

# **Break the Silence on Sexual Violence:**

## Ending the use of coercive legal agreements (NDAs)

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January 28, 2025

# Land Acknowledgement

We respectfully acknowledge we are working and learning on the traditional, unceded, and ancestral territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

# Introductions

**Elizabeth Korompai, *Outreach Coordinator***

**Sarah Marsden, *Lawyer (Consultant)***

# Housekeeping

- Feel free to ask questions
- No obligation to participate
- **Content warning**
- This presentation is for informational purposes only and is not legal advice

# Objectives

- 1) Understand the link between gender-based violence and non-disclosure agreements
- 2) Identify the problems with non-disclosure agreements
- 3) Discuss how law reform can address the harms of NDAs
- 4) Introduce ***Speak Out: Ending Gender-Based Violence***

# Stand Informed Legal Advice Services

- **3 hours of free, confidential legal advice from a lawyer**
- Available to BC residents who have experienced **sexual assault in BC** or who have had their **intimate images shared without consent** (or the threat of this)
- Clients accepted regardless of income, age, or gender
- Holistic, trauma-informed approach & referrals
- [Website](#)

# 01

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Understand the link between **gender-based violence** and **non-disclosure agreements**

# Gender-based violence in Canada

1 in 3 women experience **catcalling, sexual comments, and unwanted touch** in public

30% of women have experienced **sexual assault**

44% of women have experienced **intimate partner violence**

1 in 2 women have experienced **workplace sexual harassment, including sexual assault** in the workplace



# Gender-based violence in Canada

58% of transgender + gender diverse Canadians experienced **public harassment** over 12 months – 2x more than cisgender Canadians

59% of transgender + gender diverse Canadians have experienced **sexual or physical assault**

30% of transgender + gender diverse Canadian youth have been **physically hurt by a date**

73% of gender-diverse respondents have experienced **workplace sexual harassment and workplace violence**



