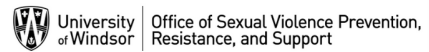




Season 3 Episode 2: Defamation Suits with Gillian Hnatiw



Prevent Resist Support Podcast

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Anne Rudzinski: Hi, everyone, I'm Anne Rudzinski. And you're listening to Season 3 of Prevent Resist Support, a podcast by the Office of Sexual Violence Prevention, Resistance and Support at the University of Windsor.

Music: I got your back my dear and I know that you got mine. I feel that hope and fear but I know we'll hold the line. Keep your head up. Keep your hand out when your breath is feeling short. Prevent, Resist, Support.

Anne: Hey everyone. Today I'm really excited to announce this episode with Gillian Hnatiw, who is a feminist lawyer in Toronto, Ontario. Gillian joins us to talk about defamation suits in our latest episode, and I'm really excited to share this content with you. If you haven't already listened to our first episode with Gillian, it is awesome. It's a full kind of exploration of the civil legal options that survivors have and is a great companion to our episode on police reporting. So give that a listen and enjoy today's episode about defamation lawsuits.

Okay, welcome, Gillian. Before we get started, could you just say your full name on the recording because last time I like Googled a bunch of interviews with you to make sure I was saying your last name correctly. So that would be real cool.

Gillian Hnatiw: No problem. It's Gillian Hnatiw. And my firm's website now has buttons of us all saying our names so if you want it again.

Anne: Oh that's awesome!

Gillian: You can go to my website and you hear me say it again and again and again.

Anne: Amazing. Okay, that's super helpful. So welcome, Gillian. This is your second time on our podcast. We're so excited to have you back.

Gillian: Thanks for having me back.

Anne: So if you haven't listened to Gillian's first episode with us, I would suggest that you listen to it, I think it's a great one. Today, we're going to be talking about defamation suits, which is really exciting. So I guess Gillian, could you very quickly, tell us a little bit about your background?

Gillian: I am a lawyer, I primarily work in areas of sexual misconduct and sexual violence, you know, starting out with claims for childhood sexual abuse. And over the years, that umbrella has grown to include certainly sexual assault, acting for survivors in different capacities, in relation to the bad things that happen to them, and trying to provide them with legal advice to navigate the different systems which are understandably very confusing and opaque and feel unaccessible often, and it's often said, and is true that sexual assault is primarily a crime of power, as opposed to it's more about power than it is about sex. And so, you know, at the core of my practice, I think about trying to be an agent of redistributing power.

Anne: I love that. I know that in our office, we really love your work. And we're really grateful to have a relationship with you where we can get this kind of content, because I know we have students on our campus that benefit from it.

Gillian: And I love the opportunity to talk to you because if I had all the time in the world, I would love to be able to sit down and sort of explain these things to people one by one and make their choices comprehensible to them. I think so much is understood through the consumption of social media and traditional media. And there's a lot of misinformation.

Anne: Yeah, absolutely. So today, we're chatting about defamation and defamation suits. So let's start with the basic what is defamation? What is a defamation suit?

Gillian: So defamation is a statement that's harmful to somebody's reputation. That's the crux of it, essentially. And the law doesn't prevent you from saying things that are harmful to other people's reputations, but it may require you to compensate them. And so I know that that's a bit of a fine line, a bit of an academic thought process, but you can say whatever you want, you just may have to pay for the consequences of that speech. And so for the person who is the subject of the comment to prove that the statement is defamatory, they just have to prove that it lowers their reputation, that they're identified by the comments. And that has been communicated to at least one other person. So in the context of sexual violence, saying that somebody committed sexual violence, I think, you know, what words with a prima facie lowers their reputation, on their face that's harmful to somebody's reputation to be accused of that kind of conduct. So if you identify them by name, by their full name, then the end of the story, if you don't identify by them by name, but sort of included enough that it would be easy to identify them, the person whose first name starts with B and who lives next to me in this residence and who is also in my history class and has red hair, I don't know, that's just off the top of my head, they may also be able to say, everybody knows that to me. And the third is that it has to be communicated to at least one other person. So if you're just journaling, and you say things in your journal to yourself for your therapeutic process, that's not defamation, to state the obvious, but might as well will state it. That's kind of when you can claim for defamation. If the harmful statement is written down, then the law assumes that it's that there's harm caused by it, if it's just said to another person, or that's called slander. And there's, it gets a bit more technical after that. But I think that what your listeners need to know right now is just that it's presumed to be harmful. And thus, there's presumed to be some damage that requires compensation. There are defenses to defamation, I'm going to try and keep this simple. But the most obvious and compelling I think, to your listeners is that truth is a full defense to defamation. And so if you say this person sexually assaulted me, and

