



Groundbreaking Bill Would Ban the Use of Public Money for Secret Settlements

May 9, 2023 — A groundbreaking bill that would end the misuse of non-disclosure agreements in the federal civil service, parliamentary bodies and in federally funded agencies has been tabled in the Canadian Senate.

Titled the *Can't Buy Silence Act*, the legislation aims to prevent the use of non-disclosure agreements — also known as NDAs or confidentiality agreements — to silence victims of discrimination, harassment and other forms of abuse, and to protect perpetrators. Because they are secret settlements, NDAs also conceal the use of federal funds to cover up such abuses.

“At present, federal employees have no protection against the use of NDAs when they complain about discrimination or harassment in federal workplaces,” says Dr. Julie Macfarlane, Emerita Distinguished Professor of Law at the University of Windsor and co-founder of [Can't Buy My Silence](#), an international advocacy group that aims to end the abuse of non-disclosure agreements in Canada and around the world.

The Bill amends the *Parliament of Canada Act* and the *Financial Administration Act*, and requires federal officials to ensure public money is not used to pay for settlements in complaints of harassment, violence or discrimination in the public sector, if the settlement is to include a non-disclosure agreement. It also prevents their use by non-government entities such as Hockey Canada or Gymnastics Canada, and requires officials to report their use of NDAs each year to the President of the Treasury Board.

Multiple federally funded agencies have been known to employ NDAs to hide abuses, but the issue made headlines in 2022 when it was revealed that Hockey Canada used non-disclosure agreements to silence victims of sexual assault by professional hockey players. As a result, the government stripped the organization's funding, and major corporations including Tim Hortons, Canadian Tire, Pepsi, Nike and Scotiabank paused their sponsorships.

“As Canadians are painfully aware as a result of the publicity surrounding Hockey Canada, there is presently no control over the use of public money to litigate or enforce NDAs,” says Macfarlane.

Manitoba Senator Marilou McPhedran, who introduced the legislation, has described NDAs as “an albatross around the necks” of many people who have signed them, and are forced to live with the lifelong threat of litigation.

“The goal has been to address the harms caused by NDAs where federal monies have been involved, and we've tried to do that to the greatest extent possible,” McPhedran told *The Hill Times* in advance of the official announcement.

The bill follows a rapidly growing wave of provincial legislation that seeks to end the abuse of NDAs in workplaces and other organizations in [P.E.I.](#), [Nova Scotia](#), [Manitoba](#) and [British Columbia](#). Ontario officials are also expected to table a bill in the coming weeks, with other provinces looking at following suit.

“We are aware of cases in which federal employees have been terminated following their making a complaint about misconduct in their workplaces, and were required to sign NDAs,” says Macfarlane. “Senator McPhedran’s Bill would give federal employees equivalent protection against coercive and exploitative NDAs as workers in provinces where legislation has already passed or is imminent.”

Former federal employee Robin Browne welcomes the new legislation; he signed an NDA after experiencing what he describes as “severe anti-Black racism” in the workplace for more than two years.

“Signing the NDA required me to drop all of my formal complaints against my employer and commit to not talking about what happened to me,” says Browne. The respondents in his case ended up being promoted rather than held accountable. “NDAs like mine are immoral and must be stopped.”

The *Can’t Buy My Silence* Bill also prohibits the use of public money to enforce an NDA like the one Browne signed.

News of the federal bill comes just months after the [Canadian Bar Association members voted over 90 percent in favour](#) of discouraging the use of non-disclosure agreements in cases of harassment and discrimination, and advocating for governments to limit their use. The Ontario government also recently passed a law [prohibiting universities from using NDAs](#) in cases of faculty/student sexual misconduct. At the same time, the [English parliament](#) passed a law prohibiting universities from using NDAs in cases of sexual misconduct, abuse, bullying, harassment or discrimination. Twenty-one U.S. states have now introduced or passed legislation to restrict the use of NDAs.

"This legislation means that confidentiality clauses that cover up bad behaviour and put coworkers in harm's way will not be permitted for federal corporations or federally funded organizations," says [Lift Our Voices' Gretchen Carlson](#), the former Fox News broadcaster who, alongside Julie Roginsky, is leading the charge against abusive NDAs in the United States and has pushed for federal regulation south of the border. "It will prevent federal employers and federally funded entities in Canada from secretly pushing out victims without giving them the right to confide in anyone about the real reason for their departure. It will level the playing field for those who only want to work with dignity."

Non-disclosure agreements were initially used in workplaces to protect trade secrets. However, they are increasingly used to cover up abuses in businesses, schools, youth clubs, universities, religious institutions, and other organizations. Meanwhile, victims and whistleblowers experience an added layer of harm as they are prevented from speaking with friends, loved ones, coworkers and even therapists about the abuses they've experienced.

The #MeToo movement exposed the extensive use of NDAs to silence victims, and *Can't Buy My Silence* co-founder Zelda Perkins was the first person to break an NDA she signed decades earlier with Harvey Weinstein. Perkins was later named a Person of the Year by both Time and The Guardian.

Thanks to the efforts of Can't Buy My Silence and other advocates, a growing number of governments and businesses are shifting their policies. The BBC, Google and Apple are among the many organizations that have pledged to stop using NDAs to cover up misconduct.

Proponents of NDAs argue the agreements help protect victims, but Macfarlane says the opposite is true — and victims who want their own privacy protected can still get one-sided confidentiality agreements, as provided in Senator McPhedran's bill and in new provincial laws.

"I'm calling on members of both Houses in all parties, as well as independents, to recognize that protecting the bad guys — the perpetrators of sexual misconduct, discrimination and harassment — is not a party or partisan issue. This is an issue of basic morality and values," says Macfarlane.

"Silence should not be bought with public money where it protects perpetrators and enables them to continue their abusive behaviour."

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