



Gender-Based Violence in the Workplace and the (Mis)Use of Non- Disclosure Agreements

Speak Out: Ending Gender-Based Violence is a project of the
Community Legal Assistance Society (CLAS)



Speak Out
Ending Gender-Based Violence



Community Legal
Assistance Society

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EXECUTIVE SUMMARY

The Community Legal Assistance Society (CLAS) established Speak Out: Ending Gender-based Violence (Speak Out Project) with the aim of addressing and reducing barriers to the success of women as a result of gender-based violence (GBV). These barriers weaken economic security and prosperity and limit leadership opportunities, due to the impacts of discrimination, harassment, and violence experienced by women and gender-diverse people in the workplace. The project engaged a literature review of secondary research as well as a range of community consultation activities around British Columbia (BC), including an anonymous survey, regional in-person and virtual workshops, and a survey of lawyers.

Findings resulting from this research and activities make it clear that gender-based violence (GBV) in workplaces and organizations is an ongoing and serious problem in BC despite efforts over the past 30 years to address it through workplace safety regulations, human rights laws, and employment law. While there is widespread condemnation of sexual harassment and other forms of GBV, existing research — including the findings of this project's research — shows that the existing internal policies and procedures of organizations to address it are not working effectively.

The impact of this ineffectiveness is compounded by the increased use and misuse of non-disclosure agreements

(NDAs) and confidentiality directives over the past 30 years. As the #MeToo movement and the public disclosure of Harvey Weinstein's sexually violent and exploitative behaviour demonstrated, the use of NDAs has expanded far beyond the original intent, which was to protect business secrets. They have impacted our capacity to fully understand and address GBV in any environment, but particularly in workplace and other organizational environments.

GBV in the workplace and the (mis)use of NDAs are serious barriers to the economic independence and leadership of women and gender-diverse people in BC and across Canada. Racialized, Indigenous, people with disabilities, and 2SLGBTQIA+ members of our communities, are experiencing these barriers at a much higher degree than white cisgender women.

As the Speak Out Project's community consultation activities uncovered, it is in the public interest to improve organizational approaches to addressing complaints of GBV and to regulate the use of NDAs. The recommendations in this report include provincial legislation to regulate the use of NDAs and actions employers, the legal community, and employee advocates could take to achieve meaningful change.

Recommendations

Based on the Speak Out Project's findings outlined in this report, CLAS has a series of recommendations for:

- the BC government
- employers, organizational leaders
- workplace safety regulators (WorkSafeBC)
- employee organizations and advocates, unions, and professional associations
- the legal community

BC government

1. Enact legislation that bans or significantly limits and regulates the use of NDAs in situations involving GBV. The legislation should ensure, at a minimum, that:
 - An NDA is invalid if the individual was coerced or pressured into signing it.
 - The wording of NDA clauses make clear what disclosures the NDA cannot prevent, including:
 - the right to report GBV to the police and other regulatory bodies,
 - the right to engage with mental and physical health services, spiritual and elder supports, and family support,
 - sharing information to avoid negative impacts on an individual's future employment, career and/or financial well-being, and
 - sharing information as necessary to prevent serial predators.
 - The unequal power differences and trauma impacts of workplace GBV are addressed, including limiting the use and scope of tactics such as payback clauses or defamation threats designed to intimidate complainants.
 - NDAs are not used to undermine the public interest in safety and ending GBV in BC.

2. Engage in a review of the effectiveness of the protections and remedies available for anyone who experiences workplace GBV, similar to Dr. Kim Stanton's June 2025 study, an independent systemic review of the BC legal system's treatment of intimate partner violence and sexual violence. The review should assess:
 - the scope and extent of access to legal services and advice,
 - the effectiveness of WorkSafeBC-based prevention of sexual harassment and GBV in the workplace, particularly in male-dominated sectors,
 - the wait times for a hearing at the BC Human Rights Tribunal, and
 - whether these approaches and remedies address and decrease incidents of workplace GBV.
3. Invest in education and training for the public around the impacts of workplace GBV and the use and misuse of NDAs.

Employers, and organizational leaders

1. Leaders set an expectation that GBV will not be tolerated and meaningfully support this with action, including leading by example.
2. Design internal policies and procedures to address workplace GBV in consultation with individuals who have experienced it.
3. Ensure such policies:
 - Adopt a trauma-informed approach.
 - Define and ensure timely responses to GBV complaints.
 - State clear boundaries or limitations relating to confidentiality of an investigation process.
 - Clearly communicate to all parties the potential outcomes, parameters, and limitations of investigations and other investigative and disciplinary processes.
 - Include in the process an opportunity for the complainant to have input into the choice of the gender, language capacity, background and/or cultural capacity of an internal or external investigator.