that's true, then you would have a full defense to a claim for defamation. The tricky part, and the part that is so hard for survivors to hear is that you would then have to prove the sexual assault. And so I've acted for survivors over the years who decided not to go to the police with their allegations decided not to commence a civil claim, but found themselves defending a defamation suit. And so my advice to somebody in that situation is invariably, A we're going to defend the defamation suit on the grounds of truth, we're going to say, Well, it's true, so too bad. And B, we're going to counterclaim for sexual assault, because if you have to go to the effort of proving the assault, if you essentially have to go through a court process that's about whether or not you were in fact, assaulted, then you might as well claim and compensation for that damage as well. And so most often that is when I am dealing with the law of defamation, we're both defending the claim for defamation on the grounds of truth, which means that we're trying to prove the sexual assault and also seeking compensation for the survivor from the person who originally sued them. In my experience, it doesn't always go well for the person who initiated the lawsuit. So the person who says, You defamed me take that off your Instagram profile. Take that down from Twitter, just in the handful of cases I've dealt with. It's resulted in in the full question being litigated, and I suspect that the person who started to claim for defamation, regrets doing that.

Anne: So is a defamation suit. Is that always a civil legal process?

Gillian: Yes.

Anne: Yes. Okay.

Gillian: Yeah. And it's the way in which Canadian law, as they say, sort of balances the right to free speech, with recognizing that telling lies about people causes harm. And it doesn't just come up in the context of sexual violence, obviously, it comes up in all sorts of contexts. You know, allegations that somebody's a fraudster. And that, that they're doing illegal things with their business. Those are the kinds of defamation claims that tend to attract large damage awards.

Anne: Makes a lot of sense. A second follow up question, when you're saying that legally, we would assume that harm is caused if something is written down. Most of the time when you're seeing these cases, is that happening via social media?

Gillian: Yeah.

Anne: Yeah.

Gillian: Most of the time is happening via social media these days. It can also happen where somebody has spoken to traditional media and has agreed to attach their name to a story and they've reported the person's allegations. But that is the most common scenario these days is that it's on social media for some reason.

Anne: I think that's really hard, because I think for a lot of our survivors, as you kind of alluded to, in the example you gave, the criminal justice system is often not kind to survivors. It's not, you know, an easy or pleasant process to go through, obviously, and I think a lot of folks will often take to social media to seek an alternative form of justice or to share their story and that feels important to them. Is there anything that that you would say about those kinds of alternative justice processes and how they relate to defamation suits?

Gillian: I guess I would say that they they don't go hand in hand very well, which is such a frustrating message for me to have to deliver. First of all, I completely agree with you that the current criminal justice system is not very kind to survivors, and actually see my first podcast with you, I think, I often talk to survivors who are motivated by wanting to protect others, and wanting to expose that person's bad actions as part of their own healing. And so I have a lot of sympathy and familiarity with that motivation. I think people just have to understand the risks that sometimes can come with it. Also, a related phenomenon that we see more and more these days is a third party ally, who creates a social media account in which they start to publish aggregate allegations against people from certain institutions or schools or communities. Again, what tends to be the motivation behind there is just trying to keep other women safe, right. But that can also expose them to a

defamation suit. And sometimes those are the most challenging and frustrating, because that third party can't countersue for truth very easily, they would need the help of the people whose stories they originally shared. And so it sort of puts them in the middle in extremely unfortunate ways. So that is sort of my high level response, I often get asked, Can I get sued for defamation? And my answer is always yes. Doesn't mean that suit against you will be successful. But there's nothing I can say to you that means that you're completely insulated from that risk. It's a risk. And so I just want you to know that you're taking it and to be smart about what you're trying to achieve. And the information that you need to share to achieve that, really, I think so often people take to social media, in states of high emotion, without really having thought through the consequences. And again, I'm hugely sympathetic to that. But I have seen the unfortunate aftermath from time to time.

