

# POLICY IMPLEMENTATION GUIDE TO BILL 151

AN ACT TO PREVENT AND FIGHT SEXUAL VIOLENCE IN  
HIGHER EDUCATION INSTITUTIONS



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## ACKNOWLEDGEMENTS

The first acknowledgment for this action plan is to the Algonquin and Kanien'kehá:ka peoples. We seek to recognize that the development and writing of this action plan was primarily conducted on unceded and unsurrendered Algonquin and Mohawk territory in the Ottawa and Montreal region.



The Student's Society of McGill represents and serves over 20,000 McGill undergraduates. SSMU works hard for fairer academic justice processes, better quality instruction, and better services for students. On the broader level, they are also strong advocates for accessible quality public education.

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Students for Consent Culture is an organization dedicated to supporting intersectional and grassroots anti-sexual violence advocacy and activism on campuses across Canada by serving as a hub of resources, tools, and institutional memory for students to engage with.

SFCC also engages in advocacy at the provincial and federal level to create better policies, practices, and accountability measures to protect student survivors. Our overall goal is to work towards creating cultures of consent both on campuses and within civil society across Canada.

[SFCCCANADA.ORG](http://SFCCCANADA.ORG)



The Association for the Voice of Education in Quebec's (AVEQ) mission is to defend both anglophone and francophone students, with particular attention to the realities of students in the regions. AVEQ currently represents over 46,000 students across three member associations, with around 10 observing associations that are actively participating in its creation. It has been working to address sexual violence throughout the past 2 years, with a focus on collaborating with student associations and community groups to support survivor-centric policy, legislation, and action on the issue.

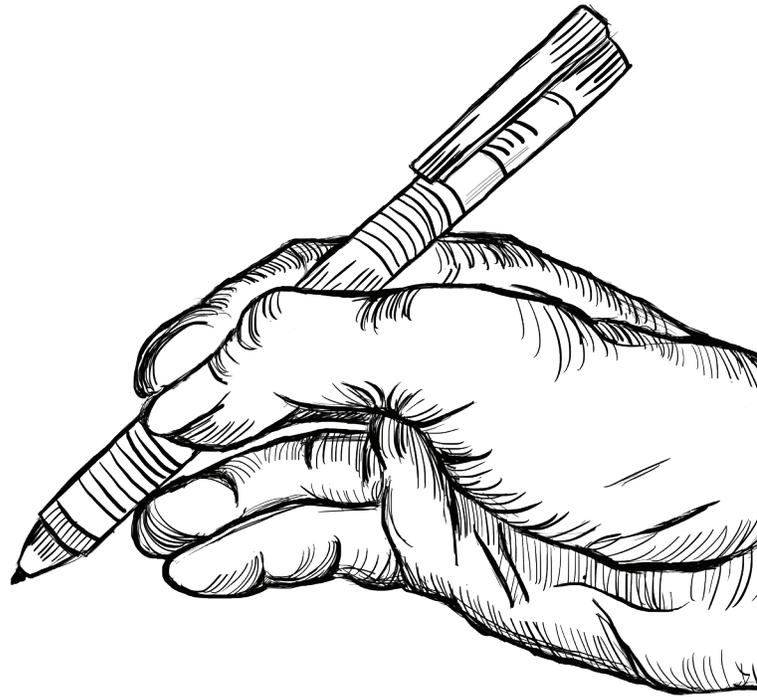
[AVEQ-NOUS.CA](http://AVEQ-NOUS.CA)

On December 8th, 2016 the Quebec provincial legislature passed [Bill 151: An Act to Prevent and Fight Sexual Violence in Higher Education Institutions](#). This law requires all higher education institutions, including post-secondary institutions and CEGEPs, to pass a stand-alone sexual violence policy by January 1st, 2019 and implement it by September 1st, 2019.

Currently, institutions across Quebec are developing or reviewing their campus sexual violence policies to ensure that they are in line with provincial requirements. The following document is to provide clear guidelines to support the creation of survivor-centric campus sexual violence policies.

A survivor-centred approach requires all those who engage in sexual violence prevention and support programming to prioritize the rights, needs, and wishes of the survivor. This requires the inclusion of procedural commitments that seek to mitigate the potential for re-traumatization when survivors seek recourse or accommodations through campus sexual violence policies.

