

CAN'T BUY MY SILENCE CANADIAN CAMPAIGN UPDATE JULY 2023

Dear Friends, Supporters, Allies and Donors,

We are thrilled to present you with more progress on many fronts below!

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 and is** happening!

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SUMMARY

On May 9, Senator Marilou McPhedran tabled a federal Bill (S-261) to restrict the use of NDAs by government and by federally funded organizations such as Hockey Canada and the CBC.

On June 6, Ontario became the 5th province to table a version of our “model Bill” to ban the misuse of NDAs in the Stop the Misuse of Non-Disclosure Agreements Bill. The Bill is sponsored by NDP MPP Kristyn Wing-Tam

The *Strengthening Post-Secondary Institutions Act*, passed in Ontario in December 2022, comes into effect on July 1. After this date universities and colleges in Ontario will be prohibited from using NDAs where there has been faculty/ student sexual misconduct.

Also in Ontario, the Real Estate Council of Ontario is banning realtors from using NDAs in their standard contracts with clients from April 1.

A widely-publicized report by investigator Janice Rubin on a series of sexual harassment complaints against the former President of the University of Prince Edward Island has highlighted the pernicious role of NDAs. The report found 32 NDAs over the past 10 years, continuously protecting the same individual and making further action impossible.

Finally, the Manitoba Law Reform Commission’s report on the use and abuse of NDAs was published at the end of June. The report is extremely disappointing giving credence to bogus arguments like “there will be no settlements without NDAs”. Dougald Lamont, the sponsor of the Manitoba NDA Bill, is also very disappointed but determined to bring the legislation back in the Fall.

IN DETAIL

- **Federal Bill**

The *Can't Buy Silence Bill* was announced at a press conference in Ottawa on May 9, by Senator Mailou McPhedran a long-time ally of CBMS. Julie Macfarlane and Robin Browne, a former federal employee terminated and NDA'ed after he raised complaints of racial discrimination, also spoke at the launch which you can watch [here](#).

The Bill makes any use of an NDA by the federal government, or a federally funded agency such as Hockey Canada or the CBC, subject to similar conditions as those in the provincial Bill, including victim request, and advice about alternatives to an NDA to protect victim privacy. It also, critically, “follows the money” by providing that no federal money can be used to enforce or litigate an NDA.

Senator McPhedran and CBMS will be working with potential supporters of the Bill in the Commons and the Senate over the summer, while Parliament is in recess. The Bill will be introduced by Senator McPhedran when the House returns and the Second Reading debate will take place.

- **Ontario becomes Province #5 to consider NDA Bill**

Lots about Ontario in this newsletter – PLUS the province has just become the 5th in Canada to table a bill to restrict the use of NDAs.

Tabled by opposition party the New Democrats, [Stopping the Misuse of Non-Disclosure Agreements](#) is co-sponsored by MPP Kristyn Wong-Tam and three colleagues. It is based again on the “Model Bill” which became law last year in Prince Edward Island.

You can watch the press launch [here](#). The Bill will return for a 2nd reading debate in October.

- **Ontario Law Banning Universities from using NDAs goes into Effect**

The [Strengthening Post-Secondary Institutions Act](#) comes into effect in Ontario on July 1. An original clause banning NDAs “after adjudication” which made no sense at all was replaced by an amendment banning the use of NDAs to stifle allegations or complaints about faculty/ student misconduct. The amendment was drafted by Julie with the assistance of our ally lawyer Rob Talach, and tabled for us by NDP MPPs Chandra Pasma and Frances Gelinas in Committee. It was accepted by the Ontario government at [3rd Reading](#), during which a dozen different members referred to CBMS and the University of Windsor’s use of NDAs (Julie’s case) as a key factor in their decision-making.

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!

- **Ontario Real Estate/ Estate Agents banned from using NDAs in their Contracts**

Following some digging by Globe and Mail reporter Shane Dingman into the way that many professional services, including buying and selling property, now include an NDA in their standard contracts which would prevent a complaint to their own regulator, the Real Estate Council of Ontario has introduced a [new regulation banning this practice](#). You can read about the impact for consumers [here](#).

There are still many areas of professional services – for example, financial services – in which an NDA is a standard contract clause. This effectively cuts out any complaint route for the consumer/ client. Regulators need to step up and take action!

- **University of Prince Edward Island Report**

Following the resignation of the President of UPEI, one week after the passage of [PEI's Non-Disclosure Agreements Act](#), the firm of Rubin Tomlinson was appointed to conduct a review of the University's complaints policies and processes, notably including the following:

“(W)e were asked to consider the "rationale" behind the University's use of these agreements.”

Their conclusion?

“The plain and obvious rationale, intrinsic to NDAs themselves, is to enforce silence from departing employees or survivors of abuse such as harassment and sexual violence.”

The Rubin/Tomlinson report also makes it clear that they cannot fully report on the allegations against the ex-President or how they were dealt with because they were hidden in NDAs. They say:

“(I)t is our view that in 2023, it is entirely inappropriate for anyone, and in particular, an institution of higher learning, to insist upon the use of an NDA in relation to the facts underlying a claim of harassment, discrimination, or sexual violence. The events that happened to the survivor are their story, and it is part of their personal agency to be able to control when, or if, they disclose the facts of their abuse to anyone else. It is inappropriate to compel silence from survivors. The institution, in making a settlement, is compensating the individual for the harm they have suffered. It should not be buying survivors' silence.”

Since the report was released there have been many calls for those currently bound by NDAs to be released. There has been no response to this call – made [here by Julie Macfarlane talking to CBC](#) - from UPEI. The Chair of the Board of Governors has now resigned and been replaced, but it feels like this story is far from over...

- **The Manitoba Law Reform Commission has released [its long-awaited report on its consultation on NDAs](#).**

The conclusions of the Report go in the opposite direction to other reviews being undertaken – for example in [Ireland in 2022](#) – coming out in favour of NDAs as a benefit for victims. The report also buys the argument that there will be “serious unintended consequences” (an unsubstantiated expression which we have heard many times before) including a collapse in settlement rates. It is very disappointing that this misinformation based on no empirical data has been accepted by the Commission. However, in a telling sign, the Commission devotes a large part of their report to considering “what if” there were to be legislation in Manitoba, and making a series of recommendations to change the current Bill introduced by the Manitoba Liberals – including restricting access to legal advice for complainants but broadening the definition of a prohibited NDA to include cases of “abuse”.

More significant may be the election this Fall in Manitoba and how CBMS can press to make banning abusive NDAs can be part of the platform of the winning party.

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and suggest others that might be useful!

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