

Can't Buy My Silence

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AN INTERNATIONAL CAMPAIGN TO BAN THE MISUSE OF NDAS

CBMS International Canada/ CBMS International UK are the twin arms of a global campaign to end the misuse and abuse of non-disclosure agreements (NDAs). Zelda Perkins and Prof. Julie Macfarlane joined forces in September 2021 to launch Can't Buy My Silence after their own experiences of NDAs being used abusively. They are working with Government in the UK, Canada, the Republic of Ireland, and Australia to change legislation and regulation around the use of NDA's to settle cases of sexual misconduct, racism, pregnancy discrimination and other human rights violations.

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 WESC parliamentary inquiries, which uncovered an epidemic of misuse and pushed the Solicitors Regulatory Authority to take disciplinary action against the lawyer who created the NDA for Weinstein. She has been campaigning for legislative and regulatory reform in the UK since 2017 and launched the Global campaign Can't Buy My Silence with Canadian Co Founder, Professor Julie Macfarlane in September 2021. In 2022 the first piece of employment law limiting NDAs in Canada was enacted and in the spring of 2023 Royal Assent was granted to the Higher Education (Freedom of Speech) Act in England which prohibits the use of NDAs in cases of sexual misconduct, bullying and discrimination between staff, students and/or visiting speakers - it is the first law of its kind in the UK. In October 2023 an amendment to the Employment Equality Bill in Ireland was passed by the Senate and is now in The Assembly. Zelda was named a Person of the Year by Time magazine in 2018, by the Guardian in 2020 and in 2023 awarded for her outstanding contribution to gender equality by the UN Women UK. Samantha Morton portrayed her character in the Universal Pictures feature "She Said" documenting her part in the downfall of Weinstein.

Professor Julie Macfarlane is a Canadian law professor and Member of the Order of Canada. 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. 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". The law in Ontario was changed effective July 1 2023 to prevent universities from using NDAs in this way and Julie's case was referred to constantly during the debate. Julie has testified to the federal Heritage Committee and Employment Equity Committee. In 2022 Prince Edward Island were the first Canadian province working with CBMS to enact an amendment curtailing the use of NDAs . This Bill was modelled on the Republic of Ireland Bill that CBMS collaborated on drafting and is now being considered in 5 other provinces. A federal Can't Buy Silence Bill to prohibit the use of public money to create or enforce NDAs for misconduct or discrimination has been introduced by Senator Marilou McPhedran.

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

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, harassment and bullying. These agreements, which threaten people with legal consequences, are being used to cover up abuse, and in some cases criminal acts.

Not only are NDAs used to cover up abuse in workplaces, schools, youth clubs, universities, and religious institutions, but they also keep settlements secret when revealing the details - faulty products, gambling addictions, paying off harassers with public funds – would embarrass the responsible party. The list is long and shocking. Secrecy around settlement amounts also means that employers can (and do) under compensate employees when they leave or are terminated following a complaint about alleged misconduct by another employee.

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, prohibiting them from speaking to family & friends about their own experiences, access to a therapist, 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 one-sided 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 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 the use of NDAs to silence victims. We ask any organisation wishing to join the coalition to commit to these four principles.

1. Legislative change to ban all NDAs (other than protection of commercial proprietary information) is our ultimate goal

2 This is supported by regulatory reform of legal practice and business codes of practice, banning the use of NDAs outside protecting intellectual property & client confidentiality

3. Prioritizing the protection of victims, including identity protection (at their option) and no constraints on speaking about any personal experiences other than usual legal obligations (defamation laws punish those who make untrue statements about others)

4. Transparency and accountability of workplace harassers/ abusers/ bullies, tortfeasors, institutions and employers*

**a tortfeasor is anyone found to have harmed another party in civil law*

Overview of Global Legislative and Policy Developments to Ban NDAs

Heightened awareness and global discussion around the misuse of NDAs has resulted in policy changes in some organisations including the BBC, Google and Hockey Canada; warning notices from regulators (e.g. the Solicitor's Regulatory Authority in England and Wales) and new laws in 20 US states with others pending there and in the Republic of Ireland.

CANADA

Canada is as a federal state with three levels of government, national, provincial and territorial. Responsibility for legislation is largely autonomous in the ten provincial and three territorial governments with the federal government having more jurisdictional powers.

PEI passes first *Non-Disclosure Agreements Act*, comes into force May 2022

Ontario passes “Strengthening Post-Secondary Education” amendment December 2022 prohibiting Ontario universities using NDSs to cover up faculty sexual misconduct, comes into force July 1 2023

Canadian Bar Association AGM resolution to discourage members from using NDAs in cases of abuse discrimination and harassment passes by 94% February 2023

Sports Canada announces May 2023 that they will revise template athlete’s contract to remove current NDA clause

First major union (National Union of Public and Government Employees) resolves to support a ban on NDAs for workplace sexual harassment

Manitoba *Non-Disclosure Agreements Act* (sponsored by the Liberals) holds a Committee hearing at which more than 20 members of the public testify about their NDAs for the first time

Nova Scotia *Non-Disclosure Agreements Act* 1st Reading (NDP)

BC *Non-Disclosure Agreements Act* 1st Reading (Greens)

Ontario *Stopping the Misuse of Non-Disclosure Agreements* 1st Reading (NDP)

Federal Bill *Can’t Buy Silence* 1st Reading (introduced by Senator Marilou McPhedran)

UNITED KINGDOM

The UK has a central government with 3 devolved legislatures (Scotland, Wales, Northern Ireland) each with a range of powers in domestic policy on health, education, culture, transport and the environment.