It is important to note that although some recommendations in this document may seem basic, the experiences of many student groups that have been working with their institutions' policies is that all procedural steps and protections must be explicitly written into the policy. This is vital to ensure accountability for administration and that a survivor has all of the information that they need in order to make a decision as to whether they wish to disclose and/or report to their institution. The experiences we have heard from the associations that we have worked with is that we cannot allow for ambiguity, as institutions have demonstrated that they cannot be trusted to uphold these policies in good faith, particularly when these procedures occur in confidential complaint processes.



Outlining the standards and requirements to be upheld in every complaint process provides survivors and their supporters with the ability to advocate for their rights. To us, this is why it is so important to make sure that the student representatives being consulted during the creation of these policies have the tools they need in order to advocate for a clear survivor-centric process.

Although Bill 151 was an important first step in addressing campus sexual violence, it had several shortcomings, in particular in lacking sufficient accountability measures or specific requirements for campus sexual violence policies that would ensure that they meaningfully support survivors of sexual violence. This guide seeks to fill that gap.

Created by the student organizations of OurTurn and AVEQ, with legal consultation as to the interpretation of Bill 151, it clearly lays out the requirements of Bill 151 on institutions and provides recommended best practices. We hope this is used as a tool by students and administrators to pass and implement policies that are truly survivor-centric, beyond the buzzword.

N.B. Per Chapter II, Section 3 of Bill 151 this policy **must be** separate from the institution's other policies.

## SCOPE: WHAT MUST BE COVERED IN THE POLICY

- Consideration for people “at greater risk of experiencing sexual violence”, including those from marginalized communities;<sup>1</sup>
- The roles and responsibilities of everyone at the institution with regards to addressing sexual violence;<sup>2</sup>
- How prevention, awareness raising, and training on sexual violence will happen;<sup>3</sup>
- Safety measures, including infrastructure adjustments;<sup>4</sup>
- Rules for orientation, frosh, and other social activities organized by the institution, a sports team, or a student association;<sup>5</sup>
- What measures will be imposed on external organizations with contracts with the institution;<sup>6</sup>
- How to report sexual violence, file complaints, or make disclosures to the institution, what measures will ensure confidentiality of these, how to prevent retaliation against the complainant, and how the person concerned will receive information from the institutions regarding follow up;<sup>7</sup>
- What actions the institution, personnel and students must take following reports or disclosures, including measures for protection, academic accommodation, and qualified psychological and other support services for the person concerned, as well as the timeline for these to be implemented;<sup>8</sup>
- A code of conduct for relationships with unequal power balance (ex: student-prof relationship);<sup>9</sup>
- An outline of the penalties for breaking the policy;<sup>10</sup>

<sup>1</sup> Chp II

<sup>2</sup> Chp II, S. 3 (1)

<sup>3</sup> Chp II, S. 3 (2-3)

<sup>4</sup> Chp II, S. 3 (4)

<sup>5</sup> Chp II, S. 3 (5)

<sup>6</sup> Chp II, S. 3 (6)

<sup>7</sup> Chp II, S. 3 (7) (12) (14)

<sup>8</sup> Chp II, S. 3 (8-11)

<sup>9</sup> Chp II, S. 3 (15)

<sup>10</sup> Chp II, S. 3 (15)

# OVERVIEW OF BILL 151 REQUIREMENTS

## MANDATORY MINIMUM STANDARDS FOR THE INSTITUTION

- Annual trainings for the institution's staff and representatives, as well as student association and union representatives;<sup>11</sup>
- The ability to report or make disclosures related to sexual violence at any time
- Measures that protect, accomodate, or offer qualified psychological and other support services be undertaken in 7 days or less, and complaints must be processed in 90 days or less;<sup>12</sup>
- The institution can not compel an individual to stay silent to protect the institution's reputation;<sup>13</sup>
- Development of a framework to prevent relationships where one person has authority over the other;<sup>14</sup>
- Grouping of all sexual-violence resources and services in an accessible and well-known place;<sup>15</sup>
- Establishment of a standing committee of students, officers, and personnel to develop, review, implement, and enforce the policy, as well as ensure consultation of the different communities in the institution;<sup>16</sup>
- Accessibility of the policy, and ensuring that all students are made aware of it upon admission and at the start of each semester;<sup>17</sup>
- Review of the policy at least every 5 years;<sup>18</sup>
- Annual reports by the institution to the Minister of Higher Education on the progress of the policy's implementation, with regards to training and education, safety measures, reports and outcomes of sexual violence complaints, and the consultation process undertaken;<sup>19</sup>

<sup>11</sup> Chp II, S. 3 (3)

<sup>12</sup> Chp II, S. 3 (11)

