



## **Advocates Shocked New Hockey Canada Rules Don't Block Use of Non-Disclosure Agreements**

April 19, 2023 — Advocates working to stop the abuse of non-disclosure agreements are shocked the federal government's new Hockey Canada rules don't put any limits on the organization's use of NDAs.

This week the Liberal government announced it would restore funding to Hockey Canada as long as the sports organization met several key conditions — but it fell short of barring the use of non-disclosure agreements, also known as gag orders or NDAs, that stop victims from talking about what happened to them and protect perpetrators.

Hockey Canada's federal funding has been frozen since June 22, 2022, after reports surfaced that the organization used NDAs to cover up multiple alleged sexual assaults — including an alleged group assault that involved members of Canada's 2018 world junior men's team.

The revelation sparked outrage, and led to the removal of the Hockey Canada board; major corporate sponsors including Canadian Tire, Nike, Sobeys, Esso, PepsiCo, Chevrolet, Scotiabank, Tim Hortons and others also paused or pulled their sponsorships of the organization.

"I am shocked and disappointed that the government would restore funding to an organization that used non-disclosure agreements to cover up sexual misconduct without blocking them from doing the exact same thing again," says Dr. Julie Macfarlane, co-founder of [Can't Buy My Silence](#), an advocacy group that aims to end the abuse of non-disclosure agreements in Canada and around the world.

"Last year Minister of Sport Pascale St-Onge told Canadians that Hockey Canada would have to end the 'culture of silence,' and demonstrate transparency and accountability. Continuing to allow the use of NDAs only reinforces the culture of silence and means there is neither transparency nor accountability," says Macfarlane, also an Emerita Distinguished Professor of Law at the University of Windsor and a Member of the Order of Canada. "Canadians — and not only those who have been forced to sign NDAs — understand this. So why doesn't the federal government?"

Hockey Canada is being required to sign on to the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS), which Macfarlane says might seem impressive, but the code does nothing to address the harmful use of NDAs. The Office of the Sport Integrity Commissioner (OSIC) states that under that code, NDAs cannot restrict individual rights, but the office admits they have no jurisdiction over NDAs between individuals and sports organizations.

Says Macfarlane, "Unless NDAs are prohibited for any complaints of abuse in sports, where they hide perpetrators and gag victims, the same abuses that triggered the Hockey Canada scandal will almost certainly continue."

When asked why the Hockey Canada funding conditions didn't include limits on non-disclosure agreements, Prime Minister Justin Trudeau said he would defer to St-Onge. St-Onge told the Canadian Press that her government plans to "deal with this question" with all Canadian sports, but was unclear about what limits on NDAs might be introduced and when.

"We are looking at ways that we can do this in a legal way that protects the athletes and also sometimes non-disclosure agreements are used to protect strategies, team strategies or stuff like that," she said. "So we need to find the right balance. But like I said, they should never be used to silence victims."

"Our campaign has always said that NDAs should only be used to protect trade secrets, including things like sports strategies," says Macfarlane. "But firm rules must be put in place to stop their use in cases of assault, abuse, harassment and discrimination. That's how NDAs are being used by sports organizations, including Hockey Canada."

Some defenders of NDAs — which are regularly used by businesses, sports organizations, religious institutions, youth clubs, universities, governments and other organizations — also argue the agreements protect victims, but Macfarlane says that's simply not the case.

"I have had conversations with hundreds of people who have signed NDAs. Without exception, every one has told me they were bullied into signing, and that the silencing has made it impossible for them to have closure and move ahead with their lives," says Macfarlane, who adds that victims' personal privacy can still be protected by a one-sided confidentiality clause. "NDAs revictimize victims. Our [testimonies](#) include many examples of this."

Opposition politicians are also expressing dismay that Hockey Canada's funding was restored without addressing the organization's use of NDAs. "Hockey Canada hasn't met all of the obligations that they've already made," said NDP MP Peter Julian in a Canadian Press interview. "For example, they promised last summer that they would release victims from non-disclosure agreements, which muzzle victims who choose to speak ... and Hockey Canada hasn't released the victims from this."

Conservative MP Kevin Waugh also said the removal of non-disclosure agreements should "absolutely" have been one of the conditions for restoring Hockey Canada's funding. "I'm tired of those non-disclosure agreements, and not only in hockey: in every sport that we have in this country," he said. "We're not getting anywhere when you start these non-disclosure agreements and there's money flowing back and forth."

Legislation barring the abuse of NDAs in cases of harassment and discrimination has already passed in [P.E.I.](#) as well as 16 U.S. states. [British Columbia](#), [Manitoba](#) and Nova Scotia all have legislation in the works. In February, the Canadian Bar Association [voted overwhelmingly](#) to discourage members from using NDAs in cases of harassment and discrimination, and vowed to lobby governments to enact legislation limiting their use. Many businesses are also shifting their policies: BBC, Google and Apple are among the many organizations that have pledged to stop using NDAs to cover up misconduct.

"It's time for the federal government to do the right thing, which means once and for all stopping the use of NDAs to silence victims and protect abusers by Hockey Canada and other sports organizations that work with both young people and professionals. The longer it takes to get there, the more victims and covered-up abuses there will be," says Macfarlane.

“If they are serious about stopping the use of NDAs to hide abuses and gag victims, Hockey Canada must also immediately release all victims from existing NDAs. Last summer they made the vague suggestion that victims could ‘contact us’ if they wanted a release – which is daunting given they signed a document saying they can’t legally discuss the agreement. Instead, Hockey Canada must contact previous signors individually and offer them a no-strings release that protects their personal privacy and their compensation,” continues Macfarlane.

“Hockey Canada has already shown the harm that NDAs can do,” she says. “If you don’t bar NDAs, what’s to stop them from doing the exact same thing again?”

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