Over 1 in 3 racialized women

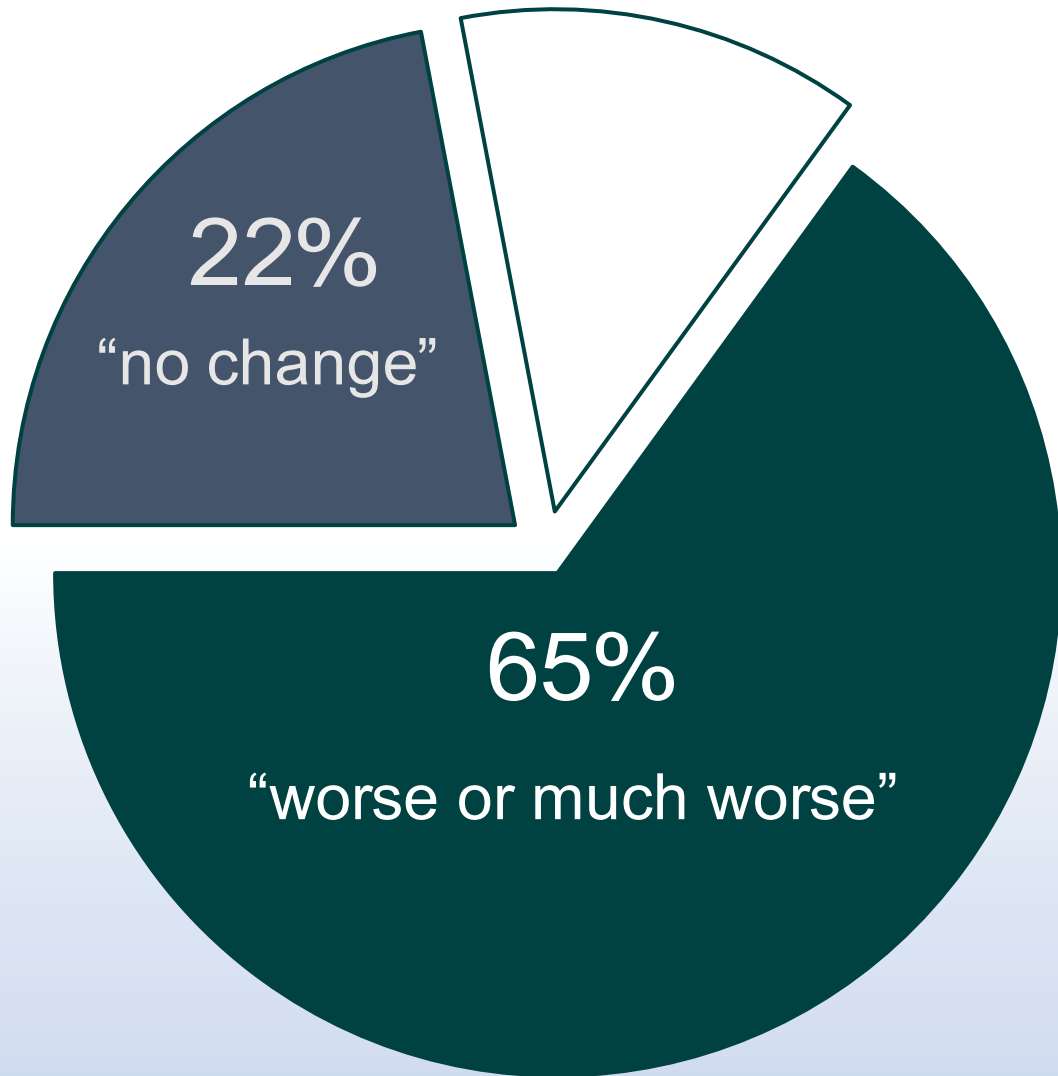


Almost 1 in 2  
Indigenous  
people



About 75% of gender-  
diverse people +  
lesbian, gay, and  
bisexual women

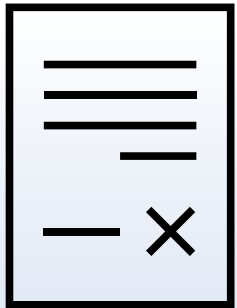
...have experienced  
sexual harassment,  
including sexual  
assault, in their  
workplace.



## Effects of reporting can include:

- Victim-blaming
- Retraumatizing investigations
- Retaliation

# What is a non-disclosure agreement (NDA)?



A contract in which the parties agree not to disclose certain information to third parties.

# 02

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Identify the **problems** with non-disclosure agreements

# Why do people sign NDAs?

- Believe that an NDA is the *only way* to protect their **privacy**
- Sign without realizing the **consequences**
- Don't have **legal advice**
- **Pressured or coerced** to sign, told that it is “normal/standard”
- **Need to settle** so feel they have no choice

# How NDAs cause harm

## Affect mental health

(many people who sign NDAs report negative mental health consequences)

## Increase systemic inequalities

(Equity-seeking groups more likely to be affected)

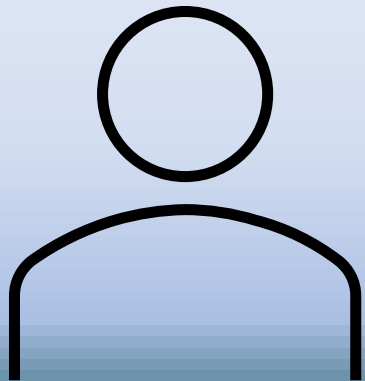
## Chilling effect on reporting

(33% do not report for fear of signing an NDA)

## Hide wrongs

(Protects an organization's reputation and the career of the perpetrator)

“In all honesty, my mental health suffered greatly after I signed the NDA. [...] **As a Black woman, I had relinquished the right to speak my truth; to reach out to and support other Black employees who were experiencing the same racist treatment that I faced.** [...] This agreement makes me feel powerless and small to this day.”

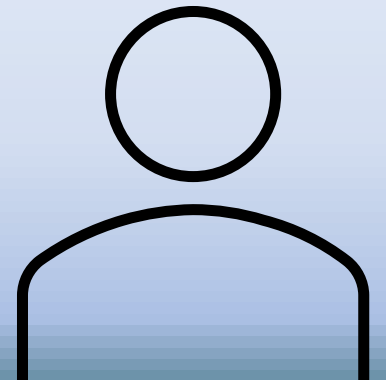


[\(Story 54 from Can't Buy My Silence\)](#)



“At the age of twenty-four, in a state of suicidal despair, my daughter told me she had been sexually assaulted by her father, my ex-husband, as a child. [...] As a result of the civil case and the signing of the NDA, my daughter **has never been able to own or speak of her own trauma**, a fact that continues to affect her life to the present day.”