<sup>13</sup> Chp II, S. 3 (13)

<sup>14</sup> Chp II, S. 3 (15)

<sup>15</sup> Chp II, S. 4

<sup>16</sup> Chp II, S. 7

<sup>17</sup> Chp II, S. 10

<sup>18</sup> Chp II, S. 11

<sup>19</sup> Chp III

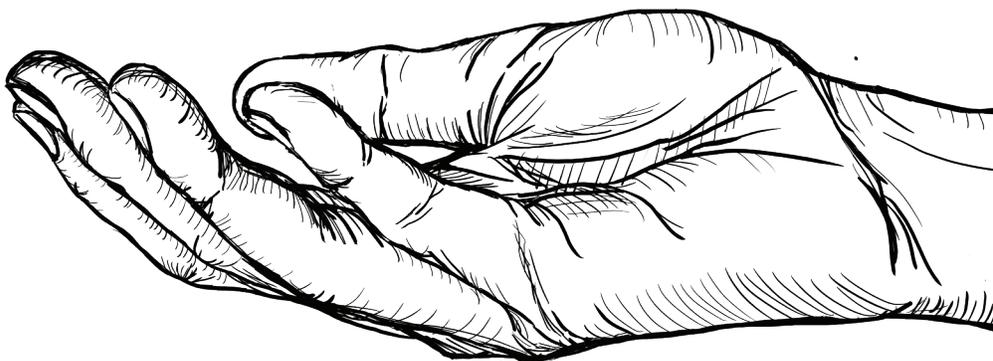


Based on the recommendations of the Our Turn National Action Plan as well as the experiences on the ground of our members whose institutions have already implemented policies, these are our recommendations of best practices to make sure are included in your institution's sexual violence policy.

## BEST PRACTICES TO ADVOCATE FOR

### 1. A DEFINED STAND-ALONE SEXUAL VIOLENCE POLICY

The existence of a stand-alone sexual violence policy that **DOES NOT place the process through another policy's procedures** as do the current Sexual Violence Policies of McGill University and Concordia University. The procedures must be stand-alone and must be clearly outlined in a step by step process for students, staff, faculty and other relevant parties. A sexual violence policy that refers survivors to various other policies, such as the student code of conduct or internal faculty complaint policies, is not appropriate and should not be considered a stand-alone sexual violence policy. ; **(Required by Bill 151)**<sup>20</sup>



# OVERVIEW OF BILL 151 REQUIREMENTS

## 2. A RIGHT TO BOTH CRIMINAL & INSTITUTIONAL PROCESSES

The ability to report experiences to both their institution and the police without risk of having a complaint suspended due to the other process; **(Not required by Bill 151)**

- Section 11.8.1 of the Lakehead University Sexual Violence Policy:

*External reporting and recourse – This Policy and the Complaint process do not prevent, and are not intended to discourage, an individual from also reporting sexual violence to the police, pursuing a complaint of sexual violence through the criminal justice system, pursuing a complaint of sexual harassment with the Ontario Human Rights Tribunal pursuant to the Ontario Human Rights Code, or the Occupational Health and Safety Act or availing themselves of other civil processes and remedies.<sup>21</sup>*

It should **NOT** include the ability to suspend a complaint if a survivor seeks external recourse, such as also filing a criminal complaint:

- (ii) Section 9 (c) of the Carleton Sexual Violence Policy:

*Jurisdictional or other legal considerations may arise (such as an active police investigation) where the formal complaint process in this Policy may be suspended.<sup>22</sup>*

## 3. MANDATORY SEXUAL VIOLENCE TRAINING FOR DECISION-MAKERS

A mandate of sexual violence sensitivity training on trauma-informed approaches, in addition to the general prevention training required in Section 3 (3) of Bill 151, for those involved in hearing the sexual violence complaint and deciding the outcomes; **(Somewhat required by Bill 151)<sup>23</sup>**

- Section 3 (a) (v) of the Ryerson University Sexual Violence Policy:

*Personnel involved in the adjudication process including staff in Human Rights Services and other offices assisting with cases of sexual violence, investigators and decision makers, will be trained in their roles, trauma-informed processes and the impact of identities on how an individual experiences sexual violence.<sup>24</sup>*

# OVERVIEW OF BILL 151 REQUIREMENTS

## 4. ENSURE THAT ADAPTED SUPPORTS ARE PUT IN PLACE FOR PEOPLE WITH DIFFERENT IDENTITIES, PARTICULARLY THOSE FROM MARGINALIZED COMMUNITIES

