



Canadian Bar Association Votes Overwhelmingly To End Abuse Of Non-Disclosure Agreements

In a landmark vote, Canadian lawyers have vowed to stop the use of NDAs in cases of abuse, harassment and discrimination, and to lobby government for new laws

February 9, 2023 — In a landmark vote, lawyers from across Canada have vowed to help stop the use of non-disclosure agreements, or NDAs, to silence victims and whistleblowers. The vote took place at the Canadian Bar Association’s annual general meeting on February 9, 2023.

Put forward by lawyer Jo-Anne Stark, [the resolution](#) — which passed overwhelmingly — outlined how the widespread use of NDAs protects abusive employers and organizations. At the same time NDAs harm victims of harassment and discrimination, rendering them unable to speak about the abuses they’ve suffered.

By passing the resolution, Canadian Bar Association members vowed to promote the fair and proper use of NDAs as a way to protect intellectual property, “and discourage their use to silence victims and whistleblowers who report experiences of abuse, discrimination and harassment in Canada.” The vote also means the association will advocate and lobby federal, provincial and territorial governments to enact legislation and policies that restrict the use of NDAs. (See full resolution below.)

“Canadian Bar Association members have recognized that NDAs can be used as a tool to further harm people — and by passing this resolution they have shown a willingness to learn about the proper use of NDAs, and to support lobbying government for change,” says Stark, who is based in Vancouver. “It’s also an important step towards creating a safer and more transparent work environment, where victims are able to come forward and perpetrators are held accountable.”

“With this resolution being carried, we ask the federal, provincial and territorial governments to enact changes to legislation and policies to ensure NDAs are not misused for the purpose of silencing victims and whistleblowers,” says Jérémy Boulanger-Bonnely, Chair of the CBA Access to Justice Subcommittee.

“This is a giant step forward for the Canadian legal profession,” says Julie Macfarlane, Emerita Distinguished Professor of Law at the University of Windsor and co-founder of [Can’t Buy My Silence](#), a group that advocates against the abuse of NDAs. “This is a recognition that NDAs have harmed victims and limited the ability to uncover and punish wrongdoing. It represents a commitment to change, and will further encourage lawmakers across Canada to make NDAs illegal for anything other than the protection of trade secrets.”

Non-disclosure agreements were initially used in workplaces to protect trade secrets. Increasingly, however, they have been used to cover up abuses in businesses as well as schools, youth clubs, universities, religious institutions and other organizations. Meanwhile victims and whistleblowers experience an added layer of harm as they are prevented from speaking with friends, loved ones, coworkers and even therapists about the abuses they've experienced.

The #MeToo movement exposed the extensive use of NDAs to silence victims. More recently, Hockey Canada came under fire after it was revealed that multiple women who had been sexually assaulted by professional hockey players have been required to sign NDAs.

At the same time, a growing number of businesses and governments are shifting their policies. The BBC, Google and Apple are among the organizations that have pledged to stop using NDAs to cover up misconduct. In July 2022, Prince Edward Island passed a law that restricts the use of NDAs in cases of harassment, misconduct and discrimination, and similar legislation has been tabled or is under consideration in four Canadian provinces. Sixteen U.S. states have also legislated to restrict the use of NDAs.

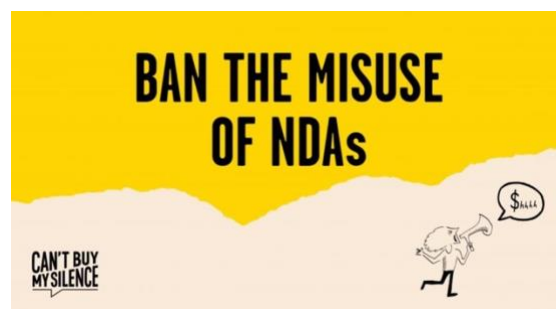
Macfarlane says the CBA vote represents a watershed moment for the legal profession as well as for victims of sexual harassment, disability discrimination, racism and other forms of injustice.

"NDAs have become a default in settlement agreements for the last decade, and this shows a big rethink is taking place," she says. "We know that up to a third of people who experience workplace harassment and discrimination do not make a complaint because they anticipate that they will be asked to sign an NDA. This will give them new confidence to come forward, and will enable workplaces to begin dealing with the roots of harassment and discrimination."

Macfarlane hopes the move will not only help victims in the future, but also ones who have had to sign NDAs in the past. "For those who have already signed NDAs and are bound for life, we are going to ask organizations and employers to immediately release them."

For More Information Or Interviews, Contact:

- **Julie Macfarlane**, law professor and co-founder of Can't Buy My Silence: julie@profjuliemac.com
- **Jo-Anne Stark**, Stark Solutions Law: joanne.stark@starksolutionslaw.ca
- [More information](#) and [victim testimonies](#) at [Can't Buy My Silence](#)
- Questions for the Canadian Bar Association can be directed to **Vanessa Racine**, Manager of Media Relations and Public Affairs: vanessar@cba.org



Full Text Of Canadian Bar Association Resolution, which passed overwhelmingly:

Principles to Prevent Misuse of Non-Disclosure Agreements in Cases of Abuse and Harassment

WHEREAS workplace harassment refers to any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment;

WHEREAS discrimination refers to the unfair or prejudicial treatment of people and groups based on characteristics listed in human rights legislation, such as race, gender, age, disability or sexual orientation;

WHEREAS employers in Canada have an obligation to investigate and address complaints of workplace harassment and discrimination, and to protect the health and safety of their employees;

WHEREAS other organizations have an obligation to investigate and address complaints of harassment and discrimination in their organizations;

WHEREAS the widespread and systemic use of non-disclosure agreements (NDAs) has been found to protect an employer's reputation at the expense of victims or whistleblowers, who may be unable to report or discuss their concerns with family, friends, co-workers or therapists;

WHEREAS NDAs are routinely used to cover up abuse in schools, youth clubs, universities, organizations and religious institutions where revealing the details of the settlement may result in reputational risk or criminal charges against the perpetrator.

BE IT RESOLVED THAT the Canadian Bar Association:

1. promote the fair and proper use of NDAs as a method to protect intellectual property and discourage their use to silence victims and whistleblowers who report experiences of abuse, discrimination and harassment in Canada;
2. advocate and lobby the federal, provincial and territorial governments to enact changes to legislation and policies to ensure NDAs are not misused for the purpose of silencing victims and whistleblowers.

Moved by Jo-Anne Stark