[\(Story 22 from Can't Buy My Silence\)](#)



## Harvey Weinstein PA says abusers still have the legal power to silence victims

Outrage ensued when Zelda Perkins revealed her non-disclosure agreement in 2017 but the expected reforms never came

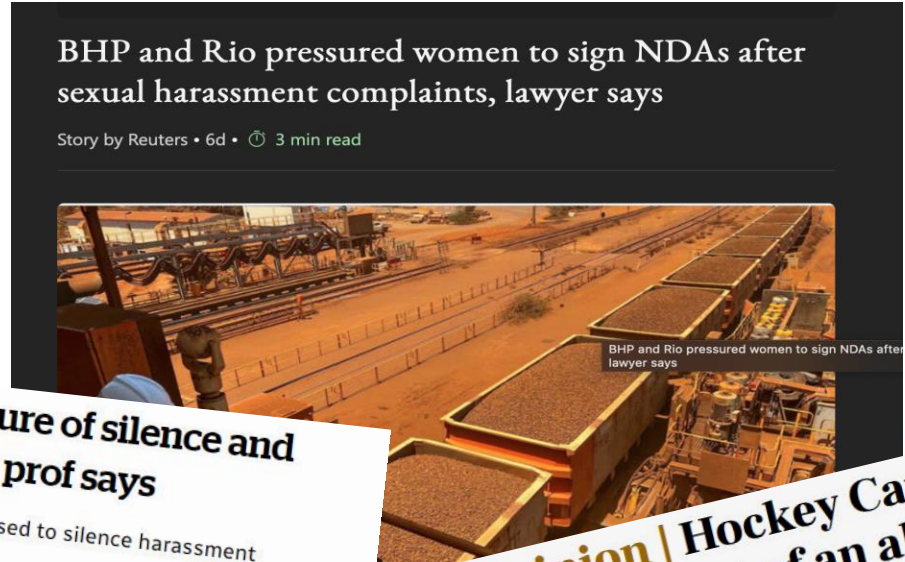


Zelda Perkins, former personal and equalities committee member on 28 Nov 2017

### Use of NDAs has created 'culture of silence and fear' on UPEI campus, former prof says

Multiple sources say non-disclosure agreements used to silence harassment allegations

Kerry Campbell · CBC News · Posted: Dec 03, 2021 2:00 AM PST | Last Updated: December 3, 2021



### BHP and Rio pressured women to sign NDAs after sexual harassment complaints, lawyer says

Story by Reuters · 6d · 3 min read

BHP and Rio pressured women to sign NDAs after lawyer says

### Opinion | Hockey Canada's use of NDAs is part of an alarming trend to muzzle victims of all kinds of abuse and discrimination

Sept. 17, 2022 | 2 min read



### Pregnant then screwed: how gagging contracts are used to silence sacked mothers

They have been used to buy the silence of victims of sexual assault - but non-disclosure agreements are also being used to hide the sidelining and sacking of new mothers. It's time we knew the extent of it



Then Screwed: 'The public would be shocked if they knew' opher Thomond/The Guardian

A global campaign to restrict the use of NDAs is happening now!

## NDA reform group to bring petition urging House of Commons to pass restrictions for federal workers

The petition is the latest push by the Can't Buy My Silence campaign to curtail NDA use in Canada

NDAs: Global campaign forces legislative change to stop abuse and cover-ups

Ruth Green, IBA Multimedia Journalist Tuesday 14 September 2021



COMMENTARY

## The End May be Near for Nondisclosure Agreements

After years of misuse, though, NDAs, and their wicked cousin, the nondisparagement clause, have come under fire for silencing sexual assault victims. As a result of the #MeToo movement, the legal landscape has fundamentally altered how NDAs are enforced, if at

June 15, 2023 at 09:54 AM

6 minute read

Forbes

FORBES > LEADERSHIP > CAREERS

# Congress Passes Law Restoring Victims' Voices, Banning NDAs In Sexual Harassment Cases

# 03

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**Discuss** how law reform can address the harms of NDAs

## ***PEI Non-Disclosure Agreements Act* – What does it apply to?**

NDAAs pertaining to:

- (a) “discrimination” (as defined in human rights legislation)
- (b) “harassment” (similar to Workers’ Comp Act definition) including but not limited to
  - (i) sexual solicitations or advances,
  - (ii) sexually suggestive remarks, jokes or gestures,
  - (iii) circulating or sharing inappropriate images,
  - (iv) unwanted physical contact,
  - (v) any action, conduct or comment that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or a promotion, or
  - (vi) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance

## ***PEI Non-Disclosure Agreements Act* – What does it apply to?**

“non-disclosure agreement” means

a provision in writing in a settlement agreement, however described, between a relevant person and

- (i) the party responsible, or
- (ii) the person who committed or is alleged to have committed the harassment or discrimination,

whereby the relevant person **agrees not to disclose any material information about the circumstances of a dispute between them concerning allegations of harassment or discrimination** that are unlawful under an enactment or Act of the Parliament of Canada;

**P.E.I is the first Canadian province to enact broad legislation on NDAs. Looking at the enforceability sections of their *Act*:**

- a) Would similar legislation be helpful and practical in British Columbia?***
  
- b) Do you see any challenges or potential negative impacts of this approach?***

## Enforceability of agreement

(3) ...the agreement shall only be enforceable where:

(a) the relevant person has had a reasonable opportunity to receive **independent legal advice**;

(b) there have been **no undue attempts to influence** the relevant person (...);

(c) the agreement does not adversely affect

(i) the **health or safety of a third party**, or

(ii) the **public interest**;

(d) the agreement includes an opportunity for **the relevant person to decide to waive their own confidentiality** in the future and the process for doing so; and\

(e) the agreement is of a **set and limited duration**.



04

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Introduce ***Speak Out: Ending Gender-Based Violence***

# Project Goals

- Raise **awareness**
- **Consult** with communities
- Strengthen **advocacy** skills
- Develop **policy and law reform** recommendations

# Confidential Survey

For BC residents who:

- **Experienced, witnessed or are at risk of GBV or**
- who have **signed or been asked to sign an NDA** for other reasons (eg racial discrimination)
- [Link to survey](#)

## Changing the Law on Non-Disclosure Agreements

(for all survey respondents)

17. Right now, employers, organizations, and individuals can use Non-Disclosure Agreements to silence victims of violence, harassment, and discrimination in British Columbia.

There is an ongoing conversation about whether the law should change to stop or limit these situations.

Please share your opinion on how the law should be. You can give your opinion on more than one option you prefer.

	Disagree strongly	Disagree somewhat	Neutral
NDA's <b>should not be allowed</b> in any situation of gender-based violence, harassment, or discrimination.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NDA's <b>should be allowed without any limits</b> - no need to change the law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NDA's should be <b>allowed</b> , but only if the complainant expresses a <b>clear preference</b> for this.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NDA's should be <b>allowed</b> , but only if they do not limit the	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

# What can we do with the results?

Recommendations to:

- Create safer organizations by improving policies
- Regulate the use of NDAs to reduce harm
- Change cultures around responses to GBV and other forms of discrimination and harassment

# Engaging with Communities

- **Outreach** to organizations across BC
- Hosting **info sessions and workshops** (including custom workshops)
- Hiring local **community researchers**

# Legal First Aid for NDA

- 1) Get **legal advice** before signing
- 2) Consider **options**, like limits to NDA or alternatives to NDA.
- 3) Choose to **sign or not to sign**

We have a [tipsheet](#) available online:

## **SHARP** WORKPLACES

### **Non-Disclosure Agreement (NDA) Fact sheet**

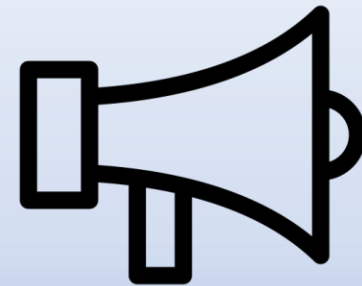
#### **What are NDAs?**

A non-disclosure agreement, or NDA, is a legal document from sharing information. NDAs can be standalone agreements or part of a larger agreement. NDAs are also called confidentiality clauses.

Historically, companies used NDAs to protect trade secrets. In recent years, NDA use has grown. Some employers are using NDAs as part of their response to sexual harassment complaints, often in the settlement process.

# Getting Involved with Speak Out

- **Leave your email address** to receive updates
- Help **connect us** with the communities you work with.
- **Spread the word** in your networks!



# Contact Us

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Email: [standinformed@clasbc.net](mailto:standinformed@clasbc.net)

Call: 604-673-3143 or Toll-free 1-888-685-6222

<https://clasbc.net/get-legal-help/stand-informed-legal-advice-services/speak-out>



# Post-presentation survey



<https://forms.office.com/r/A4SszvUQTW>

# Questions or comments?

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# Thank you!

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This project has been funded through Women and Gender Equality Canada's Women's Program.



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