In the policy itself, but also in prevention and education activities, there must be recognition that people from marginalized communities are often at greater risk of experiencing sexual violence, but also that their lived experiences and needs may vary significantly. For example, “preventative” measures such as increased surveillance could actually put people at greater risk of being harmed, and survivors may not wish to interact with authority figures while going through a reporting or disclosure process. Aside from thorough and regular consultation with these communities regarding their needs, the policy must require that people involved in support services and formal reporting processes come from a range of lived experiences, and are well-trained in order to inform the decisions and support that they are providing to survivors from all different backgrounds. **(Somewhat required by Bill 151)**

<sup>20</sup> Chp III, S. 3

<sup>21</sup> [Lakehead University Sexual Violence Response Policy](#)

<sup>22</sup> [Carleton University Sexual Violence Policy](#)

## 5. RAPE SHIELD PROTECTIONS

Explicit rape shield protections, whereby a complainant cannot be asked questions about their sexual history at any point of the informal or formal complaint process;

**(Not required by Bill 151)**

## 6. PROTECTIONS FROM FACE TO FACE ENCOUNTERS

The inclusion of protections from face to face encounters, a complainant should not be required to be present at the same time as a respondent. Similar to the criminal justice system these interests between survivor protections and procedural fairness can be balanced through the use of a screen and/or video technology. **(Not required by Bill 151)**

- Section 4.2.7. Bishop’s University Policy on Harassment:

*“If both parties don’t want to meet face to face the proceedings can be taped.”<sup>25</sup>*

<sup>23</sup> Chp II, S. 3 (2-3) requires training, but does not say it must be trauma-informed

<sup>24</sup> [Ryerson University Sexual Violence Policy](#)

<sup>25</sup> [Bishop’s University Policy on Harassment](#)

# OVERVIEW OF BILL 151 REQUIREMENTS

## 7. TIMELINES

Clearly defined and reasonable timelines for a complaint process that DO NOT exceed 45 days for a complaint process and 48 hours for immediate accommodations;

**(Different requirements under Bill 151)<sup>26</sup>**

## 8. PROTECTIONS FROM GAG ORDERS<sup>27</sup>

Protections from institutions imposing a gag order on complainants through a broadly defined confidentiality requirement. **(Required under Bill 151)<sup>28</sup>**

<sup>26</sup> Bill 151 requirements are in Chp II S. 3 (11)

<sup>27</sup> Gag Order: an order that a case may not be discussed in public

## 9. BROADER SCOPE

Campus Sexual Violence Policies must explicitly create a procedure for students to report sexual violence and/or sexual harassment while participating in a work placement, internship or co-op and require that the university keep record of the places where sexual violence has occurred to prevent future students from being placed at risk of sexual violence while pursuing co-op opportunities.

**(Unclear whether this is required under Bill 151)**

- (i) Section 2.1 (b) (v) of the University of Manitoba Respectful Work and Learning Policy Procedures:

*Matters of off-campus conduct that have, or might reasonably be seen to have an adverse effect on the proper functioning of the University or the rights of a member of the University Community to use and enjoy the University's learning and working environments.<sup>29</sup>*

<sup>28</sup> Chp II, S. 3 (13)

<sup>29</sup> [University of Manitoba Respectful Work and Learning Policy Procedures](#)

# OVERVIEW OF BILL 151 REQUIREMENTS

## 10. INFORMING OF SANCTIONS

A mandate that institutions must inform both the complainant and respondent of all sanctions ordered by the review committee. **(Required under Bill 151)**<sup>30</sup>

## 11. STUDENT REPRESENTATION ON COMMITTEES

A mandate for the creation of a Sexual Violence Prevention and Support standing committee, with meaningful student representation. **(Required under Bill 151)**<sup>31</sup>

<sup>30</sup> Chp II, S. 3 (13)

<sup>31</sup> Requires student representation but define what that should look like

## 12. REVIEW PERIOD OF 2 YEARS

Bill 151 requires institutions to review their sexual violence policy every 5 years, however we recommend that institutions review their policy<sup>32</sup> every two years, in consultation with campus stakeholders including students **(Not required under Bill 151)**

- Section 7 of the Ryerson University Sexual Violence Policy:

*This policy will be reviewed every two years with extensive consultation with members of the Ryerson community and in accordance with the agreement made between the university and representatives of the university's elected student governing bodies, for the provision and consideration of input from a diverse selection of students.*

<sup>32</sup> Chp II, S. 11



## THE COMPLEXITIES OF CONFIDENTIALITY

As students, who are involved in advocating for survivor-centric sexual violence policies it is imperative to ensure that survivors are not subjected to gag orders and have the ability to be informed of all sanctions ordered as a result of their complaint.