Anne: And I think you touched on something so important, which is that as allies and as bystanders, we often want to share the posts of folks who are sharing their allegations, but you can also be hit with a defamation suit if you're sharing a post from a survivor.

Gillian: Yes, regrettably, that is true. Again, you can be sued by defamation for sort of anyone at any time. That doesn't mean there's merit to the claim, it doesn't mean there won't be a defense. But yes, that is accurate. There's something in Canada called anti slap suits, which are basically a legal response to typically a claim for defamation, but sometimes other things, where if it's a David versus Goliath situation, and the David in the situation, who's the defendant, you know, it's clear that Goliath is trying to shut them down to silence their voice, to try and squelch something that is worthy of public discussion, then sometimes you can get rid of it through something called an anti slap suit. And it did not come armed today with all the tests that apply to anti slap suits. But just know that there are a number of tools in the legal toolkit for dealing with the situation. But the threshold issue is that you can end up having to deal with legal situations, which I think is not something that always occurs to people. And it's really unfortunate, I almost feel like I'm regretting every word that comes out of my mouth right now. Because I am alie to the fact that there is a chilling effect for me sharing this information,

and then it does give people pause. And that is what, you know, bad actors want to happen. That is how defamation suits are weaponized to silence survivors. So I just want to recognize that, but at the same time, I can't, I would be irresponsible, if not negligent of me to suggest that, No, it's fine. You can go say whatever you want, you can go share whatever you want. There's no consequences to that. Yes, there are consequences to it, unfortunately.

Anne: Yeah. And I think that's why we're making the episode, right, like defamation suits really suck. It's a really unfortunate part of our legal system that this exists for survivors. And we just want to try to give folks the information, right, like, we just think that people deserve that information, even if that information really sucks to hear. So we're really grateful that you're here and willing to chat about it. And I think that leads really well into our next question, which is, how do defamation suits impact survivors of sexual violence?

Gillian: Well, they're devastating on a couple of different levels. Because first of all, it's a very public way of trying to silence you and shut you down and simultaneously call you a liar. So that's not fun. I think survivors experience it as somebody sort of, again, taking back the power and the ownership of your story, often I've spoken to many survivors over the years who talk about how what motivates them is to just wanting to share their story and own it as their own again, essentially. And so if you finally do that, and the response is a defamation suit, then it's a bit like you don't have ownership of that story. Again, you can't decide where and when you're going to tell it where and when you're going to share it, what you want to do with it, you will be sucked into a legal process, whether you want to be or not. So that's obviously upsetting. If there is a silver lining, I think, just been like Debbie Downer, this whole interview so far. It's that sometimes, through that process, I think I have clients who, at the end of the day, feel validated in their original story. I mean, if you can defeat a defamation suit and get compensation for the assault itself, then that's a good news ending, I guess, is the best way to say it. But it's certainly traumatic in the early days, weeks, when you're trying to figure out what is happening, essentially. And I should hasten to add, which is that most of these cases don't go to trial. This is I think, something we talked about last time. But you know, they're often

resolved, they almost always resolve on some terms behind the scenes. And sometimes that can happen quickly, with money being paid to the survivor. But I think the experience of sort of finding yourself hit with a defamation suit, finding yourself having to prove what happened to you again, all of that is not is not always a pleasant experience for people.

Anne: So I like that, you know, part of this conversation is about ownership over your experiences ownership over your story. I know that from my work with survivors, telling your story and turning that into art, or getting support from a therapist or talking to somebody, you know, who is a friend or a family member, that can be really healing. So how can survivors tell their story, whether that's, you know, getting that support, or whether that's like creating some art or writing about it without worrying about a defamation suit? Do you have any advice?

