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)

Stand Informed | Speak Out Ending Gender-Based Violence

CLAS Community Legal Assistance Society

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Acknowledgements:

- The Speak Out team is deeply indebted to everyone who participated in the consultations and surveys and especially those who chose to share their stories of gender-based violence (GBV).
- Speak Out acknowledges the financial support of Women and Gender Equality Canada

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Land Acknowledgement:

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Published By:

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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.

Resources

If you have been affected by an NDA and need support, see:

- CLAS website (clasbc.net/FightMisuseofNDAs)
- Guide for Workers on Non-Disclosure Agreements (clasbc.net/wp-content/uploads/2026/04/NDA-tipsheet-booklet-FINAL-online-version.pdf)
- Can't Buy My Silence (cantbuymysilence.com/home-cn)

You may be able to access free legal advice through:

- SHARP Workplaces Legal Advice Clinic (at CLAS) (clasbc.net/sharpworkplaces)
- Stand Informed legal advice services (at CLAS) (clasbc.net/standinformed)
- Access Pro Bono (accessprobono.ca)

If you have experienced sexual violence in BC and need support, call or text VictimLinkBC at 1-800-563-0808, or email 211-victimlinkbc@uwbc.ca.

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.

Glossary

2SLGBTQIA+: This term is used in this report for people who identify as Two-Spirit, lesbian, gay, bisexual, trans, queer, intersex or asexual. In our community survey, respondents could identify themselves as any of the specific identities. In the analysis, we examined the data by both the broader and the more specific identities.

Bullying: Occurs when there is an imbalance, or perceived imbalance, of power and the person holding power engages in unwanted, aggressive, and/or frightening behaviour toward someone with less power. There is an intent to use physical, informational, or emotional power to harm the person with less power.

Cis: An abbreviation of the term cisgender, used to describe someone whose gender identity matches their sex assigned at birth.

Complainant: In this report, the "complainant" is a person who has identified themselves as someone that has experienced GBV in the workplace or other organization, whether they have filed a formal complaint or not. (See also **Survivor/Victim**)

Gender: A term to describe the range of feminine and masculine identities that are imposed on individuals based on how they present, the identities in relation to feminine, masculine, or non-binary they identify as and with, and the roles and assumptions attached to the spectrum of masculine and feminine.

Gender-based violence (GBV): GBV includes violent acts committed against a person because of their gender, gender expression and/or gender identity. It is violence that seeks, directly or indirectly, to enforce gender norms. It can be committed by any gender against any gender, but is most commonly manifested by cis-male individuals against women and 2SLGBTQIA+ individuals (97% of all GBV in Canada).[1] It includes sexual assault, harassment, cyber harassment, discrimination, intimate partner violence (IPV) and systemic acts of racialized violence such as those described in the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.[2] GBV is perpetrated against racialized, disabled, and 2SLGBTQIA+ people at higher rates than cis-white women experience.

GBV-centred/complainant-centred: A decision, policy, or action that takes into account, in a meaningful way, the actual experiences and knowledge of GBV and how GBV impacts individuals and organizations.

Harassment: Includes behaviour that humiliates, belittles, or intimidates someone based on a personal characteristic and/or identity. It can include verbal abuse, sexual and personal innuendo, yelling inappropriately, name-calling, stalking, and other behaviour. It is usually a pattern of behaviour that creates an uncomfortable environment, but it can be a single action in some circumstances.

[1] Julie S Lalonde, "Gender-based violence across Canada" (21 November 2023), online: *Canadian Museum for Human Rights* <humanrights.ca> [https://perma.cc/26NN-63ZY].

[2] "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls", online: *National Inquiry into Missing and Murdered Indigenous Women and Girls* <https://www.mmiwg-ffada.ca/final-report/>.

Intersectionality: This report acknowledges the intersectionality of power and gender and encourages readers to understand GBV as one place in which the intersecting impacts of dominant culture meet.

Non-disclosure agreement (NDA): In this report, we use the term "NDA" to refer to clauses used in settlement agreements, pre-emptive NDAs (often included in employment contracts), non-disparagement clauses, and confidentiality agreements used to prevent someone from talking about their experience and/or sharing information. It may not always be a contract, but be a directive with a threat of retaliation if breached. A common example of this is a letter directing an employee to not disclose certain information during an investigation and threatening discipline or termination if they do.

Perpetrator/respondent: In this report, we use the term "perpetrator" to describe an individual someone has identified as having committed GBV, whether proven in law or not. We use "respondent" to describe someone against whom an official complaint was filed.

Sexual assault: Ranges from unwanted touching of a sexual nature (or forcing someone to touch another person sexually) to rape and other forms of sexual acts or the threat of them where there is no express consent.

Sexual harassment: Is harassment of a sexual nature, that is unwelcome conduct and has a negative impact on a person.[3] It can include verbal comments, unwanted touching, and unwanted exposure to sexual or sexually explicit materials. In this report it refers specifically to harassment rather than the broader category of GBV.

Survivor/victim: As neither word resonates universally with people who have experienced GBV, this report uses the term each individual used to describe themselves in the survey results, case studies, or as the author of a reference publication has used. Otherwise, the term "complainant" (see **Complainant**) is used.

Whistleblower: Someone, usually in a work environment, who may owe a duty of loyalty (either legally or by consent of membership) to an organization but chooses to break that duty to publicize or report unethical, illegal, or other inappropriate behaviour.

[3] Janzen v Platy Enterprises Ltd., 1989 CanLII 97, [1989] 1 SCR 1252; Mahmoodi v University of British Columbia and Dutton, 1999 BCHRT 56.

INTRODUCTION

The Community Legal Assistance Society (CLAS) designed Speak Out: Ending Gender-Based Violence (Speak Out) as a community consultation project aimed at removing barriers to women's success that weaken their economic security and prosperity. The project emerged from the knowledge and experience of CLAS in operating the Sexual Harassment Advice, Response, and Prevention (SHARP) Workplaces Legal Advice Clinic. In that work and engagement with community partners, CLAS learned about the ways in which GBV in the workplace and the increased use of NDAs continue to weaken women's and gender-diverse people's prosperity, limiting their leadership opportunities. This project was designed to research, explore, and identify recommendations to address these barriers.

The project's objectives included strengthening and building networks and collaboration, reviewing existing research, collecting new data, and providing support for addressing specific barriers of gender-based discrimination and violence. Specifically, the project's objectives have been to:

1. Increase networks and collaboration by building and strengthening partnerships with target communities (e.g. Indigenous organizations and communities, 2SLGBTQIA+ organizations and communities, racialized communities, and in northern, remote, or rural areas) to:

    a. raise awareness of the laws, rights, and responsibilities, related to harassment, GBV, and the misuse of NDAs,

    b. engage with target communities regarding issues of harassment, GBV, and the misuse of NDAs to inform our research, support policy development, and law reform submissions, and

    c. empower communities to educate and advocate for policy and legislative change that will address harassment, GBV, and the misuse of NDAs.

2. Change policies and practices relating to harassment and violence in the workplace that impact disproportionately on women, and women belonging to targeted communities by:

    a. raising awareness of the legal rights and responsibilities related to harassment and violence,

    b. consulting communities in the development of model policies to address harassment and violence, and

    c. providing training to advocate for improved policies to address harassment and violence in the workplace.

3. Change policies and practices related to the use of NDAs in silencing complainants of sexual harassment, sexual assault, and other discrimination by:

    a. raising awareness of the misuse of NDAs and related harm,

    b. conducting research and providing legal advice related to NDAs, and

    c. developing law reform submissions to restrict the use of NDAS to address the misuse of NDAs.

This report shares the results of the project's research and community consultations. The findings and recommendations form the basis of advocacy, advocacy training, and public awareness efforts.

Methodology

The project team began by identifying the tools for research and data collection. The three key data collection tools identified and developed were:

a. an anonymous community survey,

b. workshops designed partly for sharing information about the issues and partly as focus groups to explore potential solutions, and

c. consultation with lawyers through a survey and interviews.

Fourteen community researchers were hired to assist with promoting the community survey and workshops, particularly within their geographical area. They were found via outreach to the target groups, social media posts, and job posts on university boards. The selected researchers lived in Cranbrook, Kamloops, Kelowna, Prince George, Terrace, the Lower Mainland, and Victoria. Some identified as women, racialized, Indigenous, or 2SLGBTQIA+ and agreed to help spread the word in their demographic group. Throughout 2025, the selected researchers connected with 115 organizations and over 290 individuals. They also took on additional activities such as putting up posters, holding small information sessions, and helping individuals complete the survey.

The community researchers who were selected represented different regions around BC engaged with individuals and local communities and encouraged people to:

- complete the online community survey,
- participate in regional focus group workshops, and
- distribute information about the project.

The project team promoted the community survey and workshops on social media, including using paid social media advertisements. The project team and community researchers also promoted them directly to individuals or community organizations that serve the project target groups including:

- women's groups,
- victim services,
- transition houses,
- newcomer/resettlement groups,
- groups representing racialized, Indigenous, and 2SLGBTQIA+ communities,
- employment groups, and
- legal clinics.

Relevant organizations were called or emailed to be informed about the project and to encourage their staff to complete the survey and share it with their network (newsletter, social media, etc.). With the support of the community researchers, the project team reached out to over 500 organizations or individuals between January 2025 and March 2026.

Once the community survey was closed in February 2026, the responses to it as well as the notes from the workshops, were analyzed against four key research questions:

1. What effects of policies/practices were identified by respondents who have experienced GBV?
2. What recommendations for policies/practices were identified by respondents?
3. What effects of signing an NDA were identified by respondents who have experienced GBV?
4. What recommendations regarding proposed NDA regulations were identified by respondents?

Results were crosscut against demographic information shared by participants about self-identified gender, age, race, Indigeneity, and sexuality to look for patterns, distinct experiences, and opinions. In this report, we share unique identify-based distinctions where they are statistically significant.

Throughout the report, we identify anyone who provided us with information as a participant, whether through one of the surveys or workshop. We use "survey respondent" or "workshop participant" when a distinction is needed.

Community survey

The project team determined that an anonymous, online survey was the best way to collect experiences and opinions about GBV and the use of NDAs. People tend to be reluctant to share experiences of GBV, and the very nature of an NDA prevents people who have signed one from speaking about their experience. The anonymous online survey allowed individuals to share their experience without breaking any NDA they may have signed. It also had greater reach than an in-person or virtual workshop could offer and gave people a chance to share more details about the experience.

Understanding that the Can't Buy My Silence campaign was already collecting data on the use of NDAs in cases of GBV, the project team reached out to see if it would be possible to add specific questions related to the Speak Out objectives to their existing data collection processes. However, the global and ongoing nature of the Can't Buy My Silence initiative meant this was not an option. We have relied on Can't Buy My Silence's data and compared it to findings of our own research and results.

Speak Out's community survey was open to anyone in BC, even if they had not experienced or witnessed GBV in a workplace or organization. (See Appendix 2 for the survey questions). The English version of the survey was open from January 2025 to January 2026. The survey was translated into Spanish, French, and Punjabi, and these versions were made available in early 2025. Survey respondents could also agree to be contacted for a follow-up interview. The survey produced a total of 336 responses in English, two responses in Spanish, and one response in French (339 total responses). As explained in the limitations section below, there was a phishing issue with the Punjabi survey which resulted in no valid responses in Punjabi.

Regional workshops

Ten free regional workshops were held in 2025 to raise awareness of GBV and the use of NDAs in the workplace and other organizations. These sessions were also community consultations to gather data for the project. They attracted approximately 160 attendees. In-person sessions were held in Kamloops, Kelowna, Nanaimo, Prince George, Squamish, Vancouver, and Victoria. One Vancouver session was focused on Indigenous participants. Two province-wide online workshops were held in 2025. One was a general workshop and one had a specific 2SLGBTQIA+ focus.

The locations and formats were chosen to open up consultation opportunities to individuals in a range of locations across BC. They were also determined by the existence of local partners and how easily project staff could access the various locations. Some community partner groups assisted with implementing the workshops and recruiting participants. Some partners also gave input on the workshop design. This was particularly true of the Indigenous-focused session and the province-wide online sessions. Community partners received honorariums for their support of the project.

This project also delivered nine informational sessions focused on raising awareness rather than consultation. These presentations had 269 attendees.

Case study interviews

Respondents to the survey were invited to share their contact information if they were willing to be interviewed. The senior researchers reviewed the survey responses of those who agreed to be interviewed and contacted them to ask if they would consent to their story being shared as a case study.

We wanted stories that had all three of these characteristics (if possible):

- reflected common experiences,
- offered diverse perspectives in terms of the kind of workplace, setting (rural or urban), demographic identity (for example, 2SLGBTQIA+, racialized, or Indigenous), and
- dealt with reporting the incident(s) and documented the respondent's experiences of attempting to address the issue internally.

Five individuals shared their stories through an interview. One of the five chose not to have their story included because of concern about their NDA and worry the facts might be recognized. The other four storytellers reviewed and helped anonymize their own story, and agreed to share it in Appendix 1. Before participating in the project, one of the four storytellers had already broken her NDA and shared her story publicly (see Case Study 1 — Esther). We refer to the stories throughout the report to illustrate how the issues explored here can look and feel on the ground.