4. Support policy and procedures with the following measures:
 - Train managers, leaders, and human resources staff in trauma-informed approaches, communications and appropriate responses to GBV complaints, and recognizing the different vulnerabilities to GBV for individuals who are Indigenous, racialized, 2SLGBTQIA+, or have a disability.
 - Consider and implement safety measures immediately on receiving a complaint.
 - If appointing a third-party investigator, ensure they are trained in GBV, trauma-informed approaches, and cultural awareness.
 - Make supports available to complainants and respondents.
5. Contribute meaningfully to ending workplace GBV by refusing to use NDAs in situations of GBV, including discrimination, harassment, and bullying.
6. If NDAs continue to be used, in situations involving GBV consider the long-term impacts on the complainant's mental health, career, future employment, and on workplace relationships. Draft confidentiality provisions or NDAs narrowly to specifically address the perceived risk, such as identifying individuals on social media, restricting the freedom of speech of the complainant as minimally as possible.
7. Ensure managers, supervisors, human resource staff, health and safety representatives and joint health and safety committees have the relevant information needed to assess risks and address health and safety concerns of the complainant and for all workers where a perpetrator remains in the workplace.
8. Ensure there are clear organizational values and commitments to equity, diversity, inclusion, and safety, and that the practices and actions of managers and supervisors align with organizational values.
9. Provide opportunities for learning and organizational development around gender equity, diversity, and inclusion, including understanding appropriate limits for any confidentiality requirements and the impacts implementing NDAs or employer obligations around privacy and confidentiality may have.
10. Increase the representation of racialized, gender-diverse, and Indigenous communities among the organizational leadership.

Workplace safety regulators (WorkSafeBC)

1. Require employers to have policies and procedures that specifically address GBV in line with the recommendations for employers above.
2. Adopt regulations that require employers to share relevant information on incidents and complaints of GBV with health and safety representatives and joint health and safety committees so that risks in the workplace may be assessed and prevented.

Employee organizations and advocates, unions, and professional associations

1. Contribute to, and advocate for, policies and practices that address the systemic issues that contribute to GBV such as organizational culture and the application of stated organizational values in practice, including:
 - Advocate for and participate in design of organizational processes that include meaningful conversations with individuals with lived experience of GBV.
 - Advocate for employers to implement the above recommendations.
2. Oppose the use of NDAs, particularly in cases of GBV.
3. During investigations advocate for:
 - trauma-informed processes and investigators,
 - timely, thorough, and fair investigations, and
 - limitations on confidentiality requirements, ensuring that they are only used if necessary, are limited in scope, and have a clear and limited time frame.
4. Provide training to everyone (business representatives, union and association staff, etc.) who could potentially receive a formal or informal GBV complaint on:
 - understanding GBV and trauma-informed approaches,
 - appropriate and timely responses to a complaint,
 - options for remedies and formal reporting,
 - basics of safety planning,
 - what complainants can expect in terms of the activities and scope of internal reporting systems of their employer, and
 - the implications of NDAs, and how the complainant can respond to any request or demand for confidentiality and/or an NDA.

Legal community

1. Understand the impacts of GBV-related trauma on a client and take a trauma-informed approach in working with people who have experienced GBV.
2. Oppose or limit the use of NDAs in the settlement of GBV-related cases. If an NDA is used:
 - Draft NDAs to be the least restrictive on a complainant's freedom of speech, and consider best practices as outlined in CBA's tip sheet on NDAs.
 - Ensure clients are fully informed about their rights and obligations regarding reporting to the police and other regulators.
 - Ensure, at a minimum, if NDAs are used, the settlement clearly outlines exemptions relating to the use of counselling, health services, or family, spiritual, and other advisers, such as financial and career coaches.
3. If acting as a third-party investigator, ensure workplace and organizational investigations of complaints of GBV are conducted in a timely manner, are trauma-informed and GBV-centred, and the process and potential outcomes of the investigation are clearly communicated to all parties.
4. Law societies may issue ethical guidance to lawyers on the appropriate use of NDAs.
5. Legal training organizations should make training available for lawyers on:
 - understanding the impact of trauma and trauma-informed approaches to GBV complaints,
 - the appropriate uses of NDAs and understanding the impacts of broadly worded NDAs on individuals, including the unique impacts on racialized, 2SLGBTQIA+, Indigenous people, and people with disabilities, and implications for workplace and public safety, and
 - the ethical considerations related to negotiating contracts or settlements and the use of NDAs.