Gillian: I have tips, I'm not going to call it advice, because I feel like it's such an individual experience that I would hate to try and give people advice on mass. When I was talking about defamation a few minutes ago, and saying the things you have to prove one of them is that the person has to be identified. And so if you want to share your experience of being a survivor and doing it in a way without identifying the individual, then that is generally a safe thing to do. And so if it's through art or poetry that doesn't name them, that again, that's that can be extremely therapeutic and is generally safe, I put safe in air quotes. Talking to a therapist, communications to a medical professional, or tend to be covered by something called qualified privilege. And so those can often be protected. Healthcare records are supposed to be protected anyway. So what you say to your therapist within the confines of therapy should never leave that room regardless. And so it's extremely hard to mount a defamation suit on the basis of something you don't know nobody else has even notice has been said, right. So I tend to say that therapy is a pretty safe space. It gets a little trickier when you are looking to your community for informal therapies. So, you know, friends, essentially, and I think everybody knows that the support they get from their social network from their friends is essential and integral to getting through day to day in the aftermath of an assault. If that person repeats what you said to them, then in theory, that is slander. I hope that that doesn't prevent you from confiding in and seeking support from your best

trusted friends, essentially. But if we think of it as sort of like concentric circles like rippling outward from, you know, your diary is very safe, your medical practitioners are very safe. I would say the sexual assault support centers, a safe place, your best friends are safe places. But then if you start to say, tell the story to acquaintances, kind of post it to any kind of social media, then that's where you're getting into riskier territory. Going back also to what I was saying about people often posting things or sharing things in in state of sort of high emotion. If there is a way to sort of temper that in the moment, talk to a friend, talk to a therapist, talk to a crisis worker, you know, get have that outlet in some other way. And just be a bit more thoughtful about how you want to share your story more publicly. And maybe you do want to name that person that that's that's you're permitted to do that as a choice that is yours to make. You just want to be thoughtful about it. And where that's gonna end up. I shouldn't say that the the other person that you can speak to, that's generally considered to be pretty safe is the police, you know, reports to police are also protected by what's called qualified privilege. I come around to that last because see my prior episode about what I think about sort of trying to seek justice through the criminal justice system. But there are certainly situations where it is desirable to the survivor and appropriate that they do make a statement to the police. And so you should be entirely candid, if you are doing that. And you is, again, very difficult to sue for defamation in relation to a report to the police.

Anne: That would also make sense in terms of seeking legal advice. If they were trying to seek like support around maybe filing a civil suit that would also not likely lead to a defamation suit.

Gillian: It definitely would not lead to a defamation suit. And so this is why I'm saying I can't believe I left myself out are those those concentric circles, I am at the centre, and lawyers like me are at the centre. Because if you speak to a lawyer, that conversation is protected by solicitor client privilege, absolute privilege, you cannot be sued for the things that you say to your lawyer in confidence. So that is different than the police, right? Because there's no privilege or competent, even confidentiality, that attaches to your conversation with the police. If you make a statement to the police, there will be a transcript of that there are

charges laid that transcript will get produced to your assailant. So completely different kinds of conversations that I just want to be really clear about speaking to the police is on the record, speaking to your lawyer is never on the record. It's entirely confidential, you can get advice. I'm certainly not a therapist, but I do have lots of therapy tools in my litigation bag. So get advice from somebody who's used to dealing with these things before? Yeah.

Anne: Yeah. So I want to add two things there. Number one, listen to Gillian's previous episode. It's so great. And I think one of the things that you said that I just want to plug really fast is that if this is something you're dealing with, you should look for a lawyer that has expertise in sexual violence cases, because I think one of the strong themes of your last episode was that we should look for lawyers who have that, that expertise for these cases, rather than just going to anyone to support you in a sexual violence case.

Gillian: Yes. I mean, that sounds opportunistic of me. But genuinely my advice. These are really complicated situations. And they they happen at the intersection of lots of different areas of law. And we've talked about this before, but the criminal law, the civil law, often workplace law, if it's harassment is happening in the workplace, campus codes of conduct. Now, we're talking about defamation. And so there are lawyers that understand the intersections between these systems and can help you navigate them. But it is, it is a fairly specialized area of expertise.

Anne: Yes, absolutely. The other thing I want to add really fast is just to put our office in that map, which is...

Gillian: Absolutely.