Lawyer survey and consultation

An online survey for lawyers was available from February 1 to March 24, 2026. It was designed to identify common understandings about the appropriate use of NDAs and was distributed through social media, the Canadian Bar Association, other legal organizations, and *Canadian Lawyer* magazine. Unfortunately, the survey was targeted by phishing. Of the 149 responses received, the project team determined 54 were meaningful responses from Canadian lawyers. A diverse range of lawyers, varying in practice areas and length of call, completed the survey. The most common respondents were senior lawyers with employment law experience: 40% practiced employment law, 30% conducted workplace investigations, and 74% have practiced law for more than six years. (See Appendix 3 for the lawyer survey.)

149
responses received

54
meaningful responses

MOST COMMON RESPONDENTS: SENIOR LAWYERS W/EMPLOYMENT LAW EXPERIENCE

40%
practiced emplyment law

30%
conducted workplace investigations

74%
practiced law for more than six years

After other project research was completed, including analyzing the results of the two surveys and the workshops, the senior researcher met with three lawyers whose practice focuses on (or in the case of one retired lawyer, had focused on) workplace investigations, including those involving GBV. One of the three lawyers worked primarily with employers and one worked with employees. The third was retired after a career in the field, which included drafting the first anti-sexual harassment policies for large institutions in the 1980s and later.

With each lawyer, we shared the finding that internal workplace processes and investigations made the experience worse for most people who experienced GBV, as well as the kind of impacts NDAs had on the project's participants. The lawyers shared their own experiences and helped us identify some of the elements of good investigations, which supported forming our recommendations. These experts shared their thoughts about balancing sound legal principles, the public interest in addressing GBV, and the realities and needs of people who have experienced GBV.

Limitations of the methodology

Due to the phishing issue with the Punjabi language community survey and the lawyer survey, the project team had to identify and eliminate responses that were likely phishing responses. This was accomplished by using a range of criteria to flag suspect responses, such as speed of completion and email addresses ending in common phishing domain extensions, such as .xyz.

Our public surveys were neither contained (i.e. limited to a specific group of individuals) nor randomized during this research project. They were an invitation to share stories about experiences and thoughts about the regulation of NDAs. The surveys had a relatively small sample size, and participants chose what information they wanted to share. As such, no definitive conclusions can be drawn about the prevalence of the common themes that emerged. However, we stand by the stories and opinions shared as a valid picture of the impacts of NDAs in workplace GBV cases in Canada. The case studies provide more details about experiences that were common among project participants. These details are from the perspective of the storytellers, highlighting their own experience. They are shared to help illuminate research and data evidence.

The project team had hoped to include deeper exploration of GBV and NDAs to also include experiences outside of workplaces and employment situations, such as groups or faith-based organizations in which the person is a member, volunteer, or participant rather than employee. It was challenging to reach out to both groups, given the small team and project capacity. While some survey responses are from people who experienced GBV in a non-workplace setting, the researchers did not have enough data to credibly suggest differences or similarities in experiences across the different environments. However, the information we collected suggests that there are similarities between workplaces and organizational settings: internal processes seem to protect the organization and the perpetrator, and signing an NDA increases and extends the trauma and impact of GBV.

Case Study Summaries

Individuals' names and facts have been altered to ensure anonymity, except for Case Study 1, which is the story of Esther Hwang's experience with the Vancouver Symphony Orchestra (VSO). Esther decided to breach her NDA, and her story became part of a public dialogue on the surrounding issues in early 2026.

Please see Appendix 1 for the full facts of these cases. Here is a summary of each case study:

Case Study 1 — Esther

Esther is a talented musician who began playing with the VSO as a soloist when she was nine years old. As an adult, she was an on-call musician, playing with the orchestra on an almost full-time basis. One of her teachers and mentors over the years was a married man more than 25 years her senior. She socialized regularly with him and other members of the VSO. After a few inappropriate comments and actions, this mentor sexually assaulted Esther. It happened more than once.

With the support of her family, Esther filed a complaint. The VSO responded by accusing her of trying to get money from them. Esther's goal was to have her former mentor fired so she would feel safe at the VSO. A settlement was reached in which some of her counselling expenses would be covered and the individual would be dismissed. Esther's lawyer persuaded her to sign an NDA about the details of her complaint and the settlement.

Over the next few months, the calls from the VSO to perform with them dwindled to nothing. Esther's work with the organization was over.

Many years later, after leaving music all together, attempting a new career, and extensive counselling, Esther heard a rumour amongst her former colleagues that she and her former mentor had a consensual relationship and had both been fired. Esther asked the VSO to release her from her NDA, but they refused. She decided to breach her NDA so that she could protect others from both the perpetrator and other similar behaviours.

Case Study 2 — Nora

Nora is a young woman working in communications. In a role with a large firm, she experienced sexual harassment by a senior director. It followed a pattern of behaviour of the perpetrator with other women colleagues. After one particularly bad experience at a team-building event in which the perpetrator repeatedly touched her out of sight of others, took selfies, and texted her with inappropriate comments after the event, Nora filed a complaint with HR, according to the direction of an HR manager.

Before the investigation began, Nora was asked to sign a confidentiality agreement

> "A lot of therapy and, six years later, I can discuss it without crying and curling up in a ball.
> –Nora

promising not only to not talk to anyone in the organization about her complaint, but also about the fact that the investigation was happening. The investigation was conducted by the same individual with whom Nora filed the complaint. HR determined that nothing inappropriate had occurred, leaving Nora to understand that they believed the senior director's version of events, not hers. Nora resigned from her position, but her employment was terminated suddenly before her notice period was completed.

In a final letter from the employer, Nora was reminded of the confidentiality agreement she had signed (despite it relating entirely to the investigation), and her obligation to keep information about the company and its employees private. As a result, Nora has never spoken to people in the field about her experiences, only some friends who work in different areas.

Nora took her next role, one more junior as a way to get out of her past job, and moved to another employer a year later.

A former colleague still at the same company reported to Nora that she was receiving uncomfortable texts from the perpetrator, but that she decided not to complain because of what happened to Nora.

Case Study 3 — Helen

Helen was working her shift one night, alone at the worksite, when a man began aggressively knocking on the door. She let him in and he cornered her, berating her for filing a complaint against him. She barely knew him as he worked at a different worksite, and she had never filed a complaint against him. However, he threatened her and thoroughly frightened her. When she told her supervisor, he spoke to the man and encouraged her to file a complaint with HR, which she did.

Thus began a process that took over a year to resolve. Her first meeting with HR was based on a letter she received from them referencing a complaint under their collective agreement that might lead to disciplinary action. The letter was vague about whether it was against her or about the perpetrator. She was also told, formally in writing and verbally, that she had to keep any discussion of the case confidential.

The investigation took months. There were four incidents of the perpetrator showing up at her station angry and threatening her. On the advice of her union representative, she used her right to refuse dangerous work. She did not return for eight months. Until a new HR person took over the case, she was not told that the perpetrator was on a leave the whole time. If she had been told, the employer could have instituted safety practices to keep him from her worksite. She was told she could call the police if he showed up, but it was not until she began going to a

> "What did I learn? Don't report. Now I know. I am so glad to be back at work and not afraid. But, the collateral damage has been huge. Everyone let me down — manager, union, WorkSafe. It was a year-long experience and am still going through hoops to get reimbursement for counselling and lost wages. In the meantime, I am tortured thinking "where did I go wrong?"
> –Helen

counsellor of her own (rather than internal programs) that she understood the confidentiality directive did not apply to police reporting. The police explained that it was difficult to get a restraining order against a co-worker and that internal processes of the employer had to manage his access to her.

In the end, she was able to return to work and the perpetrator was dismissed.

Case Study 4 — Shahnaz

Shahnaz works as a health and safety officer in remote oil and gas sites across Canada. She is a young, first-generation immigrant to Canada from Pakistan and experienced sexual harassment in her workplace in her first job role — the first time she had been away from her family home.

Shahnaz was at work in the site office at her desk when a senior manager showed up, despite the fact that he rarely visited this particular office in his work. He behaved oddly with her, standing physically close and saying suggestive and sexual things to her. Her direct supervisor intervened after one particularly graphic sexual comment, and walked his boss, the senior manager, out the door.

After Shahnaz complained, her mostly male colleagues behaved aggressively, acting as though they were unsafe and only engaging with her in pairs. After a series of rude and unkind comments, she responded with anger and two colleagues filed a complaint against her.

After an investigation, Shahnaz refused to sign an NDA when the company offered her a termination package. She filed a human rights complaint. Despite a finding that gender discrimination had probably occurred, the Alberta Human Rights Commission found that she had been offered a reasonable settlement by her employer and that inclusion of confidentiality and non-disparagement provisions did not make the settlement offer unfair or unreasonable. As far as Shahnaz understood the situation, if she had signed the NDA she would not have been able to file a human rights complaint. In refusing the NDA, the Human Rights Tribunal ruled she had refused the reasonable settlement offered to her, and her human rights complaint was dismissed.

The experience transformed her workplace relationships, creating an ongoing sense of distrust. Shahnaz will no longer work for any company, or on a site, unless someone she knows has worked there and will vouch for the organization living up to its values — such as providing an inclusive and safe workplace.

Overview of Gender-based Violence in the Workplace

GBV remains a pernicious and prevalent reality in Canada. In BC, a recent government-sponsored report indicated that 37% of all women and girls over the age of 15 have experienced sexual assault.[4] It does not happen in a vacuum and is a part of broader systemic systems such as colonialism, racism, and ableism. This is illustrated in part by the increased degree to which Indigenous, racialized, 2SLGBTQIA+ and disabled people experience GBV.

In the case of GBV in the workplace, it too continues to persist, despite legislative and regulatory prohibitions in all Canadian jurisdictions. Employers are required to have policies to prevent workplace harassment. The research is clear, however, that these initiatives and efforts have limited success. A 2024 article, for example, shows that workplace bullying broadly (not specific to GBV) in Canada continues to be a serious challenge, and that the existing policies have not been effective in addressing it.[5]

In the case of sexual harassment specifically, what research is available suggests it is highly underreported.[6] Research and reporting, including the recent BC study referred to above, on the extent and impact of GBV broadly in Canadian society tends to focus on sexual assault and/or IPV, and data about the scope of GBV in workplaces is limited.

[4] Kim Stanton, "The British Columbia Legal System's Treatment of Intimate Partner and Sexual Violence: Final Report" (June 2025), online: The Province of BC <https://www2.gov.bc.ca/> [https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/justice-reform-initiatives/systemic-review#relevant-statistics].

[5] Ruth McKay, Aareni Uruthirapathy & Yulia Pankova, "Managing workplace bullying and harassment in the Canadian context: same old, same old" (2024) 46:4 Employee Relations: The Intl J 850, DOI: https://doi.org/10.1108/er-07-2023-0360.

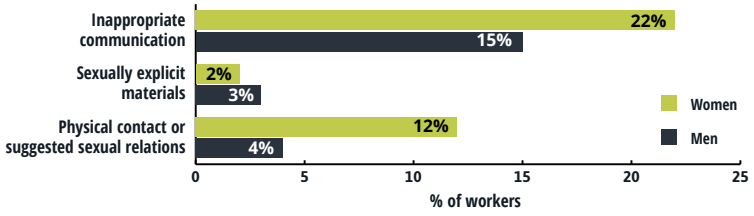
[6] For example, an international study of harassment and sexual harassment in the legal profession surveyed over 7,000 lawyers across 21 countries. It found that more than 75% of the respondents who had experienced sexual harassment did not report it. Kieran Pender, "Us Too? Bullying and Sexual Harassment in the Legal Profession" (2019), online (pdf): *International Bar Association* <www.ibanet.org> [https://perma.cc/2CPP-D4C6].

Sexual Misconduct and Gender-based Discrimination at Work, 2020

25% of women experienced sexual misconduct in their workplace in the previous year. **17% of men**

Workplace sexual misconduct and gender-based discrimination can occur at the worksite or another location where people associated through work are present.

Sexual misconduct includes inappropriate behaviours such as:



1 in 5 LGBTQ2+ workers experienced workplace discrimination based on their sexual orientation or gender identity

When asked whether their employer had given them information on...

...how to **IDENTIFY** workplace sexual harassment and sexual assault

33% of women & 28% of men said "no"

...how to **REPORT** workplace sexual harassment and sexual assault

32% of women & 26% of men said "no"

...how to **ACCESS RESOURCES** for workplace sexual harassment and sexual assault confidentially

34% of women & 28% of men said "no"

82% of women & 87% of men agreed or strongly agreed that at their workplace, everyone has equal opportunities for advancement, regardless of their gender.

10% of women & 4% of men personally experienced gender-based discrimination at work.

Source: Statistics Canada, Survey on Sexual Misconduct at Work, 2020.

Catalogue number: 11-627-M | ISBN: 978-0-660-39550-0

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Statistics Canada Statistique Canada

www.statcan.ca

Canada

Figure 1. Statistics Canada infographic on sexual misconduct at work

The silencing impact of NDAs and confidentiality agreements has played a large part in the lack of reliable data. Another reality is that GBV is rooted in intersectional experiences of power. Sexual violence is experienced disproportionately by women (especially Indigenous women), 2SLGBTQIA+ people, and racialized people. When it occurs in a work setting, both the experience and the response are often tied into policies and processes that are often more accessible to white, Canadian-born, cis-women, so it is their story that is most often heard. In addition, much of the available academic or government research on workplace-based harassment focuses on general workplace bullying and harassment, with sexual harassment being treated as one kind of bullying.

