing that we know about. So like this is Stalk Aware or this is, you know, the non-consensual distribution of intimate images. And this is a crime. And what's happening to you is wrong, I think can be very, very useful just on its own.

SPEAKER:

Awesome. If we have time for one more question, maybe Sheila's got her hand up. If that's OK. OK. Great. Thanks.

SHEILA:

Hi. I know that you mentioned different things about, you know, just basically staying off the Internet. Is there any advice that you have for a safe site? I know I personally stay off most sites, but is there any, because I know social media with young folks is extremely important to their social and well-being. And I just wanted to know if there's one that you could say that is perhaps safer than others or are they opposite that as we think.

SUZIE:

I think depending on what the issue is, there are some that are better and some that are worse, you know? Because there's, you know, things like you can have a pretty private Instagram account and you can curate it to just your friends and, you know, have good privacy settings and that type of thing. But then you still might be seeing content that makes you feel badly about yourselves. You know, the Facebook files show that, you know, a lot of women, young women and girls feel depressed and suicidal after looking at Instagram, you know. But I don't think there's really anywhere. You know, I think in the same ways when it comes to like physical and sexual violence, you know, like is there anywhere that's truly safe? You know, I think that there's, we all engage in decision making and safety practices. But I don't know if there's one that I would recommend is like the safe spot. Cynthia, do you have thoughts on healthier options?

CYNTHIA:

Well, my first thought is I don't want the takeaway from my presentation should not be stay off social media. If anything, our takeaway is the opposite. Is we absolutely are not saying that. And we don't want anyone to be telling victims or survivors of abuse that they should just stay offline. Because that's how the, I mean, that's basically how systemic oppression wins and succeeds because they're able to silence the historically marginalized group. And so that is the exact wrong direction to go in. It should be, if anything, it should be the perpetrators who are staying offline. And the other reason that that's important to get right is because oftentimes, I'm not sure if Suzie mentioned earlier, but if we move to an adjacent issue of state surveillance, privacy rights as English state, oftentimes when it comes to expansion of the criminal law and law enforcement powers, they will use the vulnerability of women and this issue of tech facilitated gender based abuse as an excuse to expand police powers when they already were not using the preexisting powers to help women and vulnerable groups to begin with.

And they're the ones telling them to, well, just stay offline then if you don't want to be bothered. So with that said, it's really about pushing back to resist being shut down and silenced in these spaces. And it's almost like we have to make them safe places to be. That being said, in terms of pre-existing spaces, it really depends on two things, what you're using the space for and who you're most scared of. Because there are places, there are social media networks that are more decentralized, that are more privacy conscious, that are more social justice conscious. The problem is network effects. Nobody's on them yet. So if you're on a platform because you need to mobilize for a cause that you care about or you want to hang out where your friends are, then you're going to go where they go. If they're on Facebook, then it doesn't matter if there's this perfectly privacy conscious social network out there, because none of your friends are on there. So it's useless to you. Or the people you need to reach are not there.

So that's the first thing. The second thing is who... But this is just a matter for you and your friends and the five of you are on this other network. But yeah, that's great. The other thing is, who are you scared of? Because if you are scared of the state, then there are ways to protect yourself, right? You can look at different platforms policies and see how diligent they are about giving data to law enforcement, for example. Do they tell users when that happens? Do they have written policies about the circumstances under which they will or won't give hand over user data to law enforcement? If you're scared of corporations, then that's when you'd be looking at their own privacy policies. Or maybe that's when you look at the more obscure ones. Like Mastodon, for example, was a decentralized, secure version of Twitter. Every few years there is a platform that will claim itself as the safer Facebook or safer Twitter, and there's the whole graveyard of them. So there's Mastodon. There's LO.

One that I checked out recently is called [...]. And it portrays itself as an Instagram, not a safer Instagram from a security perspective, but safer from a hate speech perspective. Because they built themselves as the sex worker, trans, artists, social justice friendly social media site, where all the people who are being discriminatory banned from Instagram end up. And they actually make you agree to like anti-hate speech principles and really rigorous community standards. And I think you even have to apply to be a user to make sure that you don't end up being like a troll who should really be on Parler or Gab. And so it really depends on, and then of course, if you're scared of other users or of the platform, then that's when you might engage in the tactics that as you mentioned. So for example, I remember listening to a podcast episode about a group of teenage girls who took time to try and scramble Instagram, trying to pin down exactly who they were through the algorithms. Five of these teenage girls actually shared one

account so that Instagram couldn't figure out who they each were because all of their data and preferences would be mixed up in that one account.

And so I think they called it like data scrambling or data obscuring. And there's kind of different almost workaround tactics like that. But in terms of just a straightforward this is a safe platform, particularly here's a safe platform where everyone who you would want to younger is already on there, I don't think we've quite achieved that Holy Grail yet.

SUZIE:

And just that we're kind of overtime already. But two sites that are really helpful. One is called HeartMob, and the other is called Troll Busters. And so if someone is experiencing harassment or abuse online, you can sign up to HeartMob and ask people to help you. You know, and so that can either be asking people to flag content that's been posted about you or to send supportive messages or help you collect evidence. And so there are different supportive websites that if someone is experiencing harassment or abuse on these websites, that you can go to those supported, go to those supportive websites and ask for kind of larger Internet support. And people volunteer for those websites and provide different kinds of supports. And again, those are on the resource lists that we shared for our, shared in our previous presentation. And I'm sure it will be shared again with this group.

SPEAKER:

Muted. Sorry, I was muted. Well, I guess this is, it's time to wrap it up. But I just want to thank Suzie and Cynthia again for joining us for the last couple of sessions. And we will make sure that when we share out all of the resources that were put in the chat and the resources from the last session, that we also shared the session recording from the part one so that folks that weren't in that one can go back and watch that. And thanks, everyone, for coming out. Yeah, I think. Thanks again to Suzie and Cynthia. It's been great.

SUZIE:

Great. Thanks for inviting us.

CYNTHIA:

Thank you so much.