First, a gag order refers to clauses within a Sexual Violence Policy which effectively silences survivors of sexual violence from discussing their experiences when they seek to pursue a formal or informal complaint of sexual violence with their institution. Although, institutions will not overtly include clauses that silence survivors, they will create confidentiality requirements that are so broad, they are able to justify advisors, disciplinary officers and other institutional actors involved in the complaint process to use these clauses to threaten survivors. Institutional actors have in the past used the broad language of their campus sexual violence policies to tell survivors pursuing complaints they cannot discuss the existence of a case or self-identify as survivors on social media.

As students advocating for survivor-centric sexual violence policies it is imperative to ensure that if the institution is including a section on confidentiality it is defined narrowly. Chapter 3, Section 3 (13) of Bill 151, includes protections for survivors from:

*“Any means to compel a person to keep silent for the sole purpose of not damaging the educational institution’s reputation.”<sup>33</sup>*

Students must ensure that this protection is practically included in policies by advocating for their policies to clearly outline the forms of speech that are prohibited. For example, the policy should clearly outline that no clauses on confidentiality limit the survivors ability to speak openly about their experiences or the existence of the complaint. If the policy seeks to limit the ability of the complainant to publicly name the individual, it must clearly state that as a limitation and define what is considered “public”.

Second, currently due to provincial legislation the ability for institutions to inform complainants of the sanctions involved in their cases. Thus, in many situations after survivor completes their complaint process and the respondent is found in violation of the sexual violence policy for perpetrating an act of violence, the survivor has the right to be informed of the outcome of the decision (in violation of the policy or not) but not the sanctions ordered against the respondent (education courses, space limitations, suspension, etc...). This is incredibly harmful to the safety of survivors whose psychological and physical well being is dependent on knowing whether their perpetrator has been mandated to complete education training, limited from certain spaces or suspended from campus. Institutions claim that due to provincial privacy legislation, they are not permitted to inform survivors of the sanctions involved in their cases.

# THE COMPLEXITIES OF CONFIDENTIALITY

However, Bill 151 has created the ability for institutions to forego these confidentiality limitations to protect survivors.

Chapter II, Section 4 of Bill 151 states that:

*“The educational institution may communicate to a person the information necessary to ensure his or her safety.”<sup>34</sup>*

To ensure that the institution commits to supporting survivors throughout the complaint process it is imperative that students advocate that institution define what is considered necessary to ensure the “safety” of the complainant, such as space limitations, whether they’re perpetrator will still be on campus, and the duration of the suspension if imposed. Student leaders must argue that “safety” must be defined broadly to encompass both psychological and physical well-being of the complaint.

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<sup>33</sup> Chp III, S. 3 (13)

<sup>34</sup> Chp II, S. 4



## THE DECISION-MAKING/ADJUDICATIVE BODY

Bill 151 is noticeably absent of any requirements surrounding the composition of committee (or a singular individual) involved in adjudicating formal complaints of campus sexual violence. The sole requirement is that under Chapter 2, Section 3 (3) the legislation requires that there is “mandatory annual training activities for officers, personnel members, representatives of their respective associations and unions, and student association representatives”. It does not specify the depth or quality of the training, nor the roles of the officers or personnel members.

### TO SUPPORT STUDENT LEADERS AS THEY ADVOCATE FOR SURVIVOR-CENTRIC CAMPUS SEXUAL VIOLENCE POLICIES WE RECOMMEND THAT THEY ADVOCATE FOR



# THE DECISION-MAKING/ADJUDICATIVE BODY

## 1. RIGHT TO AN EXTERNAL INVESTIGATOR

Complainants must have the right to request an external investigator funded by the institution. Cases of sexual violence require a specific set of training and sensitivity, that should be conducted by an independent professional, rather than a member of the campus administration. Furthermore, it must be stated that institutions may be perceived to have a conflict of interest in protecting the reputation of the school, particularly in cases of faculty or staff misconduct. To address both concerns about training and independence institutions must offer the right for complainants to request an external investigator.