Despite the challenges in finding data, there seem to be two clear conclusions drawn from studies this project reviewed:

a. the problem of GBV persists in workplaces in Canada, and

b. the majority of those who do report GBV find the resulting processes make the experience worse.

Secondary research findings

Several of the available studies relevant to GBV in the workplace in Canada draw on a 2020 Statistics Canada study of sexual misconduct and gender-based discrimination in the workplace. Figure 1 (page 20) shows some of the key results of the study.

This study — and others — indicated that just under half of workers in Canada have witnessed or experienced inappropriate sexualized behaviour in their workplace.[7] Half of all women have experienced GBV of some kind in their workplace in their lifetime, and more than one in ten have experienced some form of sexual assault in the workplace in their lifetime.

Women working in certain occupations — where men outnumber women historically[8] and in the present day — experienced considerably higher rates of inappropriate sexualized behaviour at work than other women. For example, almost half (47%) of women working in trades, transportation, equipment operation, and related occupations experienced these behaviours at work just in the past year, rather than 50% of women in their lifetimes.[9]
In 2022, a joint study by Western University's Centre for Research and Education on Violence Against Women and Children and the Canadian Labour Congress summarized the following:

From previous research on harassment and violence in workplaces, we know that:

1. not everyone experiences harassment and violence in the same way,

2. marginalized workers are subject to higher rates of harassment and violence, and

[7] See, for example, Statistics Canada, Workers' experiences of inappropriate sexualized behaviours, sexual assault and gender-based discrimination in the Canadian provinces, 2020, by Marta Burczycka, Canadian Centre for Justice and Community Safety Statistics (Ottawa: StatsCan, 12 August 2021), online (pdf): <www150.statcan.gc.ca> [https://perma.cc/QP33-ZMK6].

[8] Statistics Canada, Women in Canada: A Gender-based Statistical Report — Women and Paid Work, by Melissa Moyser (Ottawa: StatsCan, 8 March 2017), online (pdf): <www150.statcan.gc.ca> [https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14694-eng.pdf?st=rq7Fw_Yt].

[9] Burczycka, *supra note* 7 at 3.

3. workers who experience harassment and violence face barriers to reporting and often do not get the support they are entitled to. Yet, despite the growing body of research on harassment and violence in the world of work, too little is known about the Canadian context.[10]

The study also highlighted the intersectional differences in the experience of GBV in the workplace. The likelihood of experiencing GBV increases substantially if an employee is 2SLGBTQIA+, racialized, and/or Indigenous. The study's findings reflect those of other research referred to throughout this report:

- Just over two in five (43.9%) of survey respondents experienced at least one behaviour or practice of sexual harassment and violence in the past two years while at work. This was most pronounced for gender-diverse respondents: 73% of gender-diverse respondents experienced this harassment and violence compared to 46% and 38% of women and men, respectively.

- 2SLGBTQIA+ respondents were particularly likely to have experienced all forms of harassment and violence. This is most pronounced for harassment and violence (72%), and sexual harassment and violence (62%).

- Indigenous survey respondents experienced significantly higher rates of harassment and violence (79%), and sexual harassment and violence (47.8%).

- Survey respondents who live with at least one form of disability experienced significantly higher rates of all forms of harassment and violence.

- Sexual conversations, touching, and sexual teasing were the most common behaviours indicated by survey respondents who experienced sexual harassment and violence. Almost one quarter (23%) of respondents were stalked, and 4% were sexually assaulted.

- Workers experienced negative consequences due to all forms of harassment and violence, but those experiencing sexual harassment and violence were more likely to experience negative impacts on their health and well-being, work, and careers.

Aside from negative impacts on a worker's well-being, workplace sexual harassment also takes a significant toll on a person's economic prosperity.

> *For those who reported experiencing sexual harassment and violence, less than 1 in 4 believed that reporting to a supervisor or manager, reporting to their union, or filing a formal complaint or grievance made their situation better.*
>
> Berlingieri et al "Harassment and Violence in Canadian Workplaces: It's [Not] Part of the Job." Pg. 25

[10] Adriana Berlingieri et al, "Harassment and Violence in Canadian Workplaces: It's [Not] Part of the Job" (April 2022), online (pdf): Centre for Research and Education on Violence Against Women and Children <canadianlabour.ca> [https://perma.cc/S4NC-727J].

People who are harassed may be pushed out of their employment or forced to quit. The immediate results of this are a loss of income and benefits. Longer-term economic effects include workers taking lower-paying jobs or having to change career paths[11], a phenomenon we observed in our case studies. Sexual harassment can also be an impediment to women's participation in high-paying, male-dominated fields like trades and IT.[12]

On the employer's side, much research supports the fact that sexual harassment is financially costly for employers. Studies have found that sexual harassment negatively affects an organization's profits, productivity, and stock market performance.[13] An Australian Deloitte study[14] found that workplace sexual harassment can be estimated to cost:

- $2.6 billion (AUD) in lost productivity, including costs related to staff turnover, income to individuals, lost profits, and lost taxes paid to government, and
- $0.9 billion in other costs, including manager time and staff absenteeism.

Conversely, inclusive workplaces show increased productivity and employee retention.[15]

YWCA BC recently released a report outlining the economic costs of GBV.[16] This report calculated the cost of GBV generally as costing the province $1.12 billion annually. In terms of workplace GBV, the report states:

> *In 2018, 104,000 women in BC reported experiencing three or more instances of egregious harassment (e.g., unwanted physical contact) in the previous 12 months. The impacts are tangible: absenteeism, presenteeism (less productivity at work) and early exit from employment reduce productivity and earnings. In total, workplace harassment contributes $86M to the annual cost of GBV in BC.*[17]

The Harassment and Violence in Canadian Workplaces report found that 70% of survey respondents reporting sexual harassment missed work and 55% reported declined productivity.[18]

This study also compared the experience of harassment to the unique experience and impact of sexual harassment, both in terms of costs and the impacts of filing formal complaints.

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[11] Coly, Caroline & Margaux Suteau, "The Economic Effects of Sexual Harassment in the Workplace" (2025) 3:4 LSE Pub Pol'y Rev 7, DOI: https://doi.org/10.31389/lseppr.118.

[12] Coly et al, *Supra* note 11 at 7.

[13] Shiu-Yik Au, Ming Dong & Andréanne Tremblay, "How Much Does Workplace Sexual Harassment Hurt Firm Value?" (2024) 190 J of Business Ethics 861, DOI: https://doi.org/10.1007/s10551-023-05335-x.

[14] "The Economic Costs of Sexual Harassment in the Workplace: Final Report" (March 2019), online (pdf): Deloitte <www.deloitte.com> [https://perma.cc/8YP5-QJ96].

[15] British Columbia's Office of the Human Rights Commissioner, Economic Benefits of Employment Equity Info Sheet (Vancouver: BCOHRC), online (pdf): <bchumanrights.ca> [https://perma.cc/2SNS-DXJQ].

[16] "The Cost of Inaction: Measuring the Economic Impact of Gender-Based Violence in BC", online (pdf): YWCA BC <ywcabc.org> [https://ywcabc.org/report-cost-inaction-measuring-economic-impact-gender-based-violence-bc], citing "The Economic Costs of Sexual Harassment in the Workplace: Final Report" (March 2019), online (pdf): Deloitte <www.deloitte.com> [https://perma.cc/8YP5-QJ96].

[17] YWCA BC, *supra* note 16 at 10.

[18] Berlingieri et al, *supra* note 10 at 16.

The study shows that while 51% of respondents who experienced general harassment filed a formal complaint or grievance, only 24% of those who experienced sexual harassment did. It also showed a very large gap in terms of reporting the experience to a union: 77% of those who experienced general harassment versus only 31% of those who experienced sexual harassment. Complainants of sexual harassment were more likely to file a formal complaint in a non-unionized environment (31%) than in a unionized one (26%).[19] In addition, the report found that the majority of individuals who filed a formal grievance or complaint of sexual harassment said that reporting it either made no difference (44%) or made it worse (32%).

The 2022 Western/CLC study also reports that one in four of their survey participants said the process they were a part of was, in fact, effective.[20] Participants in the study identified that most effective responses were less about written policy and more about leadership, culture, and meaningful communication. Policies and procedures, particularly training of supervisors, should reinforce these factors. The overall actions, values and behaviours of all the players in the workplace seem to have more impact on addressing the issues and creating safer spaces than the written documents, according to that report.

The most recent academic research on the subject of workplace systems designed to address sexual harassment specifically (as opposed to GBV broadly) comes from a multi-university team of researchers who participated in a large Canadian-led study. How Signals of Silence

Harassment and Violence in Canadian Workplaces report

70%
missed work

55%
reported declined productivity

GENERAL HARASSMENT	SEXUAL HARASSMENT
51% filled formal complaint or grievance	**24%** filled formal complaint or grievance
77% reported to union	**31%** reported to union

Sustain Sexual Harassment and What to Do About it[21] was undertaken to address the lack of change in the prevalence of sexual harassment and uncover the reasons why this is true. This study points out that most examinations of sexual harassment in the workplace start with two basic assumptions:

a. Individuals need to speak up and complain; and

b. Structures and policies will prevent it.

The report authors assert that sexual harassment continues because employees take in "signals of silence" from the moment they join a new workplace. They

[19] Berlingieri et al, *supra* note 10 at 19.

[20] Berlingieri et al, *supra* note 8 at 25.

[21] Angela L Workman-Stark et al, "How Signals of Silence Sustain Sexual Harassment and What to Do About It" (2026) Human Resource Management, DOI: https://doi.org/10.1002/hrm.70063.

watch their supervisors closely to clarify expectations and reward systems, and they absorb cues and signals about what is considered (un)acceptable, what to share and what not to share, and whether silence is better than speaking up. A culture of silence can emerge, making it impossible for any process grounded in a requirement for the individual to complain to be successful.

This organizational culture is also layered with the biases and assumptions of society at large. Power imbalances, privilege, and experience of trauma all contribute to how individuals interpret the signals they are receiving in a workplace. As reported in Respect at Work:

> *Experiences are not the same for everyone. Workers who face multiple and intersecting forms of discrimination — whether race, gender, sexual orientation, gender identity and expression, disability or Indigeneity — experienced different prevalence rates.*[22]

The Speak Out Project's review of secondary research on GBV in the workplace has informed the recommendations for action and is mirrored in the results of our consultations (described below in Project Findings). In summary:

- GBV in workplaces in BC and Canada continues to persist despite regulatory and other efforts.
- The increased use of NDAs is contributing to our lack of understanding of the experience of GBV and how to address it.
- There are tremendous economic, social, and personal costs because GBV is still so prevalent.
- We need to look beyond complaint-based thinking and address cultural norms that contribute to the prevalence of GBV in the workplace, both broadly and in individual workplaces.

Understanding Non-Disclosure Agreements[23]

The very nature of NDAs means it is difficult to map out a history of their use in Canada. Their origins are somewhat unclear. One of the first mentions of an NDA is in 1949 in a media report of a confidentiality clause in American maritime law related to admirals in the navy keeping investigation information confidential.[24] It was not until the technology boom of the 1970s and 1980s that NDAs became commonplace in business to protect trade secrets and gain competitive advantage over another business.[25]

[22] Berlingieri et al, *supra* note 10 at 7.

[23] Adapted in part from Jennifer Khor, Cayleigh Shiff, Celia Taylor, and Clea Parfitt "Challenging Non-Disclosure Agreements (NDAs) and the Harm they Cause: Paving the Way for More Trauma-Informed Approaches" a paper written and presented at the 2022 Continuing Legal Education BC Human Rights Conference.

[24] Rachel S. Spooner, "The Goldilocks Approach: Finding the "Just Right" Legal Limit on Nondisclosure Agreements in Sexual Harassment Cases" (2020) 37:2 Hofstra L & Emp LJ 331 at 335.

[25] Ibid at 336.

Over the years, NDAs have crept into a wide range of settlement agreements. Reports in the 1980s and 1990s identified secret settlements involving allegations of public health hazards caused by "Honda Civics, Bic lighters, DPT vaccines, Zomax and Feldene painkillers, Zenith television sets, Pfizer heart valves, General Motors fuel tanks, Xerox toxic leak sits," asbestos, tobacco, and silicone breast implants.[26] An early example of a non-business related use was when a child entered into a confidentiality agreement with Michael Jackson in 1993.[27]

The exact time when NDAs first started appearing in Canadian settlements is difficult to determine. Originally, they were used only to keep the settlement amount confidential, and they did not apply to the underlying facts that led to the claim. People who signed one were still free to share their story to whomever they wanted, as long as they did not disclose the settlement amount. Now, NDAs stopping a complainant from disclosing the facts of their claim are increasingly used when settling almost all employment-related disputes. Of the 54 lawyers surveyed for this project, half of them agreed that there has been an increase in NDA usage in Canada. Many employers, and their lawyers, now have an expectation they will not provide a payment or settlement agreement without an NDA.