Anne: ...Also to say that Dusty and myself are confidential, and you can talk to us and you know, have the same, the same feeling of safety around the fact that we're not going to create a record unless you would like to create a record. There is no obligation to move forward with filing any kind of report. Yeah, so this is another another option you have if you want to talk to somebody about your experience, if you want to start your options, we're also here for that in a very confidential way.

Gillian: Yes, if they can see me now, they would see me nodding enthusiastically. But I would absolutely put your office at the centre of those concentric circles because they, for the individuals that who are most likely to be listening to this podcast, I think you're also probably the most accessible resource. And so even if you can just find a link in to one of those resources, who can help quarterback or navigate your next steps that is, will be invaluable to you as you try and figure out what to do.

Anne: Yeah, absolutely. So I want to take what I think is a bit of a sidestep because I would love to chat a little bit about nondisclosure agreements, and defamation suits, and how these things relate to each other. I know that that they are a different thing. But I think sometimes it's related in the sense of, you know, what does it mean in terms of what you're sharing what you're able to share? How do these things, you know, kind of relate to each other in terms of survivors and their stories? So can you tell us what is a nondisclosure agreement to start and then how does it relate to defamation?

Gillian: So a nondisclosure agreement is generally something that is signed by the survivor that says, You will never mention this, again, in the most basic terms. There are a lot of Asterix to that, but we won't get into that right now. And so it's something that has to be in place. I mean, in theory, at least the survivor has to I agree to it. Defamation by contrast is just something that's out there in the world. And as I said, if you choose to share your story very publicly and to identify your abuser, then there is a risk that you will face a defamation suit, regardless of whether you signed anything are not. Legally speaking, they're very different things. Practically speaking, I think that sometimes they get confused in the minds of the public in the minds of survivors, because they're two different ways in which people are viewed as being sort of constrained from telling their stories, you know, a nondisclosure agreement. First of all, you will have to agree to it. Second of all, doesn't matter if your allegations are true or not, you've just agreed not to say them anymore. Whereas with, you know, the risk of a defamation suit, you can tell a story that is very true. And you have some confidence that if you were faced with one, you would be able to defend it. And, you know, as I sort

of alluded to earlier, defamation suits can go badly by the person advancing them, both because they won't be able to prove the defamation and secondly, because sometimes it draws further unwanted attention to the statement that they are trying to squelch.

Anne: So I know very little about nondisclosure agreement, somebody signed a nondisclosure agreement, would that preclude them from then later deciding to go to the police or later deciding to form a civil suit?

Gillian: It's very hard for me to answer that in some kind of blanket way. It would really depend on where when why they sign that agreement? Was it voluntary? Did they get anything in exchange for it? What does it say typically, non disclosure agreements cannot prevent you from reporting these things to the police, it would be sort of contrary to public policy, but they can certainly pretend to or purport to and so they have a chilling effect in real life, so to speak. But that is a whole other area of a conversation. I know that there's often sort of discussion and movements about trying to ban on non disclosure agreements. Very controversially, I will say that I'm sort of not in it in favor of those I use non disclosure agreements on behalf of clients from time to time, I'm very careful to do it with their full knowledge and autonomy. If you've been sort of harassed in the workplace, as a professional, you may have very good reasons that you don't want other people to know about those allegations. And unfortunately, the way in which the law is gonna compensate you for the very real harm that's done to you psychologically, and to your reputation into your career. If you if other people find out that, you know, you've come forward with an allegation of harassment, the compensation sucks, the consequences to also suck. And so you might want a nondisclosure agreement plus PS, that's how I get people a lot of money in exchange for their silence. And so that's why I say it depends, like why hen how you disclose that. Like, I am very careful to have a number of conversations with clients about what their choices are in those situations, before we proceed down a road that is likely to end in a nondisclosure agreement, but but I will do it, and, frankly, makes me angry when people suggest that it's shouldn't not a legitimate choice for survivors to sometimes make, it's sometimes the best of a series of bad choices, because the law doesn't give you a better choice. And that shouldn't be visited on the head of of the

