

**CAN'T BUY MY SILENCE CAMPAIGN UPDATE  
APRIL 2023**

Dear Friends, Supporters, Allies and Donors,

We have a host of exciting developments to report since the end of last year, we are thrilled by the speed of change and feel like the heavy boulder of wrongful NDAs we have pushing up the proverbial Everest is now teetering at the peak with only one direction left to go - down

Here are some headlines of our recent achievements – read further down for more detail.

Thank you for your continued support and for spreading the word.... change **can** happen!

**TO TAKE DIRECT ACTION JUMP TO THE BOTTOM**

<b>CANADA</b>	<b>UNITED KINGDOM</b>
<p>In December 2022 Ontario became the first Canadian province to ban the use of NDA's in cases of faculty/student sexual misconduct. This was achieved by an amendment to the <i>Strengthening Post-Secondary Institutions Bill</i>, eventually accepted by the governing Conservatives, which bans universities from using NDAs in this way. The University of Windsor case involving Julie was described and cited by 12 different speakers as a reason to pass the amendment.</p>	<p>Parliament passed a new law on February 6<sup>th</sup> banning universities in England from using NDAs with staff, students or visiting speakers in relation to sexual misconduct, abuse, harassment or bullying. Originally an Opposition amendment to the <i>Free Speech (Higher Education) Bill</i>, the governing Conservatives accepted the new clause, and it will become law later in 2023.</p>
<p>The Canadian Bar Association passed a motion by an incredible 94% in February calling on members to no longer use NDAs to cover up misconduct and urging government to reform the law</p>	<p>Meanwhile 82 English Universities &amp; all 21 Welsh and Northern Irish Universities have signed the CBMS voluntary pledge which still holds institutions accountable until the new law is enacted. Universities Scotland has agreed to follow suit.</p>
<p>20 individuals gave moving testimony, many breaking their NDAs with the protection of parliamentary</p>	<p>The Legal Standards Board of England and Wales announced they intend to make it a statutory offence for</p>

<p>privilege, to the Committee hearing on the <i>Non-Disclosure Agreements Bill</i> in Manitoba. This will have a huge impact when the Bill is debated again this April.</p> <p>In British Columbia, the <i>Non Disclosure Agreements Bill</i> (based on our Model Bill) was tabled on March 9<sup>th</sup> by Green Party Sonia Furstenuau. We look forward to seeing how the BC government, where the question of NDA legislation has been studied by the Justice policy branch has been studied for the past year, will respond.</p> <p>CBMS Canada held two well attended SHE SAID screenings and panel discussions in Toronto (November) and in Vancouver (March) which were powerful funding and awareness raising events. At the Vancouver event, Sonia Furstenuau (above) announced she had tabled the Model Bill in the BC legislature.</p>	<p>lawyers to create NDAs that prevent wrongdoing of any kind coming to light. This proposal is currently in consultation, but if passed will require all legal regulators to change their guidance.</p> <p>CBMS UK held its first fundraising event, advance screening the film SHE SAID, followed by a panel and <a href="#">Q&amp;A</a> with cast and crew led by Emily Maitliss. This event was made possible with help from Times UP UK. This is fantastic news for growing the campaign as it has been totally self-funded to date.</p> <p>In 2022, Claire Laycock, an employee of the TSSA (the Transport Salaried Staffs' Association) courageously broke her NDA. Baroness Helena Kennedy KC was asked to lead a inquiry into TSSA conduct and her report, just released, was damning and resulted in the resignation of senior union leaders and a total restructuring of the TSSA.</p>
--	---

## CANADA IN DETAIL

- **NEW ONTARIO LAW**

In December 2022, the Ontario Government passed into law a ban on universities using NDAs to cover up faculty/student sexual misconduct. An original clause banning NDAs “after adjudication” which made no sense at all was substituted by an amendment we brought forward to the *Strengthening Post-Secondary Institutions Bill*, drafted with the assistance of our ally, lawyer Rob Talach, and tabled for us by NDP MPPs Chandra Pasma and Frances Gelinias at Committee.

The final Act is here ([https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-12/b026ra\\_e.pdf](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-12/b026ra_e.pdf) in final form). The new law still leaves universities free to continue to use NDAs for (eg) harassment and discrimination in universities, and we hope to plug that loophole next – but this is important progress!