There is also evidence that NDAs are widely used in employment contracts before someone begins their role with an organization, prohibiting an employee from disclosing information or facts that have not happened yet. One U.S. study found that 87.1% of all CEO employment contracts had NDAs preventing them from disclosing "confidential information."[28] Another U.S. study found that one third of all employees in the U.S. had similar NDAs in their employment contracts.[29] A study by TeamBlind Inc. found that 15% of surveyed workers in the technology industry had been silenced from speaking out about important issues through NDAs, and that similar rates existed in the hospitality industry.[30] The Free Legal Advice Centre in Ireland reviewed their files from 2017 to present and found that 4 out of 10 discrimination cases they settled included an NDA in the settlement agreement.[31]

In the past decade, there has been an increasing public awareness of the use of NDAs in GBV cases as a result of the #MeToo movement — founded in 2006 by Tarana Burke and exploded into public awareness in 2017 — in the wake of revelations about the widespread reality of GBV in Hollywood and the use of NDAs. Women such as Zelda Perkins, Rowena Chiu, Ambra Battilana Gutierrez, and Lauren Holly broke NDAs to tell their stories in relation to director Harvey Weinstein. Women broke their NDAs

[26] Ibid, quoting Barry Siegel, "Dilemmas of Settling in Secret: Companies Offer Hefty Sums in Exchange for Keeping the Details of Public-Hazard Lawsuits Quiet. Plaintiffs Must Choose Their Own Interest or the Public Good", Los Angeles Times (5 April 1991), online: <www.latimes.com> [https://perma.cc/3QHS-EVSU].

[27] Christopher R. Drahozal & Laura J. Hines, "Secret Settlement Restrictions and Unintended Consequences" (2006) 54:5 U Kan L Rev 1457 at 1457.

[28] Spooner, supra note 24 at 336.

29 Emily Otte, "Toxic Secrecy: Non-Disclosure Agreements and #MeToo" (2020) 69:3 Kan L Rev 545 at 551, DOI: https://doi.org/10.17161/1808.31571.

[30] Olivia Leahy, "The Channel 4 News Women are Just the Tip of the Iceberg — Have Women of Colour Been Disproportionately Silenced via NDAs for Years?", online: *Speak Out Revolution* <www.speakoutrevolution.co.ukj> [https://perma.cc/Z5DY-MR2D].

[31] Government of Ireland, Department of Children, Equality, Disability, Integration, and Youth, *The Prevalence and use of Non-Disclosure Agreements (NDAs) in discrimination and sexual harassment disputes (Dublin: The Department of Children, Equality, Disability, Integration, and Youth*, 7 March 2022), online (pdf): < https://www.gov.ie/en/department-of-children-disability-and-equality> [https://perma.cc/JK5K-EVYK].

to speak out about how being forced to be silent affected them and how the use of NDAs facilitates serial predatory perpetrators. In Canada, news broke in 2022/23 about the use of NDAs by Hockey Canada with complaints of GBV by hockey players.

People who are subject to an NDA related to GBV may be unable to disclose the harm they suffered to family members, therapists, or other trusted advisors, and therefore, are prevented from processing the trauma of GBV. They may be unable to explain a gap or change in their employment, or behaviour that may be triggered due to past trauma. They often live with a fear of accidentally breaching the NDA, as well as experiencing guilt if they learn that the perpetrator has moved on to others. As most NDAs do not have time limits, the perpetrator effectively exerts a level of control over the complainant forever, exacerbating feelings of powerlessness and helplessness. Perpetrators may not be held accountable for the wrongs they are responsible for and may go on to harm others.

NDAs were not originally intended to shield harassers from accountability or protect the reputation of employers. They were used to protect companies from having important trade secrets passed to competitors by their own employees. Individuals and companies have since co-opted NDAs to protect their reputations and hide public health hazards. NDAs are routinely added to settlement agreements and employment contracts, particularly in situations of sexual harassment, making it difficult for complainants to resolve their matter without signing one.

Types and Scope of NDAs

An NDA is a signed legal document that restricts one or more of the signatories from sharing certain information designated as "confidential" by the NDA. It usually means the person signing cannot disclose information about a specific event, series of events, misconduct such as sexual harassment or discrimination, the conduct of an employer, and/or the terms of the NDA itself. NDAs are usually a part of a larger contract, such as a settlement agreement, release, arbitration or mediation agreement, employment contract, or termination of employment agreement.

NDAs are sometimes referred to as "confidentiality clauses," although the term "confidentiality clause" can refer to an agreement to keep only some information private, such as the terms of a settlement agreement, but not to any other information.

Employers may also direct the employee to keep things confidential at risk of discipline or even termination. This is common where an investigation is underway as a standard legal tool for protecting the individuals involved from unduly influencing potential witnesses. These are not strictly speaking NDAs, though their impact is the same.[32] This project has found that employers rarely provide formal information about the lifting or ending of that directive, and many employees are left assuming they need to continue keeping the facts confidential.

Generally, NDAs do not have a time limit. A signatory to an NDA is bound by it for life unless it specifies otherwise. Additionally, someone who has signed an NDA may not even be able to disclose the fact that they signed an NDA.

NDAs in Settlement Agreements

NDAs in settlement agreements have arguably received more public attention than other types of NDAs.[33]
They are often in settlement negotiations where complainants are particularly vulnerable — in the thick of sexual misconduct-induced trauma and needing a financial settlement to survive. Employers are usually on the other side of the "table" holding the purse strings and the power. There is immense financial pressure on complainants, who are usually members of groups impacted by income inequality in Canada. They can be at risk of losing homes, have heightened family care giving responsibilities, and are more vulnerable to poverty than those holding more privilege. Time constraints are often placed on complainants, creating false urgency.

Perpetrators want a complainant's silence, so their reputation is undamaged, and to protect themselves from other legal liability. NDAs effectively allow the perpetrator to continue their misconduct with an unblemished background. Employers may seek NDAs in settlements to avoid the risk of opening the door to further liability from others who have been

[32] Ms. C v City and others, 2023 BCHRT 203.

[33] Julie Roginsky and Gretchen Carlson, "Nondisclosure Agreements Perpetuating Workplace Toxicity" (30 Oct 2023), online: American Bar Association <www.americanbar.org>.; Kim Elsesser, "Five Years After #MeToo, NDAs Are Still Silencing Victims", Forbes (21 March 2022), online: <www.forbes.com> [https://perma.cc/3F62-4V9C]; Sara Ganim and Sunlen Serfaty, "Why some victims of sexual harassment can't speak out", CNN (24 November 2017), online: <www.cnn.com> [https://perma.cc/34YT-QYXL].

affected by the same behaviour but have not yet spoken up. They are also using them to shield their public reputation. The effect is that the employer can avoid pressure to make systemic change to their workplace culture and how they handle the presence of sexual harassment.

No one can include a confidentiality clause in a settlement agreement unless it is specifically negotiated, which in law is described as "not an implied term of settlement".[34]

When the parties have agreed to include a confidentiality clause as a part of settlement, the parties agree they will not disclose certain information covered by the agreement.

Some confidentiality clauses might only seek to keep the settlement amount secret, while others may restrict parties from talking about the settlement negotiations, or the underlying facts of the claim. Settlement agreements can also contain non-disparagement clauses which prohibit someone from saying anything negative about the other party, even if it's true.

Pre-emptive NDAs

Pre-emptive NDAs are often found in employment contracts. These types of NDAs prevent employees from discussing the employer's trade secrets or other confidential information. This means that someone signing a pre-emptive NDA does not even know what information they are promising to keep secret at the time of signing. However, not all pre-emptive NDAs prohibit an employee from disclosing misconduct. Some may only seek to keep other business information confidential, such as trade secrets.

Non-Disparagement Clauses

A non-disparagement clause can appear in a settlement agreement or a pre-emptive NDA. Non-disparagement clauses prevent the signatory from ever speaking negatively about the other party, often the employer. This means, that someone who signs a non-disparagement clause cannot say anything that casts a negative light on the other party, even if their comments are true. This type of NDA was commonly used by Harvey Weinstein's film production company.[35] This type of NDA shields perpetrators from legal and reputational risk.

Employers commonly include NDAs and/or non-disparagement clauses in employment termination agreements or severance packages, whether they are aware of any past misconduct or not. Employees being presented with termination agreements usually need to agree to the terms, including the NDA and/or non-disparagement clause, in order to receive the termination or severance package they are being offered. In these cases, the employer has significantly more bargaining power than the employee whose employment is being terminated, and employees may sign because of their financial need.

[34] *Abouchar v Conseil scolaire de langue française d'Ottawa-Carleton — Section publique, 2002* CanLII 49423, 58 OR (3d) 675 (ONSC); Dube v Shooman, 2013 ONSC 4348; Bouzanis v Greenwood et al., 2022 ONSC 5262; *Murphy v Fraser Valley Real Estate Board,* 2026 BCHRT 88.

[35] Otte, supra note 29 at 551.

Movement to Restrict or Ban NDAs

As a result of women coming forward during #MeToo, there were advocacy efforts to ban or restrict the use of NDAs. Currently, 34 jurisdictions have adopted legislation restricting or banning the use of NDAs in workplace sexual harassment and discrimination, and/or sexual assault. This includes the United Kingdom[36], Ireland[37], the state of Victoria in Australia[38], 29 American states, and at the federal level in the USA[39]. In Canada, legislation has passed in Prince Edward Island[40] and Ontario in the post-secondary education context.[41] In 2023, the Uniform Law Conference of Canada (ULCC) established a working group to consider the need for uniform legislation on NDAs. The working group has issued three policy papers[42] and is expected to bring forward draft legislation for consideration to the ULCC in August of 2026.

It is useful to note that prior to the passage of the *Employment Rights Act* in the UK in 2025, the Equality and Human Rights Commission in the UK issued guidance for employers on the use of confidentiality agreements in discrimination cases in 2019.[43] The Solicitors Regulatory Authority issued a warning notice[44] about the improper use of NDAs in 2018, which applied to all NDAs regardless of context in which it arises. In Canada, the Canadian Bar Association (CBA) passed a resolution advocating for the proper use of NDAs and to prevent the misuse of NDAs in cases of abuse and harassment in 2023.[45] The CBA also produced a tip sheet on NDAs to assist lawyers in considering using or in negotiating an NDA.[46] Research is also now available that concludes that settlement rates are not affected by the

> “I felt as though the meetings I had with management and human resources was a dog and pony show to keep me from pursuing further action. There was no transparency for ‘privacy concerns’.
> –Survey respondent

[36] *Higher Education (Freedom of Speech) Act 2023 (UK)*, online: <https://www.legislation.gov.uk/ukpga/2023/16>; Employment Rights Act 2025 (UK), <https://www.legislation.gov.uk/ukpga/2025/36/contents>.

[37] *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024* (Ireland), 2024/37, online: <https://www.irishstatutebook.ie/eli/2024/act/37/enacted/en/html>.

[38] *Restricting Non-disclosure Agreements (Sexual Harassment at Work) Act 2025* (Vic), 2025/51, online (pdf): <https://content.legislation.vic.gov.au/sites/default/files/2025-12/25-051aa-authorised.pdf>.

[39] “US Legislation”, online: *Can’t Buy My Silence* <https://www.cantbuymysilence.com/us-legislation> [https://web.archive.org/web/20260513225108/https://www.cantbuymysilence.com/us-legislation].

[40] *Non-disclosure Agreements Act*, RSPEI 1988, c N-3.02.

[41] *Strengthening Post-secondary Institutions and Students Act*, SO 2022, c 22.

[42] “Non-disclosure Agreements (NDAs) Progress Report of the Working Group” (2023), Uniform Law Conference of Canada; “Non-disclosure Agreements (NDAs) Second Policy Report of the Working Group” (2024), Uniform Law Conference of Canada; “Non-disclosure Agreements (NDAs), Third Policy Report” (2025), Uniform Law Conference of Canada.

[43] UK, Equality and Human Rights Commission, *The use of confidentiality agreements in discrimination cases* (Guidance) (London: Equality and Human Rights Commission, October 2019), online (pdf): <www.equalityhumanrights.com> [https://web.archive.org/web/20260526214653/https://www.equalityhumanrights.com/sites/default/files/guidance-confidentiality-agreements-in-discrimination-cases.pdf].

[44] UK, Solicitors Regulation Authority, *Use of Non-disclosure Agreements (NDAs)* (Warning Notice) (London: Solicitors Regulation Authority, 6 August 2024), online: <www.sra.org.uk>, [https://web.archive.org/web/20260526215016/https://www.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/].

[45] “Resolution 23-05-A: Principles to Prevent Misuse of Non-Disclosure Agreements in Cases of Abuse and Harassment” (9 February 2023), online (pdf): CBA <www.cba.org> [https://web.archive.org/web/20260513220849/https://www.cba.org/getmedia/e0489900-8e50-4c2c-8eee-3f229f618836/23-05-A.pdf].

[46] “Non-Disclosure Agreement (NDA) CBA Tip Sheet” (10 March 2026), online: CBA <www.cba.org> [https://web.archive.org/web/20260513220417/https://cba.org/Sections/Dispute-Resolution/Resources/Non-Disclosure-Agreement-NDA-CBA-Tip-Sheet].

introduction of restrictions on the use of NDAs, which has been often raised as a concern regarding restricting the use of NDAs.[47]

Speak Out Project Findings

In reviewing the project results, it is important to acknowledge that people identify behaviours and experiences differently depending on their intersectional realities. For example, research shows that white, cis-women are more likely than racialized and 2SLGBTQIA+ women to identify their experience as aligning with legally defined and policy descriptions of sexual harassment.[48] Workshops discussions helped inform the project team and suggested that some participants in the workshops and surveys who reported that they had not experienced GBV in the workplace may actually have experienced it. These individuals may not have identified with our definitions or may have felt uncomfortable disclosing GBV, despite the protections afforded by anonymity.