individual who's already experienced all that harm. So that's my little rant about non disclosure agreements. They are used, I think, irresponsibly, and do cause great harm in a number of other situations. Any lawyer who just agrees to have their clients sign a nondisclosure agreement as a bit of an afterthought, I think is doing that client a huge disservice. I mean, to me, it's something that gets negotiated separately, there's very different thought and attention behind it. And there needs to be very real forms of compensation in exchange for it. I've also sort of negotiated a number of different creative ways of using them in the past, including with what we call sunset clauses. So it applies for five years, and then you know that there will be very detailed conditions, sometimes including something that we call a Jane Doe carve out, which is that you won't tell your story. But if you hear somebody else coming forward with a story, you know, all bets are off, the nondisclosure agreement will strain you. So the tricky compromises that get made and thus ends my rants about non disclosure agreements. But I think that most often, they're not used responsibly by lawyers. And they're experienced by people as another form of silencing. And so that's the link to defamation.

Anne: Yeah, so I think, you know, the next question was gonna be if somebody's asking you to sign one, what should you think through before signing? It sounds like a lot. It sounds like you should probably maybe seek legal advice.

Gillian: Yes, I think before you sign anything, you should try and seek legal advice. I know that's daunting for some people, because lawyers are expensive, can be expensive. But your office can help them hopefully connect with the advice they might need. At the very least, there's usually community legal clinics on campus or the law helpline through the Law Society, like get some advice, do not sign something unless you're getting something substantial in return for it. And so if you're getting something of somewhat substantial in return for it, then you should probably invest in a lawyer to help you make sure you're maximizing what you could get. And also that you're not signing something that's more onerous than you need to sign. And so my office does like consults with people all the time, and my partner Anna Matas takes certificates under the provincial the pilot projects, you know that

you get up to four hours of free legal advice. And that would be something that would be covered by one of those certificates. So get some advice. Again, this is not intended to be opportunistic. It's really what I think people need.

Anne: Also real fast hype for Anna because we love her. She's great. Okay, so the next question then is, can we read something into an NDA when there is one in relation to sexual violence? Is there anything we can read into it? Or somebody's like, Oh, can't talk about John Doe, I've got an NDA. Can you say that or you know, is there? Is there something that can be read into it? I know it's complicated.

Gillian: There's a story she can't tell. And so it immediately begs, well, why what's the story? Why can't you tell it? What's so what's so harmful about this story? Right. So yeah, I think that practically speaking, there's probably something you can read into it. You know what that is? And what that means? It's, it's hard to say, but, yeah, like, why, why to go to the trouble of getting somebody to sign an NDA? If there's nothing to see?

Anne: And is that would you say, different than a defamation suit? If we hear about, let's say, a defamation suit in our local community, is there something we can read into that? Or is that more is that kind of like thought of differently?

Gillian: It's hard for me to say how it would be thought of within the community. As a lawyer, if I hear somebody has been sued for defamation, in these circumstances, my my first thought is, oh, they're a bully. They, you know, they're trying to shut this down. And yeah, I want to talk to the survivor about the alleged survivor, I guess, at that point in time about like, what's the story here? What are the power dynamics? What do you [inaudible]? So that's how I hear it. If somebody comes to me and says, I've been asked to sign an NDA, again, I'm sort of thinking or is, are you being bullied into signing this? What's the story? Let's talk about whether or not this is a good idea for you, and what you want.

Anne: Amazing! Well, I think this is very helpful. There's a lot of great information in here. I have a couple wrap up questions. If somebody's

listening, if they're a survivor, and they're worried about getting hit with a defamation suit, you know, what would you say to them? Is there advice that you would give them, is their tips that you would give them? What is kind of like the takeaway message for them?