2018 Women and Equalities Select Committee (WESC) parliamentary inquiry: ‘Sexual Harassment in the workplace’. Zelda Perkins gave evidence on NDA misuse

2018 Solicitors Regulation Authority (SRA) publish warning notice on misuse of NDAs after Weinstein/Perkins Investigation.

2019 Second WESC parliamentary inquiry: ‘The use of non disclosure Agreements’. Zelda Perkins submitted evidence on NDA misuse

2019 Law Society publish updated Practise note on the use of NDAs and confidentiality clause in an employment context.

2019 Department for Business, Energy & Industrial Strategy carry out consultation into NDAs measures to prevent misuse in situations of workplace harassment or discrimination.

2020 SRA update warning notice on NDAs after sending Allen and Overy partner to solicitors disciplinary tribunal over Weinstein/Perkins agreement

2021 Dame Maria Miller MP (Conservative) tabled Private Members Bill to ban the misuse of NDAs on launch day of CBMS

2022 Layla Moran MP (Lib Dem) tabled Private Members Bill to make provisions on content and use of NDAs.

2022 Devolved education departments of Wales, Scotland and Northern Ireland sign up to CBMS pledge to no longer use NDAs in Higher Education.

2023 Higher Education (Freedom of Speech) Act banning NDAs in cases of sexual misconduct, discrimination and bullying passes through parliament and receives royal assent.

2023 Legal Services Board (LSB) call for evidence on misuse of NDAs with 2024 report backing up CBMS data unequivocally.

2023 SRA Official Review into use of NDAs , resulting in a planned program of work to review their warning notice and identify gaps in knowledge and practise. Also a coordinated programme of education across all regulators creating harmonised cross sector guidance for professionals.

2023 Dame Maria Miller MP tabled amendment to the Victims and Prisoners Bill to broaden the definition of victim to include people who have signed NDAs in cases of misconduct.

2024 Report from WESC parliamentary inquiry: 'Misogyny in Music' finds distressing amount of misuse of NDAs and calls for 'retrospective moratorium of NDAs' citing CBMS evidence submission.

2024 Report from Treasury Select Committee parliamentary inquiry: 'Sexism in the City' recommends banning NDAs as report shows shocking prevalence of misuse citing CBMS evidence submission.

REPUBLIC OF IRELAND:

[CBMS collaborated](#) with Senator Lynn Ruane to draft an NDA amendment to the Employment and Equality Bill, which was introduced on June 3, 2021. This passed through the Senate on October 25 2023. It is now moving to the Dail where draft legislation will be presented in the spring of 2024.

UNITED STATES: *The U.S. has fifty state governments and one national government.*

Approximately 20 states have introduced bills to limit the use of NDAs in sexual misconduct cases including: Arizona, Maryland, New York, Tennessee, Vermont, Washington and California. This legislation has been extended in California and Washington to include racial harassment and discrimination under the Silenced No More Act, co sponsored by CBMS ally Ifeoma Ozoma.

At federal level the Speak Out Act was signed into law by President Biden in 2022. This bill prohibits pre dispute NDAs or non disparagement clauses in employment contracts in cases on sexual harassment or assault. This bill was championed and backed by CBMS allies Gretchen Carlson and Julie Roginsky of Lift our Voices. A second Bill to prohibit NDAs to cover up age discrimination is in progress.

News Coverage on NDAs

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

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 Arsenault
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 Arsenault.
<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/>

UK

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>

The Telegraph - Rail Union Boss faces me Too moment By Steve Bird
<https://www.telegraph.co.uk/news/2022/06/09/rail-union-boss-faces-metu-moment-amid-harassment-allegations/>

The Guardian - Former Ch4 employee traumatised after signing NDA
<https://www.theguardian.com/media/2022/feb/10/former-channel-4-news-employee-traumatised-after-signing-nda>

Financial Times - The Post Office scandal shines an unforgiving light on NDAs
<https://www.ft.com/content/7bc55ace-34da-4291-9aeb-86fe78aa7ef5>

REPUBLIC OF IRELAND

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 Examiner: [Twenty-five years of 'being in the wilderness' - a campaign to end NDAs](#)

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>

UNITED STATES

Law 360 : "One by One States are banning NDAs"

<https://www.law360.com/articles/1476428/one-by-one-states-are-banning-ndas-to-protect-workers>

THIS LINK DOESN'T WORK? Can't find it online either. <https://sd20.senate.ca.gov/news/2021-04-13-senator-leyva's-silenced-no-more-act-approved-senate-judiciary-committee>

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 Tye: "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, please contact

General inquiries: info@cantbuymysilence.com