[47] In David Engstrom et al, "Shedding Light on Secret Settlements: An Empirical Study of California's STAND Act" (2025) 92:1 U Chicago L Rev, more than a quarter million case filings for Los Angeles County Superior Court were reviewed. Engstrom concluded there was neither a sharp increase or decrease in case filings, nor a prolongation of cases or increase in intensity, in cases still settled without secrecy. There was also no evidence that settlement amounts were decreased.

Blair D. Bullock & Joni Hersch, "The Impact of Banning Confidential Settlements on Discrimination Dispute Resolution" (2024) 77:1 Vand L Rev 51, DOI: https://doi.org/10.2139/ssrn.4562380. Bullock analyzed cases in U.S. federal court and arbitration, and compared data from New Mexico, which enacted NDA legislation, to neighbouring states which did not have legislation. She found that settlement NDA bans increased filing of allegations of employment discrimination in U.S. federal court, but there was a small decrease in settlement at the court and in arbitration. Bullock concludes that there may be an increase in deterrence resulting from the legislation but the decrease in settlement may weaken the deterrence value.

[48] Sandy Welsh et al, "'I'm Not Thinking of It as Sexual Harassment': Understanding Harassment across Race and Citizenship" (2006) 20:1 Gender & Society 87.

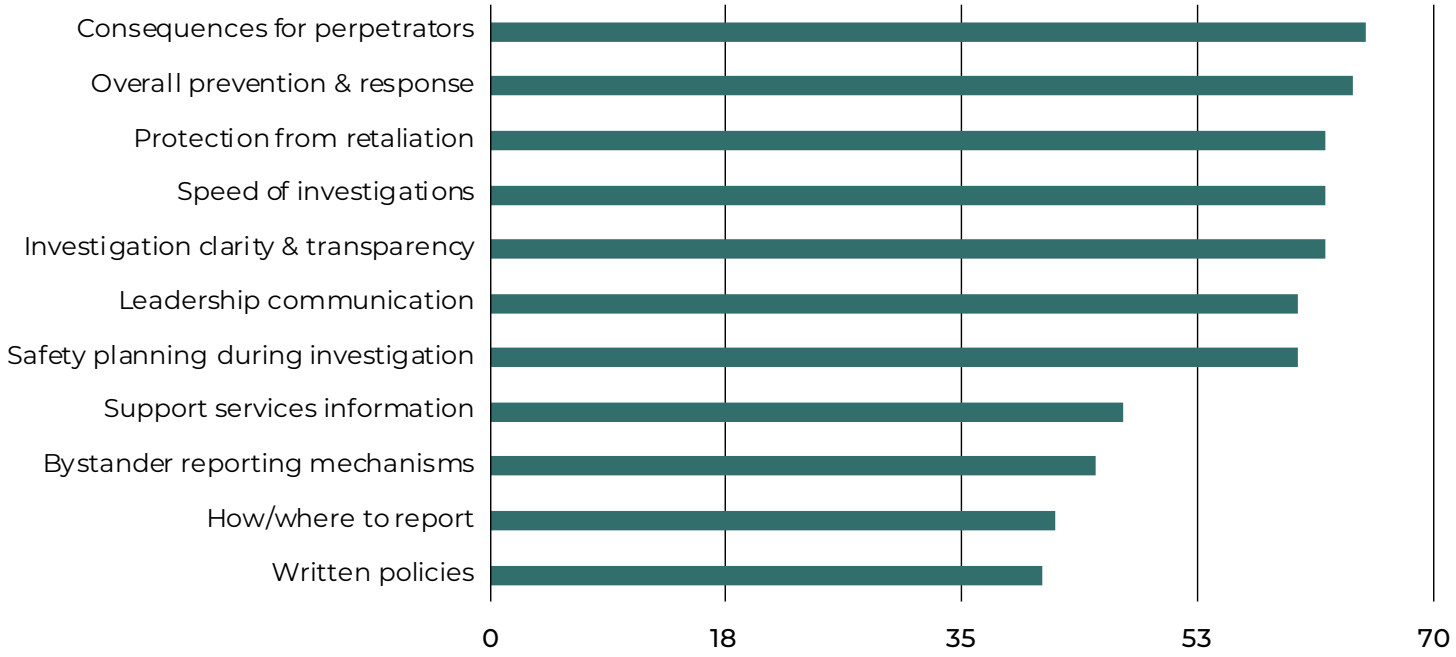

Figure 2. Number of all 339 survey respondents who rated policies and practices as "very unhelpful"

1. Effectiveness of internal policies and processes findings

Survey respondents who had experienced GBV in the workplace described internal processes, policies, and practices intended to address the issue as unhelpful, singling out the lack of consequences for perpetrators. The people who put the policies into practice did not always do so effectively, which meant there were few or no consequences for perpetrators. As the secondary research outlined in the section Overview of Gender-Based Violence describes, common anti-harassment policies do not seem to be having an impact on lessening the incidences of GBV in workplaces in Canada.[49]

Participants who had not experienced GBV in the workplace were more likely than those who had to think that policies and procedures of employers were helpful. Those who had experienced GBV cited the impact of how these were applied as problematic and sometimes highly traumatic. Most of them expressed a lack of trust in the investigations and a strong sense that human resource staff, managers, and internal investigators are highly biased.

Comments and open-ended responses suggest that internal investigators may be more focused on protecting and serving the employer's interests rather than seeking either the truth or the safety of employees. Figure 2 shows the degree to which all survey respondents rated written policies and procedures as very unhelpful.

Survey respondents were invited to share how helpful they found various possible practices, processes, or policies. They could choose: very unhelpful, somewhat unhelpful, neither, somewhat helpful, or very helpful. They were offered these employer characteristics, responses, or policies:

[49] For example see McKay et al, *supra* note 5 and other cited research.

- Written policies
- Information on how and where to report GBV
- Ways for witnesses and bystanders to report GBV
- Investigation steps were clear and process was transparent
- Safety planning during investigation
- Speed of concluding investigations
- Ways of dealing with retaliation for making a complaint
- Consequences for people who engaged in GBV
- Communication from leadership about GBV prevention
- Information on available support services
- Diversity in the organization
- Overall prevention of and response to GBV

When we disaggregated the assessment of policies and practices according to whether the respondent had experienced GBV or not, some differences emerged. (See Figure 3.) In the table below, we have shared the most helpful and most unhelpful policies and practices according to the survey respondents' experience of GBV. They are listed according to the number of survey respondents who chose them.

Top 5 *most* ***helpful*** aspects of internal policies and practices according to those who had experienced GBV	Top 5 *most* ***helpful*** aspects of internal policies and practices according to those who had not experienced GBV
Leadership communication	Speed of investigations
Diversity in the organization	Consequences for perpetrators
Support services information	Overall prevention and response
Written policies	Bystander training
Protection from retaliation	Protection from retaliation
Top 5 most ***unhelpful*** aspects of internal policies and practices according to those who had experienced GBV	Top 5 *most* ***unhelpful*** aspects of internal policies and practices according to those who had not experienced GBV
Consequences for perpetrators	Leadership communication
Investigation clarity and transparency	Diversity in organization
Overall prevention and response	Written policies
Speed of investigation	How/where to report
Safety planning during an investigation	Safety planning during investigation

Figure 3. Most helpful and most unhelpful workplace policies and practices separated according to experience of GBV.

> Nora sees a challenge with potential employers and being a "fit" as a result of the confidentiality agreement because she never felt free to explain to people why she asks about sexual harassment policies. She has not felt free to tell her story to potential and current employers.
> –Nora

What this comparison illuminates is that what someone may think is helpful is informed by whether or not they have experienced GBV. For example, if a person has not experienced GBV, they seem to underestimate the importance of leadership communication and diversity in the organization. While we should not generalize too much from these results, they point to the value of consulting people with lived experience when evaluating and designing systems to address GBV. Providing parties to an investigation an opportunity to provide feedback on the process and then meaningfully improving it as a result is one way to make the experience of reporting workplace less traumatic.

These findings show that those who have experienced GBV in the workplace and those who haven't have almost opposite ideas about what makes for a better process for handling GBV in the workplace depending on whether the respondent has experienced GBV or not. Acknowledging the importance of lived experience will help us understand the key elements needed to create safer workplaces and more effective processes.

Understanding the impact of internal processes on those that have experienced GBV was also explored through the case studies. Nora's case study is an illustration of this and the problems in overall prevention and response. In her case, the speed of the investigation was not a problem as the HR manager acted quickly. However, Nora felt the process was opaque, resulting in the HR manager deciding to accept the response of the person most senior to her. It felt unfair and unjust, especially since Nora's career was and still is seriously disrupted by the experience, whereas the perpetrator seemed to have experienced no fallout at all. From the communications she had, the investigation consisted of the HR person interviewing her and the perpetrator, and then simply choosing to believe the perpetrator's explanation of the interaction over Nora's.

Nora felt the process ought to have included interviewing witnesses (like the person who drove her home from the site where the incident happened), clarifying when the confidentiality commitment ended, and communicating how they would address the imbalances

> I was the first of five people to come forward about harassment from a senior manager. The organization chose to silence all the survivors with NDAs and protect the perpetrator. They adopted policies that complied with the law, but did not follow them, and WorkSafeBC has no power beyond requiring that the policies exist.
> –Survey respondent

> GBV, harassment, intimidation, discrimination cannot be understood in isolation. Intersectionality is at play here. Look in statistics who are usually reporting GBV, what is their intersectionality of identity ... Important to consider intersectionality, [be]cause this does not happen in isolation.
> –Workshop participant

of power inherent in the roles held by the investigator, the complainant, and the person she names as the perpetrator.

In another case study example, Shahnaz describes the experience of someone in a male-dominated workplace. Despite the company promoting itself as inclusive and having zero-tolerance for harassment, including gender-based harassment, the culture resulted in the processes being virtually irrelevant. In her case, the perpetrator seems to have filed a complaint against her shortly after the rather egregious sexual harassment incident that was witnessed by others. The system the company put in place did not, certainly in Shahnaz's case, stop the harassment or prevent future harassment.

A human rights tribunal found gender discrimination in her case, but Shahnaz never found out if anything changed. She recommends processes that are evaluated in light of both practice and public statement of values.

2. Common themes that emerged from the survey responses

Common themes about the limitations of internal policies and practices emerged from all the survey responses. (Note: these are presented in order according to how often they were mentioned by survey respondents):

Retaliation: Several respondents noted that reporting GBV led to direct or indirect punishment of the complainant that was often more damaging than the original complaint process. For example:

- Being fired or pushed out
- Non-renewal of their contract
- Exclusion or isolation by leadership or other employees
- Reputational damage.

Victim-blaming and victimization: Survey respondents indicated that they felt the organization's approach was defensive and not complainant-centred. For example:

- They were accused of lying or misunderstanding events

> Every organization has written policies, but there is often no enforcement. Those who report mistreatment are frequently fired. Management may initiate bullying, subject the target to excessive monitoring and micromanagement, and ultimately force them out of the workplace.
> –Survey respondent

> In our First Nation we have situations where parents who are employed by an organization have children who also work at that job site, and the children are sexually harassed on the job. The parents get terminated for speaking out on the job because of the harm the child experienced.
> –Workshop participant

> Employers need to act quickly using trauma-informed communications and questioning, let the complainant know "we hear you, we are getting an investigator, what do you need to feel safe?"
> –Legal expert specializing in BC workplace investigations

- Complaints were framed as "interpersonal conflict" rather than violence
- The organization was focused on protecting its own reputation
- They felt pressured to sign NDAs.

Lack of accountability: Survey respondents believed that perpetrators faced no or very few consequences for their actions and that power dynamics overrode written policies. For example:

- Leadership protected their senior staff, through either formal or informal protection networks
- Perpetrators remained employed in the organization
- Social relations (for example, being friends with the boss) influenced the outcomes of investigations.

Power imbalance: Survey respondents described feeling powerless against the institutional hierarchy, particularly when GBV involved supervisors or authority figures. Respondents described:

- Sexual assault by supervisors
- HR departments siding with management/leadership
- General abuse of authority in the incident or the organizational response.

Enabling environment: Survey respondents described specific aspects of the organizational culture that allowed GBV to persist. For example:

- Toxic workplaces
- Culture of silence and intimidation
- High turnover
- Leadership bias
- Leadership prioritized protecting the organization's or perpetrator's reputation over safety.

Training: Bystander and prevention training was inadequate or not provided at all. Survey respondents noted a need for:

- Practical training on recognizing abuse, coercive control, and how to identify covert resistance

- Guidance for bystanders and witnesses on responding to disclosures.

Intersectionality and discrimination: Survey respondents described that GBV intersected with broader inequities. For example:

- Racial bias, including lack of support for Black employees

- Lack of cultural competency from leadership during the investigation

- Presence of gendered power dynamics.

Survey respondents who experienced GBV in the workplace described:

Implementation failures: Policies existed but were not applied consistently, were opaque, lacked timeliness, or were not complainant-centred.

Weak accountability: There was a lack of meaningful accountability, particularly for perpetrators.

Retaliation concerns and experiences: Many survey respondents who had experienced GBV noted that they experienced retaliation after making a complaint, or that they did not make a complaint because of their fear of retaliation.

Leadership and culture: Poor communications or a lack of timeliness in communications from leadership were singled out as particularly problematic.