Gillian: Start with being very clear in their own minds, what they're trying to achieve by sharing their story. And that might sound stupid. But I think when you force somebody to say like, what are you trying to do here, sometimes it helps them clarify their own thought process. If it's you want to share your story as a way of de stigmatizing the experience of sexual violence of offering support to others, perhaps is part of trying to help you shed your own sense of self shame or self blame. Those are all very valid reasons to want to share a story. And so think about do you really need to name that individual? You know, is it necessary for you to name and shame? And that's without me presupposing what the answer is, but that's, I think, the question that they need to grapple with. If the purpose of telling the story is to protect others from that specific individual, then I think it's useful to have a conversation about how does that an individual operate like what are the risks associated with this? Is this somebody who knowingly goes to parties and looks for the drunkest girl in the room like, you know, so I have to how are we going to address trying to defuse that risk to others? And there aren't easy answers to these questions. But I think sort of identifying the goal of wanting to share your story is a good place to start in terms of thinking about strategies for mitigating the risk to yourself. I mean, I say this at the end is a bit of a throwaway. But it shouldn't be a throwaway, that if you do commence a lawsuit for sexual assault, then that's also protected by absolute privilege. And so I have worked with the media in the past, where we have intentionally started a lawsuit and told the survivors story through the Statement of Claim, knowing that the media can then report on that those allegations and the survivor is safe. So that's, you cannot be sued for defamation for anything you say in a statement. And so that's another, I would say tool in the toolkit that doesn't work for everybody for a whole host of reasons. But that is another safe way to get allegations out there. And sometimes I see news stories unfolding of allegations against very high profile abusers, and it just gets messy. And I sort of think there might have been a

smarter, more strategic way to get that information into the public realm, while minimizing the harm and the risk to the survivor.

Anne: That is so interesting. I've never heard of that before.

Gillian: Yeah, I'm giving away all my secrets. It's not really a secret. But I mean, so when I said before that I talked to people about non disclosure agreements, those usually arise in my practice in response to a demand letter. And so sometimes allegations are made behind the scenes, sometimes, compensation is paid behind the scenes, and that is most frequently when non disclosure agreements are used. And so I won't even start somebody down that path. If they say, under no circumstances will I agree to that, I'd say great, fine. Like, let's skip the demand letter, let's go right to a statement of claim, then it's in the public record, you can speak about it, you can choose to be named in that claim or not, you can use your initials, the media can report on it, it takes you down a whole other pathway. So when I talk about wanting people to talk to somebody with some knowledge and expertise in that area, it's because I think you have to understand the way in which those different threads intersect. And it's about knowing more than just like the black letter of the law. Those strategic choices you make early on will sort of affect the way probably the length of your dispute, the way in which you'll be able to tell that story into the future, the degree of risk you're putting yourself out there for, and none of these are easy choices. There's there's trade offs in all of them.

Anne: Amazing. So if we have someone listening who is currently being served or has been served with a defamation suit, what advice would you give to them? We've kind of talked about the options that are available, is there kind of a take home message for somebody if they've already been served with the defamation suit?

Gillian: I mean, I would get some legal advice, I guess is if you can somehow get legal advice. I've mentioned ones that Ontario has a certificate program that gets you up to four hours of legal advice. I think they can be used in those situations, if you're being sued for talking publicly about your sexual assault. That would be I guess, step one, don't be bullied into a quick settlement or too quickly signing something. I know

there was a situation in Windsor in recent years where there were a whole bunch of people sued simultaneously. And sort of, as I understand it, they were sort of picked off and pressured into settlements, one by one, like there can be power in numbers as well. So take a breath. If somebody's giving you deadlines and making you feel that sort of immediacy and pressure. Know that those that deadline that pressure is for the most part false, and created to serve somebody else's timeline. So get the advice and support you need before making a decision or signing anything. You know, as a young person in I would assume financially precarious circumstances as virtually all undergrad students are. The response to getting a letter like that is often one of panic. And that's totally understandable. So take huge deep breath, and get some get some advice and support before you do anything.

Anne: This has been so thoughtful and so helpful. And I'm just really grateful that you were willing to chat with us and create this resource. So thank you so much for being here today.

Gillian: I love these chats. It's a pleasure.

Anne: Amazing. Well, have a great day.

Gillian: Thanks, Anne.

Anne: Thanks so much for joining us for this awesome conversation on defamation suits with Gillian Hnatiw, lawyer from Toronto, Ontario. If you haven't checked out our previous episode of Gillian, it's from season one of our podcast and you can find that on Anchor, Spotify, Apple anywhere you listen to podcasts. Remember to give us a like and follow and again thank you so much for listening.

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you can check out our website at www.uwindsor.ca/prevent-resist-support. You can contact us through the website or view a list of resources on our UWindsor campus and in our Windsor community. If you're not at UWindsor, you can learn about supports and your community through the Ontario Coalition of Rape Crisis Centres. Their website is sexualassaultsupport.ca