

The Right to Say No: A Guide to Resisting an NDA

CAN'T BUY
MY SILENCE

*This document is provided for general informational purposes only and does not constitute legal advice.

Have you been asked to sign a non-disclosure agreement or a non-disparagement clause for something other than a trade secret or confidential client information?



1. IS IT AN NDA?

An NDA is a clause within a larger agreement.. Note that an NDA is almost never described as a “non-disclosure” agreement - instead look for words such as “confidential” and “confidentiality.” Here are some typical examples of NDAs:

“The parties agree to keep the existence and terms of this agreement confidential.”

Often this includes another phrase “...and the circumstances concerning the (eg) termination of your employment confidential.”

The difference between these is marginal. Any agreement not to talk about the existence of an agreement makes it very difficult, in practice, to talk about what happened (“the circumstances concerning”).

It is very likely that if you are being asked to sign an NDA, you will also be asked to agree to a “non-disparagement” clause. This clause prevents you from saying anything negative about the other side even if it is true, if it damages their reputation. Here is a typical non-disparagement clause:

“The (eg) employee/ former employee shall not make any adverse or derogatory comment about the (eg) employer or their officers, employees or workers or do anything which shall, or may, bring the employer or their officers or employees into disrepute.”

Non-disparagement clauses could also refer to an organization like a sports club, a consumer services or product provider, a church or other religious institution, a university and so on.

Important: Every settlement agreement includes a “release” which means there can be no further legal action. This is sometimes mistaken for an NDA. A “release” (sometimes called a “waiver”) is essential to any settlement agreement, unlike an NDA. The wording of a release includes legal language which emphasizes there is no future legal liability and is often understandably upsetting to victims, but this, unlike an NDA, is required for a legal settlement.

[This blog](#) explains the differences.

2. YOUR CIRCUMSTANCES

If the remainder of the settlement agreement you are offered is satisfactory to you (compensation, outcome/consequences for a perpetrator, responsibility-taking by the organization or employer) but **the one element** you do not want to sign is an NDA and/or a non-disparagement clause, what should you do? Here are some practical considerations:

- * Do you have an immediate need for the financial compensation you are being offered to pay bills, etc?
- * Do you have a network of support around you (personal, professional) that will support you if you resist signing the NDA?
- * Is there some other reason that means that you want to accept silencing?

These are all important, valid issues to consider. However, we want to offer a *warning* that many people are told that signing will give them “closure”. Many, many of our testimonies say that far from closure, the NDA prevents closure and healing because of continuing anxiety and harm from not being able to speak about what happened.

Remember that *before* you sign, you can still speak about what happened (provided it is true and not seen as “defamatory”). You may decide to sign, but first considering telling others privately (or being public if you choose).

3.YOUR DECISION, YOUR CHOICE

If your decision is to sign, make sure you are not being rushed or pressured to sign within a particular time. There is no legal proscription about how long you can have to consider before making up your mind whether or not to sign. The legal standard is “reasonableness”, which is vague and unspecific, but if you make a specific (usually written is best) request for more time to consider the offer, and offer a deadline (1-2 weeks), you should be entitled to this time to consider. If you are still being pressured with the withdrawal of the offer within a very short time, you should let the other side know that you are aware of the standard of "reasonableness".

If you sign, make sure you ask for and receive a copy of the agreement (this is sometimes withheld, so be sure to ask explicitly).

If you decide not to sign and rather push back against the NDA, there are a number of steps you might take next.

4.NAVIGATING RESISTANCE

Remember - you can change your mind at any time and sign. But you should be ready for a series of claims and threats from the other side. The following information is to help you to call these out.

Threat:
“You will have to fight us in court if you don’t sign”

Reality: This is questionably accurate. Remember, the party wanting the NDA does not want this information to be made public and damage their reputation. If they “make you” take them to court or tribunal for compensation, the information - including everything you will say about them in your statement of claim - will become part of the “public domain”. They are therefore unlikely to risk taking the matter to court.

CBMS has found in the past year (2025) that people who have been able to resist the NDA have always ended with a settlement that does not include it, rather than having to go to court. But do not underestimate how stressful resisting and “holding your nerve” might be. Sometimes the other side will continue their insistence on an NDA right up to the morning of a hearing.

Claim:
“Everyone signs them,
what’s the big deal?”

Reality: The other side (and perhaps your own representation, if you have any) may tell you that an NDA is a “standard requirement” and “normal” for every settlement. In fact a decision in Ontario states clearly that NDAs are neither required nor essential to settlement. While it is presently true that most people sign, that is simply because they have been told that they must! It is not what the law says. And rest assured, more and more people are resisting signing NDAs around the world.

Legal and union representatives are becoming aware of the growing debate over NDAs. If they insist that they are still 100% “normal” you can point out to them any of the news stories that show widespread public disgust at covering up misconduct (for example, the 2022 - 25 Hockey Canada case which originally had E.M. sign an NDA, or the Esther Hwang and the VSO case in 2025). You can also point to the 2023 Canadian Bar Association resolution calling on the government to reform the law and discouraging its members from using NDAs to cover up wrongdoing.

Claim:

“Don’t you want the privacy you get from an NDA?”

Reality: Yes - but the NDA makes you “pay” for your own privacy with a promise to protect the other side’s privacy / identity (the employer/ institution/ the perpetrator). You can negotiate a one-sided “victim-protective” clause that protects your privacy, but does not protect the other party in exchange. See our template [here](#).

Claim:

“An NDA will give you closure and enable you to move on”.

Reality: This is a trope (although some lawyers seem to genuinely believe it). As many, many signers have pointed out the NDA is a “dark cloud hanging over them” for the rest of their life and “the opposite of closure”, leading to many negative mental health outcomes.

Threat:
“You must decide and sign by”

Reality: Artificial time limits are discussed above. As long as your requests for more time to think, consult, etc. are “reasonable”, do not be pressured into making a decision before you are ready.

SOME TIPS FROM OTHER RESISTERS

“I advocated strongly to resist signing an NDA and required the institution to sign a one-sided protection of privacy agreement instead. As a survivor, it is my human right to speak about my experience in my own words.

Every act of resistance is a stepping stone on the pathway to change.”

Dr Angela Grace, trauma psychologist

“I would ask myself what am I looking to accomplish? Do I want the behaviour or culture to change? Am I ok if it doesn't, because it remains hidden?”

Jason MacLean,
Secretary-Treasurer
NUPGEU

“You have more bargaining power than you think. Agreements are negotiable. Scope, duration, and exceptions can often be narrowed or removed—especially when they overreach or conflict with public interest.”

- Marcel Williamson, IT
Consultant