

Why We Must Stop The Use of NDAs Now

Non-disclosure agreements, or NDAs, are contractual agreements that are used by corporations, government agencies, sports clubs, universities, youth clubs, religious institutions, powerful individuals and others to cover up harassment, discrimination, and other abuses. They are also used to hide the underpayment of severance, maternity benefits and other entitlements — and to cover up everything from faulty products to medical malpractice.

What's the problem with NDAs?

NDAs permanently gag victims, and often prohibit them from speaking with family, friends, or even counselors about what happened, or warning others. They also allow abusers to move on with impunity, and chill the climate for anyone wishing to speak up. In a survey by Speak Out Revolution and Can't Buy My Silence, 93 percent of respondents who signed NDAs reported negative mental health consequences from doing so. Many agreements also include non-disparagement clauses, which bar victims from making any negative remarks about the abuser or employer — whether or not they are true. This is an unacceptable constraint on free speech.

How common are they?

It's estimated that more than a third of employees have signed an NDA in Canada, and that tens of thousands are signed every year in cases of sexual harassment alone. Cases where NDAs were used to cover up crimes include Harvey Weinstein, Hockey Canada, Roger Ailes and Peter Nygard.

But aren't NDAs essential for settling cases?

Data shows that, in jurisdictions where NDA laws have been introduced, settlement rates have gone up — not down — likely because perpetrators and employers are afraid of public decisions.

Is this an equity issue?

Definitely. Our data shows that five times as many women report signing NDAs as men. They are also disproportionately used against racialized people, people with disabilities, low-income workers and other marginalized groups.

But shouldn't victims have a choice?

Victims can be given the choice of a clause that protects only their privacy — and not their abuser's. An NDA forces victims to protect the perpetrator or organization's identity in order to be protected themselves.

What needs to happen now?

NDA legislation has already passed in the U.S. — in 28 states and federally — as well as in the UK and Ireland. Legislation has been tabled in six Canadian provinces and federally, but only passed in PEI. It's imperative that legislators immediately pass legislation at the federal and provincial levels, before tens of thousands more victims are silenced.

All about Can't Buy My Silence

Can't Buy My Silence is an international campaign to end the misuse of NDAs. It was co-founded by Zelda Perkins — the first person to break her NDA with Harvey Weinstein — and Dr. Julie Macfarlane, Emerita Distinguished Professor of Law at the University of Windsor and Member of the Order of Canada. Together they have successfully pushed for anti-NDA legislation in North America, the UK, Ireland and Australia, forged alliances around the globe, and appeared in major media including the BBC, CBC, The Globe and Mail, The Guardian and many others.

**CAN'T BUY
MY SILENCE**

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