

Can't Buy My Silence

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AN INTERNATIONAL CAMPAIGN TO BAN NDAS

CBMS International Canada/ CBMS International UK are the twin arms of an international campaign to end the misuse and abuse of non-disclosure agreements (NDAs). Zelda Perkins and Dr. Julie Macfarlane have joined forces to stop the expanding misuse of NDAs by demanding new legislation and regulation that stops “gag orders” from being used to settle cases of sexual misconduct, racism, pregnancy discrimination and other human rights violations.

Who We Are

CBMS CO-FOUNDERS:

Zelda Perkins has been campaigning since 2017 when she was the first woman to break an NDA, signed decades earlier, with Harvey Weinstein. She brought the systematic abuse of NDA's to the attention of the British Government and international press, giving evidence at two parliamentary inquiries, which have uncovered an epidemic of misuse, and pushing the England and Wales Solicitors Regulatory Authority to take disciplinary action against the lawyer who created her NDA for Weinstein. Her actions have been inspiring others, to come forward by her example. Zelda was named a Person of the Year by Time magazine in 2017 and by the Guardian in 2020.

Professor Julie Macfarlane is a Canadian law professor, Member of the Order of Canada, who has won many awards for her work in advocating for access to justice. In 2016, in her personal negotiations with the Anglican Church, she persuaded the Church and their insurer to end the default practice of forcing NDAs on victims of clerical abuse. Later that year, she discovered that a colleague terminated following an investigation for harassment and other misconduct was protected by an NDA that had been negotiated before his departure from the University of Windsor, and that he had been able to move to another law school who knew nothing of his history. The University continued to hide the facts in the NDA enabling the perpetrator to successfully sue her for “defamation”.

Their combined experience has made them key experts consulting to legislators, educators and organizations around the world, and passionately committing to ending the misuse of NDAs

Our Partners and Allies

CBMS works alongside partners and allies including individual politicians, established organizations working on sexual violence, workplace harassment, and discrimination including legal clinics, sexual violence support services, women's services, immigration services and other advocacy groups. A small sample of our allies and their reasons for supporting CBMS may be found on [our website](#).

Why are NDAs a Problem?

Non-Disclosure Agreements (NDAs) have become the default solution for organisations, corporations, individuals, and public bodies to settle cases of sexual misconduct, racism, pregnancy discrimination and other human rights violations. These agreements, which are being used to threaten people with legal consequences, are being used to cover up abuse, and in some cases criminal acts.

Not only are NDA used to cover up abuse in workplaces, schools, youth clubs, universities, and religious institutions, but they also keep settlements secret wherein revealing the details - faulty products, gambling addictions, paying off harassers with public funds – would embarrass the responsible party. The list is long and shocking.

Who do NDAs Impact/ Disadvantage?

NDAs ...

- Allow a person who has behaved abusively and possibly criminally to stay put or move to another workplace without revealing any information about what they have done.
- Gag victims permanently, preventing them reporting, speaking to family & friends about their own experiences, or warning others about the perpetrator.
- Benefit the employer's reputation and the career of the perpetrator, not the victim who can be protected by a simple confidentiality clause
- Require the victim and in some cases their colleagues to tell lies, or risk being sued for "defamation".
- Are usually pressed on victims who are told they "must" sign to protect the other party if they want a settlement.
- Chill the climate for anyone wishing to speak up about wrongdoing whilst leaving victims living in fear of breaking the agreement.

The Goal of the CBMS campaign

CBMS is committed to building a coalition of organisations across the world advocating for the end of NDAs.

- 1. Legislative change to ban all NDAs (other than protection of commercial proprietary information). This is our ultimate goal*
- 2. Regulatory reform of legal practice and business codes of practice, banning the use of NDAs outside the protection of intellectual property. We are pushing for voluntary pledges, sector by sector (eg [universities](#)) to create momentum for change.*
- 3. Building public awareness and knowledge about NDAs and giving people the information necessary to say no to signing an NDA*

4. Providing a safe space for people who are gagged by NDAs [to share their stories, anonymously.](#)

Overview of Global Developments to Ban NDAs

Legislation to restrict the use of NDAs has now passed or is in process in many parts of North America, Ireland, England and Wales and Australia.

For details, see [our legislative tracker](#) (note: last updated November 2022)

Heightened awareness and global discussion around the misuse of NDAs has resulted in policy changes in some organizations including Apple, Google, and the BBC.

In Ireland:

Our first “Model Bill” was introduced by Trinity College Senator Lynn Ruane into the Irish Senate on June 3, 2021. Ruane states that under the Employment Equality (Amendment) (Non-Disclosure Agreement) Bill all such agreements on would be banned other than those requested by the victim to protect their own confidentiality and which do not impact third party interest. The Bill is supported by the Irish Government and all political parties following their [consultation](#) and is now moving to the House of Commons for its final stages). The following articles provide more information.

The Sunday Times: “Trinity senator Lynn Ruane in move to curtail non-disclosure agreements by employers” By Mark Tighe

<https://www.thetimes.co.uk/article/trinity-senator-lynn-ruane-curtail-non-disclosure-agreements-employers-pv2pprmg7>

Irish Times: “Non-disclosure agreements: ‘People are actually terrified to speak out against them’” By Marie O’Halloran

<https://www.irishtimes.com/news/politics/non-disclosure-agreements-people-are-actually-terrified-to-speak-out-against-them-1.4593400>

In the United Kingdom:

In March 2019, the UK Government proposed a new law restricting the use of NDAs. The proposed law would state that individuals “cannot be prevented from reporting crimes, harassment or discrimination to the police.” In addition, victims would be entitled to receive legal advice before entering into any confidentiality agreements. The Women and Equalities Committee published a report based on consultations, “[The Use of Non-Disclosure Agreements in Discrimination Cases.](#)” The Select Committee recommended that the Government should act and outlaw the use of NDAs in cases of discrimination. The Committee’s report and recommendations have never been acted on by the British Government.