- **PROGRESS IN MANITOBA**

Manitoba held a parliamentary Committee hearing on the *Non-Disclosure Agreements Bill*, tabled by Liberal Leader Dougald Lamont, in November 2022. Members of the public were invited to testify, and since testifying in Parliament is protected by parliamentary privilege, we put the word out with this information to those we know have signed NDAs in Manitoba (and beyond). More than 20 individuals testified before the Committee on one very memorable evening (and night!) in November 2022, many of them breaking their NDAs and speaking for the first time about what had happened to them. The moving and poignant testimonies can be watched [here](#) on You Tube.

The Bill then ran out of time in that parliamentary session, but has been reintroduced and will be debated again in the House in April 2023.

The Manitoba Law Reform Commission has now concluded its consultation on NDAs and is expected to report very shortly. This report will be critical for the Bill being pushed forward by the Liberals.

- **BILL TABLED IN BRITISH COLUMBIA**

In British Columbia, the “Model Bill” was tabled on March 9 2023, as the *Non-Disclosure Agreements Bill* by Green Party Leader Sonia Furstenau. Sonia made this announcement the day before, International Women’s Day, at a screening of “She Said” and a panel discussion at the Women in Film and TV Vancouver festival. This event and a second in Kamloops the following day were extremely well attended, and we are grateful to the many volunteers who helped make this possible. We are now waiting to see how the BC Government – which has been conducting a policy review of NDAs for the past year – will respond to the Bill.

- **LOTS OF NOISE IN NOVA SCOTIA**

In Nova Scotia, the Bill tabled in the last session was denied sufficient parliamentary time by the Government but is carried forward to the current sitting. It is tabled by NDP Leader Claudia Chender, now with the support of Elizabeth Smith-McCrossin, an Independent member. A petition of 450 signatures (which had to be in writing) demanding action on NDAs was presented to the Premier in the House on March 27.

The news focus for the following week was on another document tabled in the legislature the same day by Smith-McCrossin, purporting to be an NDA between former PC staffer (Kaitlyn Saxton, now sadly deceased) and an unknown person. The language makes it clear this is an NDA, but it is unsigned. It dates from the time of the resignation of the former PC Leader Jamie Baillie for “inappropriate behaviour”.

There has been vehement denial of any involvement from the PC Premier and Minister for Women, Karla MacFarlane, who was Interim Leader at that time. When the shouting is over and the dust settled, what is evident is that the PCs wanted to distance themselves as far as possible from this NDA, which raises the question for many Nova Scotians – why don't they just pass this Bill then instead of stalling it? Here are some links and some commentary

<https://www.cbc.ca/news/canada/nova-scotia/nda-non-disclosure-agreement-sexual-assault-harassment-1.6795021>

<https://www.halifaxexaminer.ca/morning-file/by-not-clearly-stating-whether-he-signed-an-nda-jamie-baillie-does-a-disservice-to-the-memory-of-kaitlin-saxton/>

<https://www.saltwire.com/atlantic-canada/news/sheldon-macleod-ndas-and-a-culture-of-silence-100841347/#cantbuymysilence>

Watch this space for more news!

- **CANADIAN BAR ASSOCIATION MOTION**

Finally but very significantly, the [Canadian Bar Association passed a motion](#) at its AGM in February calling on members to stop using NDAs to cover up misconduct and discrimination, and urging governments to reform the law. We were amazed by how many lawyers contacted us because they wished to speak to the motion, which passed by 94%. Although the CBS has no disciplinary or regulatory powers, this is a huge cultural shift and a very important victory! Many people helped with this and we gained lots of new lawyer allies, but special thanks in particular to our allies (and CBA members) Jo-Anne Stark (who proposed the motion) Sara Hanson, and Jennifer Khor of SHARP workplaces who worked so hard on building support for the motion.

## UK IN DETAIL

- **NEW LAW BANNING NDAs IN UNIVERSITIES**

Our joint University Pledge with the English Department for Education has been steadily gaining sign ups although the slow movement of the Oxbridge Colleges has been noticeable; just 4 have signed up. This galvanised us to push hard for an [amendment](#) to the Higher Education (Free Speech) Bill to ban the use of NDAs in Higher Education.

Jess Phillips, Labour MP and a big ally of CBMS, first proposed the amendment. After it passed in the Lords, the Government agreed to support the amendment. Education Minister, Claire Couthino who presented it in the Commons said:

“It can never be right to force a victim of sexual misconduct, bullying or harassment to remain silent, denying them the right to talk about what has happened to them even with their family or close friends. This does not come down to politics, in my view; it is about doing what is right.”