The respondents' negative experience of policies and processes reflects the findings of Can't Buy My Silence. According to the international survey results of almost 7,000 respondents, 55% of respondents describe the experience of formal reporting made the situation much worse, 15% said it made it worse and only 3% reported that there was a full resolution of the issue.[50]

In our project survey, racialized respondents were more likely than others to report that the processes for holding perpetrators accountable were unequal or biased. 2SLGBTQIA+ respondents were more likely than others to report that consequences were inadequate when the perpetrator was a senior staff member.

The issue of retaliation was a common experience among respondents who had submitted a complaint, despite policies stating otherwise. They reported common experiences of career stagnation, loss of opportunities, hostility, and isolation. Community partners of CLAS and survey respondents describe temporary foreign workers as particularly vulnerable to retaliation given their precarious immigration status, which is often attached to their employer.

Most respondents highlighted the timeliness and opacity of the process as an issue with internal systems. One of the legal experts consulted near the

[50] "Speak Out Survey and Dashboard", online: "*Can't Buy My Silence*" <https://www.cantbuymysilence.com/speak-out-survey-and-dashboard>. Protection from retaliation is provided in human rights, see *Ms. K v Deep Creek Store and another*, 2021 BCHRT 158 and when reporting health and safety concerns: WorkSafeBC, Prohibited Action Complaints (Richmond: WSBC), online: <www.worksafebc.com> [https://web.archive.org/web/20260527212616/ https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints].

end of the Speak Out Project agreed[51] and explained that a good investigation process for everyone must make timeliness and communication the highest priorities.

The value and importance of a good internal process, according to this lawyer, is the capacity to be highly responsive. One of the benefits of pursuing an internal complaint rather than utilizing possible external remedies, such as a human rights complaint, is the ability for an employer to act quickly to ensure the safety and well-being of employees. For example, a human rights complaint can take years and may result in financial compensation but cannot do a simple thing like change the complainant's supervisor. Worker safety regulators expect people to utilize internal systems first, and delays on the employer's part will further delay those processes.

Another lawyer consulted, who works almost exclusively with employers[52], highlighted the importance of the policies and communications being very explicit about expectations. Project participants — both survey respondents and workshop participants — expressed a high level of frustration because of a lack of clarity about the process.

Helen's case study illustrates how damaging the lack of information can be for a complainant. In that case, the HR manager was so unclear that Helen thought she, herself was under disciplinary action and that she was a party in a court case. It increased Helen's stress, something she was not able to share with colleagues because she had been told not to discuss the case with anyone. As she struggled to understand what was happening and the employer did not provide safety from the perpetrator, Helen was off work for almost eight months.

In summary, the Speak Out data support the secondary research that GBV is still prevalent in workplaces where, more often than not, internal processes make the experience worse. It also tells us that people who have experienced GBV have different ideas about what is important in preventing and addressing GBV in the workplace.

3. Project participants' recommendations for policies and practices designed to address GBV in workplaces and other organizations

The survey respondents' recommendations can be summarized as follows:

1. **Independent or external reporting mechanisms:** Survey respondents frequently recommended third-party or external reporting channels so that complaints do not rely solely on internal processes and management.

    - Provide external whistleblower or reporting lines

    - Allow employees to report to independent investigators or regulators

[51] Legal Expert 1. Interviewed March 25, 2026.

[52] Legal Expert 2. Interviewed April 1, 2026.

- Create additional safe options when perpetrators are management or business owners.

Demographic patterns:

- Respondents making these recommendations often worked in small businesses or family-owned workplaces
- Many respondents who identify as women and work in male-dominated fields (policing, trades, etc.) made these recommendations.

2. **Stronger enforcement and accountability**: Survey respondents note that even where policies exist, enforcement is lacking.

- Ensure there are real consequences for perpetrators
- Terminate employees who are found responsible for GBV
- Prevent management/owners from ignoring or minimizing GBV complaints.

Demographic patterns:

- Respondents who identity as women and had experienced organizational tolerance of GBV were more likely to make these recommendations

However, overall, these recommendations were made across demographic categories, indicating systemic issues.

3. **Protection from retaliation:** Respondents emphasized that reporting GBV often led to the complainant, rather than the perpetrator, being punished.

> "There was no trauma-informed support, no investigation process that centered the safety of the victim, and no meaningful follow-up. The absence of a dedicated HR department only made things worse. Staff were expected to report serious incidents to supervisors who weren't trained in handling disclosures, and in some cases, had their own histories of inappropriate conduct.
> –Survey respondent

- Stronger protections against dismissal, forced resignations, workplace bullying, and retaliation for complainants.

Demographic patterns:

- Respondents who identify as women were more likely to express fear of retaliation after reporting GBV.

4. **Gender equity and diversity:** Representation in leadership and management was identified as an important structural solution.

- Increase the number of women in management roles
- Improve gender and racial diversity in leadership positions
- Ensure decision-makers understand gender-based discrimination, including intersectional discrimination.

Demographic patterns:

- Women and non-binary people working in male-dominated workplaces emphasized this issue
- Racialized respondents were more likely to recommend the need for more workforce diversity.

5. **Clarity of procedures and guidance:** Some respondents emphasized the need for clearer processes and guidance for employers.

    - Policies should clearly outline investigation steps, response procedures, and supportive resources for complainants.

Demographic patterns:

- No clear demographic patterns emerged in this recommendation.

As described above, the survey responses, lawyer interviews, workshop discussions and the findings from the Speak Out Project's secondary research indicate that complainants who experienced GBV in the workplace feel that reporting their experience made things worse.

When survey respondents who experienced GBV were asked which policies were helpful or unhelpful, the results were clear. For them, it is not about written policies, and the impact of speaking up usually compounds the negative impacts of GBV. These respondents suggest that employers should focus on:

- Organizational culture
- Training managers and leaders on complainant-centred responses
- Improving communications about and during investigations
- Strengthening organizational diversity as a representation of the organization's commitment to equity, decolonization, and other values expressed in the policies and procedures.

The legal experts and lawyers surveyed raised the importance of trauma-informed approaches, particularly the importance of:

- Clearly setting out the scope, and limitations of the process
- Timely and clear communications
- Avoiding falling into the trap of he said/she said mentalities.

Community survey respondents, whether they reported their experience to their employer or not, agreed that the need for independent investigations and leadership accountability for dismissing or minimizing complaints were very important elements of helpful approaches. They also talked about needing much better ways of addressing the consequences for perpetrators. As the case studies illustrate, a common experience of complainants is that there are no, or very limited, consequences for those who found to engage in gender-based harassment and violence.

On the other hand, the lawyers' survey results and the expert lawyers consulted raise the privacy challenge — that employers are bound by law to maintain the privacy of employees. Lawyers are

often clear about how the nuances apply, but employers, usually through HR managers, have trouble finding the balance. In addition, employees are often unaware of employer obligations around privacy and feel confused and frustrated about the information shared and not shared.

Helen's case study helps illustrate the tensions between the recommendations of survey respondents and the considerations of lawyers when they look at a case. In practice, it is often a manager trying to apply the principles. One HR manager might think they are applying the law by not sharing any information about the perpetrator, even if some information might help the complainant feel safer.

In Helen's case, the perpetrator was on leave when the incidents happened, meaning they did not have access to keys and passcodes. However, since the HR manager was trained to maintain the privacy of employees, they did not tell Helen that. In fact, they chose to tell her very little about the situation of what the employer was doing. Helen would have felt much safer and the entire experience might have been very different if some of that information had been shared. When a new HR manager was appointed, they interpreted the privacy question very differently and shared more information with Helen, transforming her feelings about her own safety. In that case study, no one was denying that the perpetrator's behaviour was wrong and frightening. The failures were: not taking a complainant-centred approach; failing to consider the significant impact the perpetrator's behaviour had on Helen's sense of safety; and not inquiring with Helen whether she had concerns in the workplace that needed to be accommodated.

Helen describes that she was forced into a confusing process that escalated her fear, resulting in her having to refuse work shifts for almost seven months. She described the internal process of her employer as:

- disempowering,
- lengthy,
- adversarial,
- isolating,
- unhelpful,
- unsupportive,
- burdensome for the employee, and
- misleading.

The two most common points consulted and surveyed lawyers made was that confidentiality is vital during an investigation and that assumptions about the perpetrator's responsibility should not be made until the investigation is completed. However, in Helen's case no one explained to her if she was part of an official investigation. In fact, the communications to her made her think a disciplinary complaint had been filed against her and that there was a court case involving her. Her colleagues and the HR Manager all acknowledged the perpetrator was engaged in harmful behaviour.

Shahnaz's case study illustrates how harmful it can be when an employer

represents itself as a safe and inclusive workplace, but a male-dominated culture undermines the benefit (if it existed) of written statements and policies that were intended to ensure a safe and inclusive workplace. Shahnaz reported her experience of sexual harassment, but the behaviour of colleagues in response to her complaint was humiliating, confusing, and frightening. The investigation took five months, and, despite witnesses to the sexual harassment, ended in a report claiming that Shahnaz started the inappropriate conversation. Immediately after the incident, the perpetrator triggered a performance review action against her and colleagues began a process of toxic bullying and behaviour aimed at her.

In the end, Shahnaz filed a human rights complaint, and the Alberta Human Rights Tribunal found that gender discrimination had occurred. However, they also found that the internal processes and the settlement offer the employer made were sufficient and she should have accepted it. Shahnaz chose not to accept it because it came with the requirement to sign an NDA.

A common tool in most internal organizational policies and procedures is training. Research shows that training is an important aspect of addressing GBV in the workplace. However, Speak Out participants recommended a shift in the focus of training, and a need to enforce the training. According to participants in the survey and workshops, workplace GBV training should be:

- Regular and reinforced in the goals and evaluation of supervisors
- About ethical, complainant-centred management and how to respond to complaints effectively
- Creating knowledge among all employees about the ways to talk about GBV violence and sexual harassment
- Skills development in communications.

The results strongly suggest that communications training may be more important than how policies are drafted.

Another common refrain in the survey results and research is the importance of representation in leadership — having members of historically marginalized groups in management and leadership roles. Workshop participants and survey respondents described this as building a culture of trust and inclusion. Not only does it signal that upper management may have some insights into power dynamics, but it suggests that the employer is not just performative in its stated commitment to things such as truth and reconciliation, gender equity, and supporting people with disabilities.

Many participants also recommended having external ways to report experiencing GBV, to entirely avoid internal culture and hierarchy issues. They mirrored the findings of the Workman et al study referenced earlier in the report — that the manager's ethics and integrity are key elements of a successful employer response. All of this leads to the recommendations that employers and organizations focus on culture over attempting to identify the perfect policies.

There was strong convergence between those respondents who reported GBV

Survey respondents described feeling confused, isolated, and silenced by the use of NDAs.

"I had to sign to leave. I know now that NDAs don't protect illegal activity, but I was very young at the time. I lived in constant fear. I couldn't'eat, sleep, I lost my sanity for months and started abusing substances and drinking to try to forget."

"I was let go after reaching a level of burn out where my depression was debilitating and I asked for help and was let go. I was asked to sign an NDA in exchange for a buyout I couldn't say no to."

"It [an NDA] protects the bully from accountability, an abuse of power, defamation of character to the abused."

"I felt that if I didn't sign, I would have to go to the tribunal, and that was something I didn't want hanging over me for the next few years. I'd heard stories about folks winning, but at the cost of the families and mental health."

"He was allowed to read everything we wrote — we were not allowed copies of what he said. I was told I could talk to a spouse — I don't have one. I did nothing wrong — and yet threatened by the [employer] with firing and a lawsuit if I talked about my harassment/assault. I am still under threat."

"The NDA made me feel more ashamed about my situation. The NDA was used to silence me. The organization retaliated after dealing with my human rights complaint (which is illegal), but I felt helpless because there was an NDA. I never talked to friends and family for the next 5–6 years because of my fear of the NDA."

