



Key Points From The Can't Buy My Silence Act

The *Can't Buy Silence Act* was introduced to the Senate of Canada by Senator Marilou McPhedran on May 9, 2023, after extensive consultation with advocates and officials.

It is a groundbreaking bill that aims to end the misuse of non-disclosure agreements in the federal civil service, parliamentary bodies and in federally funded agencies.

How will it work?

It will change two federal laws, the *Parliament of Canada Act* and the *Financial Administration Act*, in order to stop the use of non-disclosure agreements, or NDAs, to cover up wrongdoing caused by harassment, discrimination or violence by any entity funded by federal — and therefore public — funds.

In other words, the Bill “follows the money” by:

1. Placing stringent conditions (similar to those in the first provincial legislation in Prince Edward Island) on the use of public monies to create NDAs that cover up misconduct on a go-forward basis — see below
2. Prohibiting the use of public money to litigate or enforce existing NDAs.

What entities are affected by the Bill?

This Bill has a wide scope. It requires changes in the use of NDAs in:

1. The Parliament of Canada (House of Commons, Senate)
2. The Library of Parliament
3. Parliamentary Protective Services
4. Other federally funded entities including government departments (such as the Department of Justice), Crown corporations (such as the CBC), departmental corporations (such as federally funded granting agencies), and non-governmental organizations that receive federal funding (such as Hockey Canada, CBC).

Why is it important to restrict NDAs?

Bill S-261 is focused on NDAs because of their widespread use in covering up wrongdoing; in fact, research shows that 1 in 3 US workers have now signed an NDA, and their use is also prevalent in Canada, the UK and Australia.

That is not how NDAs started. They are contractual agreements originally created to protect trade secrets and proprietary information; however they are now used as a matter of default in a wide range of civil settlement agreements, such as the recently revealed Hockey Canada agreements.

In an NDA the complainant (and sometimes both sides) makes an indefinite commitment to tell no one about the underlying facts of the dispute and their experience — and often about the terms of their agreement. As a result, NDAs enable secret settlements that hide wrongdoing, and sometimes criminal acts, by buying the silence of a victim or whistleblower, thereby shielding perpetrators and institutions from accountability. They also create environments that enable harassment and discrimination or violence to continue.

Many people who have signed NDAs were told the *only* way to protect their own privacy was to also protect that of their abusers; others were told it was the *only* way to get the money they were owed by their employers. Many who have signed NDAs continue to be silenced and stressed by the threat of litigation, which they can't afford. Knowing the other side can use federal funds to enforce an NDA is a threat that hangs over them for life. This Bill changes that.

What conditions does it put on new NDAs in federal workplaces and federally funded entities?

The Bill puts in place conditions on NDAs going forward:

1. Before any settlement can be completed, the complainant must indicate their preference for an NDA rather than another way to protect their confidentiality in writing
2. This can only happen after receiving independent legal advice that includes options other than an NDA to protect their confidentiality

Will federally funded bodies have to disclose their use of NDAs?

To change the permissive culture that has allowed NDAs to be used to cover up misconduct instead of protecting trade secrets, this Bill will also introduce new and higher standards for transparency and accountability in reporting to Canadians on the use of public monies.

In clause 3, the Bill requires that all entities whose financial information is included in the Public Accounts prepared under the *Financial Administration Act* provide the following information to Parliament:

- a. The number of NDAs made in cases of harassment and discrimination or violence that met the above conditions
- b. The amount spent on those NDAs in that fiscal year

Similarly, entities that are not included in Public Accounts (eg Hockey Canada, CBC, SSHRC), but who have received a federal donation or contribution, must provide the same information — without disclosing complainant identity — on an annual basis to the President of Treasury Board (clause 4).

How will we know if it's working?

There will be a public review of the effectiveness of the *Can't Buy Silence Act* every two years. This will enable advocates to plan ahead, and to monitor through access to information that is not currently available.

What if I work for a private company or organization?

Since NDAs are contracts, and laws governing contracts are generally under provincial/territorial power, provinces must legislate to protect those who sign NDAs in non-federal workplaces and organizations. Such steps are pending currently in British Columbia, Nova Scotia and Manitoba, and are already in force in P.E.I.

For more information, visit the Can't Buy My Silence website at cantbuymysilence.com.