The amendment had strong cross-party support and was passed resoundingly. It is awaiting Royal Assent. This is a huge step forward and the first piece of legislation banning NDAs in England. This clause not only prohibits the use of NDAs in cases of sexual harassment but it protects all students, staff and visiting speakers from being silenced in cases of bullying, harassment and discrimination as well as sexual misconduct. With the Government backing this move, this is also a big win on the moral argument for banning abusive NDAs - the next logical step is to give the same protection to the whole English workforce. It may be difficult for the Government to row back from Ms Couthino’s statement, and hard to argue against broadening this ban to all employment sectors, not just academia.

Although Scottish, Welsh and Northern Irish Universities are not covered by this new legislation all 8 Universities in Wales and the 13 Northern Irish Universities have agreed to the CBMS pledge - Universities Scotland has agreed in principle and we are in talks as to how we will uphold the pledge for the devolved sectors.

We are shortly to launch a business Pledge in the UK that will hopefully mirror the success of the University Pledge. We are growing a coalition of cross sector Business to take to meet the new Minister for Trade and Business with the view to the department backing the pledge going forward and ultimately amending the Employment Bill to ban the misuse of NDAs.

- **LEGAL SERVICES BOARD CONSULTATION**

Although the Solicitors Regulation Authority and the Law Society have both issued warning notices and practice notes with regard to the misuse of NDAs, no change in official guidance has taken place. In practice, this means that lawyers are still making agreements with many of the same clauses as in the Weinstein/Perkins agreement.

However, exciting developments have taken place since the Legal Services Board conference, where Zelda spoke. As the oversight regulator, the LSB can push the other legal regulators to overhaul their guidance by making new statutory policy, which will apply, to all legal regulators & practitioners.

The LSB put out a call for evidence in March and will consult formally over the summer with a policy statement or guidance to be issued early

next year. If as hoped, the result is a statutory policy against lawyers making agreements that stop wrong doing from coming to light, this will have a huge impact on the use of NDAs and confine them much more securely to their correct use – protection of trade secrets.

With the Canadian Bar Association vote and the hope of new guidance in the UK there is clearly change coming from around the globe from the once intransigent regulator sector!

- **SHE SAID FUNDRAISER**

The film SHE SAID, which was released at the end of 2022, retells the story of the two New York Times journalists who broke the Weinstein story in 2017 precipitating the avalanche of #MeToo. The film starred Carey Mulligan and Zoe Kazan and co-founder Zelda Perkins was depicted in the film by Oscar nominee Samantha Morton.

The film has raised so much awareness around the appalling practise of NDAs and really given the campaign a great push. We were lucky enough to be supported by Universal Pictures, Plan B and Times UP UK to throw a fundraising event, screening the film followed by a [Q&A](#) with Emily Maitliss, Samantha Morton, Rebecca Lenkiewicz (the writer), Laura Madden and Zelda Perkins, with a great party afterwards. Even though it was a tough film to watch there was a great buzz on the night and we raised nearly £35,000! We can't thank all of those who came enough for their huge generosity and support on the night. For the first time the campaign has some funds to employ much needed help and to get us over the line which is drawing ever closer! Please do watch under the [Q&A link](#) to get a flavour of the night.

Commented [JM1]: Not sure what Zelda means by this?

#### **OTHER NEWS: AUSTRALIA**

- Julie spent February in Australia and wrote about the exciting developments there in a [blog](#). She met with the Attorney-General for the Victoria state government and the legal advisor to the Premier. Victoria is actively considering the Model Bill and would be the first state in Australia to legislate to restrict NDAs. Julie also spoke with policy advisors to the federal ministers of Labour, Industrial Strategy and Women about NDA legislation and there was a lot of interest. And some of the biggest unions are getting on board too!



#### **HOW YOU CAN HELP THE CAMPAIGN**

**We are a small team run almost entirely on a voluntary basis so all the actions below REALLY help us**

**[PLEASE DONATE](#)**

**[UK](#)**

**[CANADA](#)**

**[WRITE TO YOUR UNI VC/ PRESIDENT](#)**

**[SHARE YOUR STORY](#)**

**[SIGN THE PETITION](#)**

**[READ OUR RESOURCES ON NDAs](#)**

**and suggest others that might be useful!**

**PLEASE FOLLOW US ON**

TWITTER INSTGRAM FACEBOOK