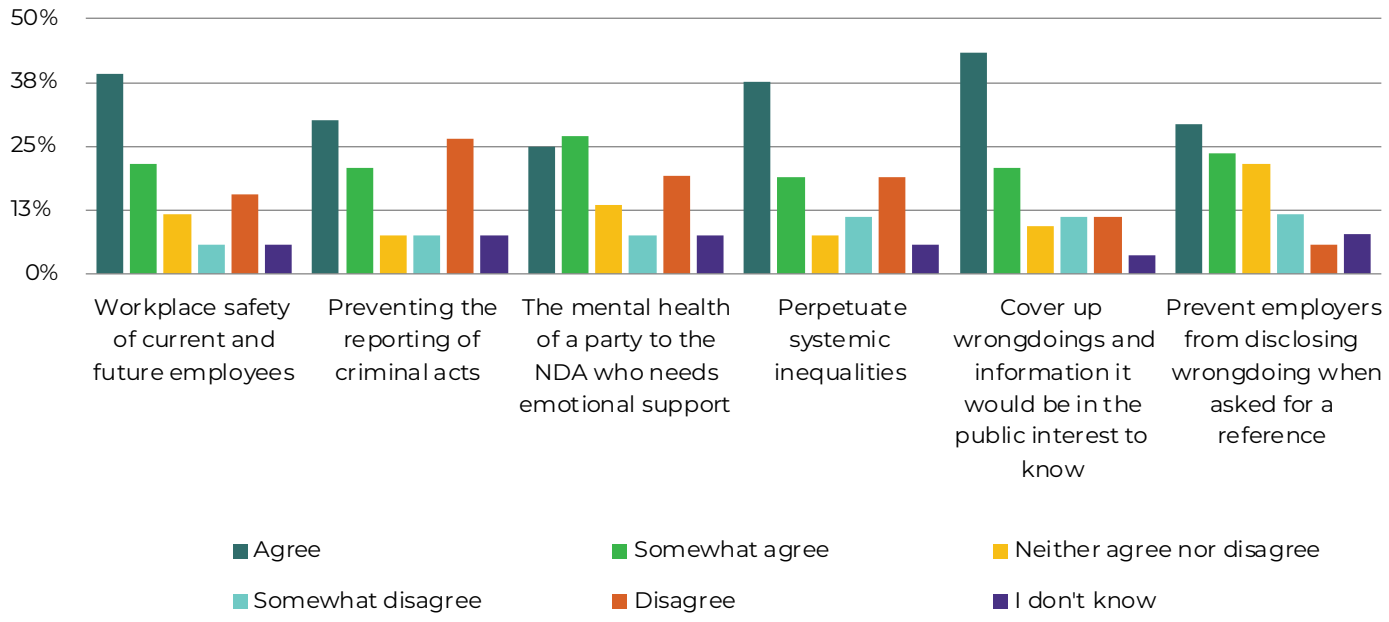

Figure 4: Level of agreement of respondents to the lawyer survey on concerns about the impacts of NDAs

and those who did not on the following recommendations:

- The need for an independent and/or external reporting and investigation processes
- The need for meaningful consequences for perpetrators
- The importance of leadership accountability, especially not to minimize or dismiss claims of GBV

4. The impacts of signing an NDA

Findings from both the existing research and this project's research indicate that NDAs in cases of workplace GBV have a very negative impact on most complainants. The public dialogue arising from the #MeToo movement, and the uncovering of the impact of silencing people who have experienced GBV through the use of NDAs over the past decade, are mirrored in this project's findings.

Respondents reported the following common impacts of signing an NDA:

- **Negative health impacts:** Including depression, anxiety, trauma, and negative self-esteem due to being unable to speak about what happened.
- **Lack of accountability:** Employers, perpetrators, or both were not held accountable for their actions.
- **Others are harmed:** The conditions of the NDA prohibit respondents from warning others, potentially putting them at risk of harm.
- **Unexplained departure:** Survey respondents could not explain their departure to others, particularly potential future employers.
- **Lack of choice:** Survey respondents felt they had no choice when they signed the NDA.

- **Reduced awareness:** Survey respondents felt that signing an NDA contributed to overall lack of public and government awareness of GBV because it prevented them from discussing their experience.

- **Damaged work relationships:** Survey respondents felt that their work relationships were harmed because they could not speak frankly.

In the lawyers' survey, respondents were presented with common negative impacts NDAs have had on those who have experienced GBV that the project team had already identified through the secondary research. Half of all the responding lawyers, regardless of their area of practice, stated they had often (20%) or occasionally (30%) seen these impacts on clients, and 10% said they had seen them at least once. A total of 43% of lawyers who responded to the survey agreed that the use of NDAs in the context of GBV undermines the public interest in effectively addressing gender-based discrimination and violence in workplaces (see Figure 4). In their open-ended comments, respondents agreed that these impacts were more serious if the NDAs are written unclearly or too broadly. The legal experts emphasized that in their own practice when a party wants an NDA clause, they advise both employers and employees to have an NDA that provides concrete boundaries and clarity as to any exemptions or allowed disclosures.

The case studies support these findings. Esther signed an NDA, and Nora and Helen were directed to keep information about their experience confidential. All three described the need for ongoing counselling, although they hesitated to seek it out because they were not sure if it was allowed. Helen and Esther described experiencing a lot of confusion and stress about the role of the police in the incidents, if any, whether to report their experience, and what the implications of reporting might be.

> "I compartmentalized and dissociated just to survive. I tried to continue with my life and act cheerful. But none of this means I ever consented to anything. [name redacted] took advantage of me. [name redacted] hurt me. And he knew he was getting away with it. As my former teacher, a father of two, and my superior at work, he had the responsibility to be better, and he abused that power...It felt like my world shattered.
> –Esther

Esther reported her sexual assault to the police five years after the event because no one at the time, including her lawyer, told her that she could or should. When she met with her former employer to discuss the rumours that were circulating — that she and the perpetrator had a consensual affair and were both fired as a result — the VSO board told her to withdraw her police report or they would refuse to investigate further. They told her that a police report was a breach of the NDA she signed.

Esther explained that both the NDA and the GBV she experienced impacted her husband and family, and she described the stress it caused them learning about and trying to help her address the outcomes. She also described how it felt to watch the perpetrator continue his

work with other young musicians and not being able to say anything to another employer they had in common because of the NDA. Her own safety and fear led her to withdraw from that employer so she would not have to work with the perpetrator and witness his interactions with others.

Despite years of success and commitment to music, the impact of the NDA was that she left the profession and her music completely and pursued a different career. Eventually, she returned to a career as a professional musician — something more possible and rewarding once she chose to break her NDA.

In Helen's case, the confidentiality directive and the withholding of information was unquestionably about protecting the perpetrator, not protecting Helen's safety. Despite the agreement from her supervisor and her employer that his behaviour was inappropriate and threatening, for almost a year they left her to protect herself rather than share information about the perpetrator's access, or lack of access, to her workplace. Helen ended up not working, refusing unsafe work according to her right in the collective agreement, for approximately seven months. She found herself changing patterns of behaviour in her community to avoid him and was provided with information she was expected to act on alone to keep safe, like calling the police if he threatened her and pursuing restraining orders.

5. Respondents' and participants' recommendations regarding possible regulation of the use of NDAs in cases of GBV

This project's findings support other research about the negative impacts of the use of NDAs in cases of GBV. Together they suggest that most people, including lawyers, believe that the use of NDAs should be tightly limited in such situations, if not banned outright. The majority of community members in focus group workshops and survey respondents were very clear that legislative regulation is needed, whereas lawyers are mixed. In fact, the majority of respondents to the survey and participants in focus group workshops felt a total ban on the use of NDAs in cases of sexual misconduct is appropriate.

Project participants (survey respondents and workshop participants) were presented with a list of proposed regulations for the use of NDAs and asked to share their level of agreement with each. The complete list of proposed regulations was based on Prince Edward Island's *Non-disclosure Agreements Act* and reforms being considered by the Uniform Law Conference of Canada's Working Group on NDAs. The community survey is shared in Appendix 2. There are some nuances between the surveys and the workshops — to which all project participants mostly agreed.

The two proposed regulations that the community survey respondents and the workshop participants strongly supported were:

- A complete prohibition of the use of NDAs in any situation that involved GBV, harassment or discrimination
- The establishment of clear and enforceable GBV-centred safeguards if an NDA is used.

Those who have experienced GBV supported many of the proposed regulations at a higher level than all project participants. For example, more than 95% of the respondents to the community survey who had experienced GBV, somewhat or strongly agreed with these statements:

1. NDAs should not be allowed in any situation involving GBV, harassment, or discrimination.

2. There should be penalties for employers/organizations who use NDAs when they are not allowed.

3. NDAs should be allowed only if they do not limit the complainant's ability to talk to certain people (lawyers, doctors, counsellors, family etc.).

4. More public education is needed about the impacts of NDAs on the people who sign them. The following lists the top five proposed regulations most highly supported by community survey respondents who had experienced GBV. They are listed starting with the most supported regulations:

1. More public education about the impacts and implications of NDAs

- 2SLGBTQIA+ people and respondents with disabilities indicated the highest agreement with the need for additional public education

- Older respondents (40-55) indicated were more likely (but lower than the above demographic groups) to identify the importance of education and public awareness.

2. Penalties for employers that use NDAs illegally (if they are regulated)

- Indigenous respondents and respondents with disabilities both showed strong support for this recommendation.

3. An NDA should be invalid if a complainant was pressured, coerced, or misled into signing it

- Women, non-binary people, and trans people showed the strongest support for this recommendation

- Indigenous people and people with disabilities also indicated strong support for this recommendation.

4. Publicly funded organizations should not be allowed to use NDAs in situations that involved GBV

- Younger respondents (<35) demonstrated the highest support for this recommendation

- Women and Indigenous people showed strong support for this recommendation.

5. NDAs should not be allowed in situations involving GBV, harassment, or discrimination

- Women, non-binary people, and trans people indicated the strongest support for this recommendation

- Younger respondents (<35) and 2SLGBTQIA+ people demonstrated higher agreement (but slightly lower than the above demographic groups) with banning NDAs in situations involving GBV, harassment, or discrimination.

Some of the verbatim comments in the survey or at workshops were:

"Any desire by an employer or any organization to have a victim agree to sign a NDA should only be allowed when an independent 3rd party is satisfied that the victim has received sufficient legal and psychological support. In my case I was not emotionally strong enough to fight for myself and feel that if I was given more expert advice and more time to heal first, I would have been in a better position to gain a better result — not just for myself but future victims."

"I wonder if the person who abused me would have paid the settlement without an NDA? I think he would have negotiated more vigorously, and the settlement would have been smaller, or more likely he might have opted to go to court. NDAs are terrible, but the drive to remove them must not backfire."

"Overall, they (NDAs) are harmful to victims. They allow people to buy their way out of violating human rights. Human rights should not be for sale! Vile behaviour should be showcased so the public knows whose businesses they are supporting and so they can protect others from experiencing the same trauma."

"I don't think NDAs should protect the perpetrators and should only protect the employers if the employer took proper steps to ensure the perpetrators are punished (i.e. dismissed), and the victims are compensated plus provided all necessary supports at the expense of the employer."

"Continuing colonial structures!!!!! Just a formal way of muzzling BIPOC and women and giving them money but letting the people who harmed them have no or minimal consequences. Out with the NDAs!!!"

"If NDAs are in place, a signer should always be allowed to speak with medical and mental health practitioners about the related details without penalty. NDAs typically benefit the party in a position of power, causing further harm to people who agree to them, particularly in GBV and discrimination situations."

At the focus group workshops, participants spent more time discussing the options with each other and workshop leaders. They had an opportunity to explain why they agreed or disagreed with something. Note that some people disagreed with all the proposed regulations on the basis that they felt NDAs ought to be entirely banned in cases of GBV. Below are the proposed regulations in order of most agreed with at the workshops (the percentage of agreement appears in parentheses at the end of each):

a) NDAs should not be allowed if the party offering the NDA pressured, coerced, or misled the complainant to sign. (100%)

b) NDAs should not be allowed in any situation of GBV, harassment, or discrimination. (88%)

c) NDAs should be allowed, but only with wording that makes clear the complainant can still report to police or other authorities including under whistleblower laws. (86%)

d) NDAs should not be allowed if they include a requirement to pay back settlement money or other financial penalties for speaking. (86%)

e) NDAs should be allowed, but only if the complainant gets meaningful legal advice — including on alternatives to an NDA. (80%)

f) NDAs should be allowed, but only if they do not limit the complainant's ability to talk to certain people (doctors, lawyers, counsellors, close family members, spiritual advisers, etc.) (77%)

g) NDAs should be allowed, but with a cooling off period (such as two weeks) for complainants to change their mind after signing. (73%)

h) NDAs should be allowed, but only with a mandatory time limit and after that the complainant can speak freely. (71%)

i) NDAs should be allowed, but only if the complainant expresses a clear preference for this. (70%)

j) NDAs should be allowed, but only if there is no risk to the health or safety of any third party. (52%)

k) NDAs should be allowed but only if confidentiality applies to the complainant, the employer, and the harasser. (36%)

l) NDAs should be allowed without any limits — no need to change the law. (0.008 %)

6. Lawyer survey and consultations findings

In terms of the feedback from lawyers in this project, whether through the survey or interviews, lawyers were less supportive of legislated regulation than community participants (see most supported regulations below). Most agreed with the negative impacts NDAs usually have for people who have experienced GBV, with more than 70% agreeing or somewhat agreeing with the concern that misuse of NDAs could result in wrongdoings being covered up that are in the public's interest to know. Figure 4 above shows that although the responding lawyers had mixed opinions about the concerns that have been raised

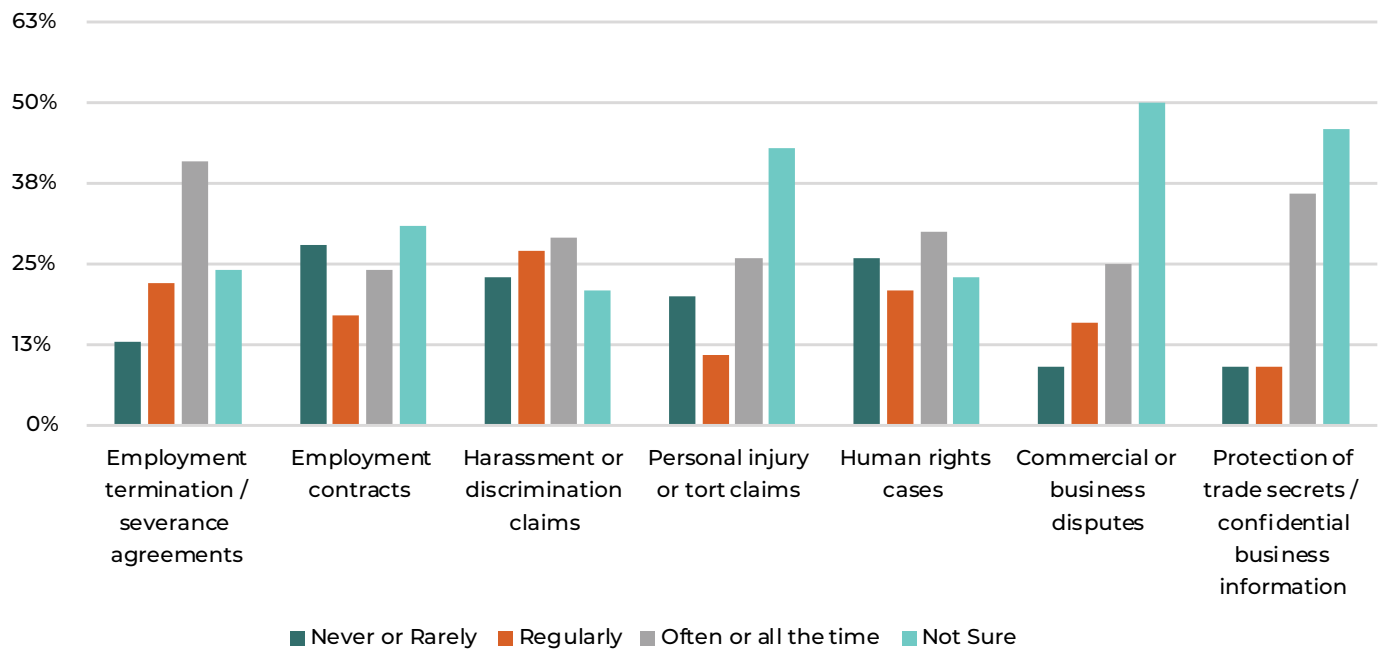

Figure 5: How often respondents to the lawyer's survey advise clients to accept an NDA by type of case

about the use and misuse of NDAs, the majority agree with them.