- An example of this can be found in the UOIT Sexual Violence Policy, which first defines an investigation as:

*“The purpose of an investigation is to: gather evidence and witness statements; weigh the evidence; make findings of fact based on the evidence; and produce an investigative report. In an investigation under this procedure, the investigator must conclude, weighing the evidence on a balance of probabilities, either: (1) that Sexual Violence did occur; or (2) that Sexual Violence did not occur.”*<sup>35</sup>

- The UOIT policy then goes on to guarantee the complainant right to an external investigator in Section 46, which states:

*“The Case Manager will appoint an investigator with the required training and experience to conduct a fair and objective investigation. The investigator must not be directly involved in the incidents at issue, and should not have a reporting relationship with the individuals involved in the incidents being investigated. Where accommodations are required, the discloser has the right to request and that an external investigator be appointed. To this end, the investigation may be conducted by an UOIT investigator or by an external investigator.”*<sup>36</sup>

## 2. CENTRALIZED AND TRAINED ADJUDICATIVE BODY

The process for a formal complaint of sexual violence, tends to follow a similar structured process in institutions across Canada. A formal complaint is filed, an investigator is chosen to investigate the complaint, collect and draft a report determining whether the act of sexual violence occurred and then the investigative report is provided to an individual or review committee who has the authority to determine the final outcome of the case and impose sanctions. The majority of campus sexual violence policies include the ability to appeal this decision.

- For the review committee we recommend a centralized and trained adjudicative body. For this we recommend a combination of clauses from the Lakehead Sexual Violence Response Policy and the University of Ottawa Policy 67b - Prevention of Sexual Violence Policy.

# THE DECISION-MAKING/ADJUDICATIVE BODY

First, similar to the Lakehead policy we recommend that there is a centralized body of 6-15 individuals who hear and decide formal complaints of sexual violence. Creating a centralized body ensures that cases are not handled by individual administrators who do not have the training, nor institutional knowledge to adequately decide cases of sexual violence. This centralized body should include representatives who are students and individuals from the community with knowledge and training with respect to sexual violence.

- This clause is found in Section 11.5.2. Of the Lakehead Sexual Violence Response Policy:

*The Panel [of three individuals to decide a formal complaint of sexual violence] will be selected from a pool of up to fifteen (15) people who are: tenured members of the faculty of the University, senior administrators of the University, other Employees of the University or individuals from the community 15 with knowledge and training with respect to sexual violence. The members of the Panel shall be appointed in each year by the Board of Governors or its Executive Committee on the recommendation of the President of the University.<sup>37</sup>*

- In addition to the creation of a centralized body, we recommend students advocate for the inclusion of clauses mandating student representation on cases involving students and appropriate training for all members of the review body. This is best evidenced through section 7.6.1. of the University of Ottawa Policy 67b - Prevention of Sexual Violence, which states:

*Within five business days after receiving the investigation report, the Director of the Human Rights Office will appoint three individuals to form a review committee, taking into consideration the parties to the formal complaint (for example: if both a Complainant and the Respondent are students, the Director will appoint a student to the review committee).*

- *a) The members of the review committee must have knowledge of proper investigative practices, of basic principles of fairness in complaint processes. The members of the review committee will have received training provided or arranged by the Human Rights Office in the sensitive issues surrounding sexual violence, in procedures leading to fair resolution and in consequences or measures that may be appropriate to an incident of sexual violence and which act as deterrents to further occurrence of sexual violence. This training will not deal with the specific complaint currently before the review committee and is in no way meant to hinder the independence of any review committee member to make a decision and/or recommendation on based on the information provided to the review committee and according to his or her conscience.<sup>38</sup>*



# WHAT TO DO IF YOUR INSTITUTION IS NOT UPHOLDING BILL 151

If your institution is not abiding by the requirements of Bill 151, under Chp 4 sections 14 and 15 :

*“The Minister may impose oversight and monitoring measures on any educational institution that fails to comply with any of its obligations under this Act.” and “If an educational institution fails to comply with its obligations under this Act, the Minister may, at the institution’s expense, cause those obligations to be performed by a person the Minister designates.”*

This means the Minister has given themselves the authority to impose oversight and monitoring measures to any institution that is failing. The minister and their delegates may also step in to perform the duties the institution is failing, and the institution is obliged to work with them.



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<sup>35</sup> [University of Ontario Institute of Technology Sexual Violence Policy, Section 44](#)

<sup>36</sup> *Ibid*, Section 46

<sup>37</sup> [Lakehead University Sexual Violence Response Policy, Section 11.5.2](#)

<sup>38</sup> [University of Ottawa Prevention of Sexual Violence Policy, Section 7.6.1](#)

