



Lawyers, Advocates Outraged as Nova Scotia Govt Refuses to Limit NDAs But Can't Explain Why

September 25, 2023 — Lawyers and advocates for victims of sexual assault, harassment and discrimination are expressing dismay and outrage as Nova Scotia's Progressive Conservative government announced it won't limit non-disclosure agreements — but it can't seem to explain why.

Last Thursday, Nova Scotia justice minister Brad Johns said his government would not pass the [Non-Disclosure Agreements Act](#), which bans the use of non-disclosure agreements — also known as NDAs, gag orders or confidentiality agreements — in cases of sexual harassment and discrimination, where they are regularly used to silence victims and protect abusers.

"I don't support NDAs being used as a method to silence victims, but at the same time, we're just not moving forward with it right now," said Johns to reporters. When asked for the reasoning behind the decision, Johns said it was a "complex issue" and there were "pros and cons to both sides."

When asked to name even one or two of those pros and cons, Johns did not answer and instead said, "I can follow up with you. I have it written all down." Johns also said his government did a "jurisdictional scan" and found that "no other jurisdictions in Canada have come outside."

However [Prince Edward Island](#) has had legislation banning NDAs in force since May 17, 2022. Legislation has also been introduced in [B.C.](#), [Manitoba](#), Ontario and [federally](#), and earlier this year, [Canadian Bar Association members voted 94 percent in favour](#) of discouraging the use of non-disclosure agreements in cases of harassment and discrimination and of advocating for governments to limit their use.

The Ontario government also recently enacted a law [prohibiting universities from using NDAs](#) in cases of faculty/student sexual misconduct, while the [English parliament](#) passed a law prohibiting universities from using NDAs in cases of sexual misconduct, abuse, bullying, harassment or discrimination. At least 17 U.S. states have also introduced and/or passed legislation to restrict the use of NDAs.

"Incredible. I can't understand it," said Ron Pink, a veteran Halifax employment lawyer based in Halifax, in an interview with CBC Radio. "Who is he protecting by not doing this? He's protecting somebody — certainly not the women of this province."

"These things are signed for one purpose: to protect the male harasser," added Pink, referring to cases of sexual harassment, which disproportionately affect women. "And the male harasser then goes on to do it again. And he can continue to do it because he can buy his way out. That's what's going on."

NDP Leader Claudia Chender said it was "insulting" that Johns was unable to explain his government's position. That "raises a number of alarm bells and suspicions, and does a disservice to survivors and to women across this province," Chender said. "I think that the message is that the safety and equity of women in this province is not a priority for this government."

“We are deeply disappointed that the Nova Scotia Progressive Conservatives have said they will not pass legislation on NDAs. As a direct result, countless people — mostly women and vulnerable communities — will be bound to a life of silence after experiencing sexual harassment, racism, homophobia, disability discrimination and other harms in workplaces, sports, universities, religious institutions and other venues,” said Julie Macfarlane, Emerita Distinguished Professor of Law at the University of Windsor, Member of the Order of Canada, and co-founder of [Can’t Buy My Silence](#), the anti-NDA advocacy group behind many recent advances in NDA legislation and policy.

“What’s more, perpetrators will be protected and allowed to continue their abuses. There is no good reason for NDAs in cases of harassment and discrimination, and we question why the PC Party feels the need to cover up for abusers — especially after leaders in their own party were found to have used NDAs,” said Macfarlane. “Clearly if Nova Scotians want transparency, accountability, and a government that doesn’t cover up abuses by people in positions of power, they’ll need to elect a different government.”

Non-disclosure agreements were initially used in workplaces to protect trade secrets. However, they are increasingly used to cover up abuses in businesses, 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 or even therapists about the abuses they’ve experienced.

In recent months, lawyers who represent abusers and some politicians have argued that NDAs help victims obtain compensation, and if they were outlawed, cases would no longer settle; however this is untrue. Macfarlane has heard from hundreds of victims and their lawyers who pushed back against NDAs, and their cases still settled. Why? Because employers are just as desperate to prevent incidents of harassment and discrimination from appearing in court or arbitration decisions, which are public.

In fact, according to new data from the U.S. Equal Employment Opportunity Commission — which is responsible for enforcing federal laws against workplace discrimination, harassment and other harms — in states where NDA laws were passed, rates of settlement actually went up, not down. In 2017, of more than 7,511 sexual harassment claims, 81 percent settled. In 2021, after six states passed legislation forbidding NDAs, 90 percent settled.

In the CBC interview, lawyer Ron Pink also pointed out that the compensation victims receive is meant to be for the harm they experienced — not for their silence.

“Simply put, banning NDAs actually pushed settlement rates up, not down. At the same time, anti-NDA laws have protected countless victims from being forced into a lifetime of silence — and have prevented perpetrators from covering up their abuses and moving on to other victims,” said Macfarlane. “Bottom line, there is no good reason not to pass this legislation.”

For more information or interviews, please contact:

- Stacey Buchholzer, Campaign Coordinator: info@cantbuymysilence.com
- [More information](#) and [victim testimonies](#) at [Can’t Buy My Silence](#)

Major Legislative and Policy Developments in Canada, 2022-2023

April 2022: Nova Scotia's [Non-Disclosure Agreements Act](#) gets its first reading

May 2022: PEI's [Non-Disclosure Agreements Act](#), the first of its kind in the country, comes into force

May 2022: The Nova Scotia Union of Public and Government Employees (NSGEU) becomes the first union to resolve to ban NDAs in cases of workplace sexual harassment

June 2022: The National Union of Public and General Employees (NUPGE) becomes the first national union to resolve to ban NDAs in cases of workplace sexual harassment

November 2022: As part of Manitoba's [Non-Disclosure Agreements Act](#), parliamentarians hold a committee hearing where more than 20 members of the public [testify about their NDAs](#) for the first time

December 2022: Ontario Government passes a law [banning universities from using NDAs](#) to cover up faculty/student sexual misconduct

February 2023: A Canadian Bar Association [AGM resolution](#) discouraging members from using NDAs in cases of abuse, discrimination and harassment passes by 94 percent. It also commits the CBA to lobbying government for legal reforms

March 2023: British Columbia's [Non-Disclosure Agreements Act](#), introduced by Green Party leader Sonia Furstenau, gets its first reading

May 2023: Senator Marilou McPhedran tables federal [Can't Buy Silence Act](#), which would bar federally funded agencies from using federal dollars to fund or enforce NDAs in cases of harassment and discrimination

May 2023: Sports Canada announces [it will remove the current NDA clause](#) from its athlete contract template (not yet acted on)

June 2023: Ontario's [Stopping the Misuse of Non-Disclosure Agreements Act](#), tabled by Ontario MPP and NDP Justice Critic Kristyn Wong-Tam, gets its first reading

July 2023: Ontario's [Strengthening Post-Secondary Education](#) amendment, which prohibits Ontario universities from using NDAs to cover up faculty sexual misconduct, comes into force