Following a very successful “universities pledge” campaign in England Wales, in partnership with the Minister for Higher Education, a clause requiring all registered universities and colleges in the UK to stop using NDAs was accepted into the Free Speech (Higher Education) Bill. This will come to the House of Commons and is expected to pass into law in February 2023.

UK News Stories on NDAs

Newsnight interview with Zelda Perkins

<https://m.youtube.com/watch?v=uzpirYP7iVw>

The Times - UK universities 87million NDA costs” By Rosemary Bennett

<https://www.thetimes.co.uk/article/universities-spend-87m-gagging-staff-szbrl8qcg>

BBC - Westminster 2.4 million of public money spent on NDA’s By Chris Cook

<https://www.bbc.co.uk/news/uk-politics-44571120>

Financial Times - NDA use in the worlds biggest accounting firms By Madison Marriage

<https://www.ft.com/content/78f46a4e-0a5c-11ea-bb52-34c8d9dc6d84>

In Canada:

Prince Edward Island became the first Canadian province (where most employment law is provincially regulated) to ban the misuse of NDAs in [legislation](#) passed into law in July 2022. This followed the structure of the Irish Bill with adjustments made following local consultations.

A similar Bill has been introduced by opposition parties in Manitoba and Nova Scotia, and will be reintroduced this session with increasing pressure for the governing party to allow time for debate and passage. The Manitoba Law Reform Commission is consulting on restricting the use of NDAs following the publication of [their initial paper](#) in December 2022.

In Ontario, an amendment was accepted by the government into the [Strengthening Post-Secondary Institutions Act](#) in December 2022 to ban universities using NDAs to cover up faculty to student sexual misconduct.

Discussions are ongoing regarding the introduction of legislation similar to the Model Bill in Ontario and British Columbia. Amendments to federal legislation regarding federal employees, and federally regulated agencies are also under discussion, and we expect the introduction of a PM Bill shortly.

Canada News Stories on NDAs

[The Hockey Canada scandal](#) which revealed that NDAs were being widely used to cover up sexual misconduct by professional hockey players has increased awareness of the misuse of NDAs in Canada.

We have included a few articles/video links of interest below to lend you a wider scope of the problems with NDAs in Canada.

The National - “#MeToo and restricting the use of non-disclosure agreements in Canada” Alexander Gay

<https://www.nationalmagazine.ca/en-ca/articles/law/opinion/2019/metoo-and-restricting-the-use-of-non-disclosure-ag>

CBC- “Dark side of NDAs” By Adrienne Arseneault
Interview with New York Times journalist Jodi Kantor

<https://www.cbc.ca/player/play/1658745923951>

CBC- “How sexual assault accusers can be silenced by NDAs” Adrienne Arseneault.

<https://www.cbc.ca/player/play/1667243075925>

The Nova Scotia Advocate “Non-disclosure agreements: the rot at the heart of human rights” Judy and Larry Haiven

<https://nsadvocate.org/2021/03/24/non-disclosure-agreements-the-rot-at-the-heart-of-human-rights/>

CBC “Universities should protect students, not reputation: Professors call for elimination of confidentiality deals” Lori Ward & Mark Gollom

<https://www.cbc.ca/news/canada/windsor/university-windsor-non-disclosure-agreements-professor-1.4645268>

Global News- “Should Canada restrict the use of gag orders in sexual abuse cases?”
Jane Gerster

<https://globalnews.ca/news/5080002/sex-assault-nondisclosure-agreements/>

In the United States:

Over the last few years, the misuse of NDAs in sexual misconduct cases has gained much media and political attention in the United States. As a result, many states have introduced bills to limit the use of NDAs in (variously) sexual misconduct, harassment and discrimination cases and those bills have been passed into law in 16 (as of December 2022) including Arizona, Maryland, New York, Tennessee, Vermont, Washington State New York State and California.¹ In December 2022, the first piece of federal legislation (banning NDAs at the point of hiring for sexual harassment) was [signed into law by President Biden](#).

¹ Goulart, Rueben, Renton, Alison. “Confidentiality Agreements in Harassment Cases: New Global Trends” on workplace.ca Members Quarterly, Spring Edition 2020.

Useful US media stories:

New York Times: An NDA was Designed to Keep Me Quiet by Ifeoma Ozoma (co-sponsor of the California legislation)

<https://www.nytimes.com/2021/04/13/opinion/nda-work-discrimination.html>

The Tyee: “How Non-Disclosure Agreements Have Become a Cancer on Democracy” by Andrew Nikiforuk

<https://thetyee.ca/Opinion/2018/10/18/How-Non-Disclosure-Become-Cancer-Democracy/>

Taylor and Francis Online: “Erased: ending faculty sexual misconduct in academia: an open letter from women of public affairs education.” By Sarah Young and Kimberly Wiles

<https://www.tandfonline.com/doi/full/10.1080/14719037.2021.1895576>

Harvard Business Review: “NDAs Are Out of Control. Here’s What Needs to Change” by Orly Lobel

<https://hbr.org/2018/01/ndas-are-out-of-control-heres-what-needs-to-change>

For more information about the constantly changing situation and new updates, please email us at info@cbms.com