The results also suggest that for many lawyers, the use of NDAs is common practice. As Figure 5 shows, lawyers surveyed often advise clients to accept NDAs. The survey question was not specific to situations of GBV, and it also reflects which areas of law respondents practice (i.e. the high "not sure" responses to the use in commercial disputes reflects the fact that most respondents practice employment and human rights law). This tells us that NDAs commonly (i.e. regularly, often, or always) appear in cases of employment terminations, harassment and discrimination cases, and human rights law — all places where GBV in the workplace legal remedies arise.

In their comments, a number of lawyers who responded that they somewhat agreed with common concerns about the use of NDAs in cases of GBV rather than agreed, qualified their response in open-ended comments as concern for the complainant's privacy. They noted that the complainant's need for privacy could outweigh the public interest to know about the perpetrator's behaviour.

> "NDAs are suffocating. Carefully crafted confidentiality clauses can protect a victim/survivor and actually be empowering. Counsel should consider every case on its own merits. What is appropriate in one case may not be appropriate in another. Counsel should be alive to the misuses of NDAs/confidentiality clauses, and should always be prepared to advocate on behalf of the survivor/victim.
> –Lawyer survey respondent

> I am concerned about the chilling effect on free speech and public accountability, particularly in cases involving sexual harassment, systemic discrimination, or corporate misconduct. While NDAs serve a legitimate purpose in protecting trade secrets and sensitive commercial information, they are often overused to silence whistleblowers and suppress information that is critical to public safety and ethical governance. There is a need for clearer regulatory limits on the scope and enforceability of NDAs, especially in cases involving human rights and criminal conduct.
> –Lawyer survey respondent, 20+ years in practice

> In some cases, the threat of public disclosure, rather than legal proceedings, is the most leverage that an employee has to achieve any kind of acknowledgment or compensation from the employer. I do not want to see complainants lose one of the tools they have available to them. The BC Human Rights Tribunal is currently borderline dysfunctional with massive backlogs and cases not being even accepted for filing within even the first year post filing. Until the Human Rights Tribunal is fixed in some way, complainants should not have a potential tool in achieving settlement of their claims taken away.
> –Lawyer survey respondent

In addition to how NDAs are currently used, lawyers were shown a summary version of the proposed NDA regulations that were used in the workshops and the community survey. Lawyers responded most positively to a version of 'e' above on page 49: approving regulations that would require both parties receive independent legal advice (77%). A total of 69% agreed or somewhat agreed with a version of 'c' above, that NDAs should be allowed where clear exemptions are set out in regulations.

7. Legal advice and advocacy supports findings

Many survey respondents and focus group participants raised concerns about the need to rely on independent legal advice as a protection against the negative impacts of NDAs. They expressed concern about access to lawyers both because of the costs, which are prohibitive for many people, and the lack of lawyers who are trauma-informed and/or understand the experience. Another factor that makes engaging with lawyers difficult seems to be the internal processes and the nature of the information complainants receive from their employer. It is often unclear whether or when it may be appropriate or allowed for the parties to seek independent legal advice.

The case studies suggest that even the employer representatives engaged in responding to the complaint are not sure when to engage a lawyer and/or call in the union if one is present in the workplace. Where a union is present, the complainant may not be informed about

when to reach out to the union. According to the community survey, case studies, and the workshop participants, union representatives may not know what to do and when legal representation may be needed. Added to these findings, the Western/CLC Respect at Work study found that those who experience GBV find the unions as challenging as their employer in negatively impacting their experience.

Helen shares in her case study that she was left feeling confused and unsure about her rights for about a year. The union representative helped her understand her right to refuse unsafe work, but the employer was adamant that she could not talk to anyone about her experience. At no point did she get legal advice, in part because she did not know it was an option.

Shahnaz would likely have benefited a great deal from early legal advice because the human rights complaint she filed was dismissed, despite a finding of discrimination. The Human Rights Tribunal seemed to determine the settlement issue was about money, but for Shahnaz, it was about the NDA. A lawyer might have helped her understand the importance of the NDA as a material term and the tribunal would have had to consider it in making its decision.

Esther and her family paid for independent legal advice, but the settlement she was offered did not include any contribution to those costs. Her lawyer advised her to sign off on the NDA that was part of the settlement, or the perpetrator would not be fired. Esther had focused on that particular remedy so that she would feel safe to go back to work. However, in the end, the employer stopped calling her in for work.

Conclusion

Through this project, CLAS seeks to address barriers to women's success that weaken women's economic security and prosperity, including the ways harassment and discrimination continue to impact women's leadership opportunities. Our research shows that the impact of internal policies and processes that employers use to address GBV in the workplace are a continued barrier for women and gender-diverse people. It also became increasingly clear that the use and misuse of NDAs is not only a central and pernicious barrier in both understanding the scope and nature of workplace GBV, but also in extending and creating new barriers to women and gender-diverse people's economic security and leadership.

This report shows that internal processes and workplace safety regulations are not addressing the extent and impact of GBV in the workplace. A key finding is the importance of creating systems and responses designed in consultation and reference to the experiences of those who have navigated workplace GBV.

The findings from the community consultation and research show that confidentiality requirements and settlement agreements that include NDAs are widely used in cases of GBV and that the community, including the legal community, supports government regulation. Until this is done, workplace GBV cannot be adequately addressed by workplace safety initiatives, current training efforts, legal remedies, or internal systems for addressing complaints.

As the reach and number of responses to the lawyer survey were limited, CLAS believes there is room for more engagement with the legal community. CLAS recommends more research into the legal community's perceptions and use of NDAs as our research shows wide diversity of opinion among lawyers. Most respondents to the lawyer survey who have over a five-year call to the bar have observed the rise in the use of NDAs in cases of discrimination and GBV. Many respondents to our community survey, other research, and data show that many lawyers are advising clients to accept NDAs in cases of GBV. Therefore, it is important that the legal community be involved in limiting, regulating, and curbing the misuse of NDAs. More information into the extent of the use and misuse of NDAs by the legal profession would be useful.

Overall, our findings are that most non-lawyers would like to see an outright ban on the use of NDAs, and most respondents — lawyers and non-lawyers — feel that there must be strict, clearly defined limitations on the use of NDAs and exemptions. Lawyers consulted in the survey and interviews tended to be more supportive of the legal profession addressing NDA usage through how clauses are drafted, but also supported legislative regulation of some kind. Virtually, everyone who participated in our study agreed that there is a need for more public, legal, and employer training on how NDAs work, when they are appropriate, when they are not, and what exemptions apply.

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SECONDARY MATERIAL: REPORTS

"Non-disclosure Agreements (NDAs) Progress Report of the Working Group" (2023), Uniform Law Conference of Canada <https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2023/Progress-Report-of-the-Working-Group.pdf>

"Non-disclosure Agreements (NDAs) Second Policy Report of the Working Group" (2024), Uniform Law Conference of Canada <https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2024/Non-Disclosure-Agreements-(NDA)-working-group-2nd-progress-report-with-Appendix.pdf>

"Non-disclosure Agreements (NDAs), Third Policy Report" (2025), Uniform Law Conference of Canada <https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2025/Non-Disclosure-Agreements-Policy-Report-2025.pdf>

APPENDIX 1: CASE STUDIES

Esther

A. Description of circumstances of GBV

As a junior, on-call musician, Esther engaged in social activities with other members of an arts organization, the Vancouver Symphony Orchestra (VSO). One of the permanent staff members, a much older married man, former teacher, and current mentor, made several sexual advances toward Esther. Esther accepted support and participated in social interactions, including accepting drives, but did not ever consent to a romantic or sexual relationship of any kind. One night, the older man sexually assaulted her when she had been drinking. He assaulted her numerous times after that, while also apologizing for his behaviour. With the support of her family and counselling, she eventually filed a complaint. They came to an agreement, and she resisted signing an NDA, but her lawyer advised her to or the settlement offer would go away. She withdrew the complaint and agreed to an NDA.

The employer stopped hiring Esther for work as a musician. A few years later, Esther heard and confirmed rumours spread amongst her former colleagues that she had a consensual affair with the perpetrator. She filed a complaint of retaliation with the employer, who hired an investigator. The investigator found no retaliation had occurred.

B. Internal processes, if any

Esther filed a complaint with the employer through a letter from legal counsel. Claiming to base their decision on their anti-harassment and anti-bullying policy, the employer responded by denying the perpetrator was in a position of power and asserted that the sexual assaults occurred outside the workplace environment, making the policy irrelevant in this case.

C. Circumstances surrounding signing of NDA

Esther is a racialized woman, and her parents are low-income immigrants to Canada. At the time of settling the first complaint, her family had minimum-wage jobs. She was afraid to seek counselling support.

Esther filed the complaint to have the perpetrator removed so that she would be safe to continue working for the VSO. The VSO took the position that they would not remove him from his job unless she signed the NDA. She consulted her lawyer, and while she did not want to sign it, her lawyer persuaded Esther to do so to keep her job. Before the complaint and settlement.

Based on her lawyer's advice, she only had three choices: sign the NDA, quit the VSO, or engage in a lengthy court process. There were no other professional orchestras, and she had been playing with them since she was nine years old. Her legal costs were already high, and the settlement was not financially substantial. It covered only out-of-pocket counselling but not her legal fees. She signed the NDA.

Before the complaint and settlement, Esther was called in to play at 100% of the VSO's performances. Once she signed the NDA, they called her in less and less frequently until she was no longer working with the organization.

D. Impacts of GBV in the workplace

Esther has experienced long-lasting mental health impacts, a damaged reputation within the small musical community, and a sudden end to her work with the VSO (regardless of the investigation's findings).

"I compartmentalized and dissociated just to survive. I tried to continue with my life and act cheerful. But none of this means I ever consented to anything. (name redacted) took advantage of me. (name redacted) hurt me. And he knew he was getting away with it. As my former teacher, a father of two, and my superior at work, he had the responsibility to be better, and he abused that power...It felt like my world shattered."

E. Impacts of NDA

"The NDA made me feel more ashamed about my situation. The NDA was used to silence me. The organization retaliated after dealing with my human rights complaint (which is illegal), but I felt helpless because there was an NDA. I never talked to friends and family for the next 5-6 years because of my fear of the NDA."

Because of the NDA, Esther felt she had to hide the situation, and that she should (and did) feel shame about the whole situation. She felt the pressure of the command "Do not disclose who this man is or what he did." She described it as suffocating. People would ask her why she was not with the VSO anymore, and she was not allowed to say.

The perpetrator and Esther both worked with another organization. She consulted her lawyer about whether she could tell this other organization about what happened and was advised not to discuss it. As a result, she took on fewer gigs there to stay away from him, but she could not tell anyone why. He was still teaching, and she was not free to warn anyone.

While she had been a soloist in the community and at VSO since she was a child, she felt she had to retreat from all of it. She left her music career and tried to work as a real estate agent.

The entire situation has had a negative impact on her husband's mental health as a bystander. Esther was 22 at the time, and no one told her that she could still report the incidents to the police. She could never tell new employers and colleagues why she responded to things the way she did when she was triggered.

Five years after the settlement, a former colleague sent Esther information about a rumour that Esther had a consensual affair with the perpetrator and that is why she was

fired. Esther reached out and found others that had heard and believed this rumour. As a result, Esther went to the VSO to ask to be released from the NDA but they declined.

Before a meeting with the VSO board, Esther filed a police report. She met with the VSO's board of directors, and they agreed to investigate her claim of retaliation. She was told if she breached the NDA (including telling the police) the investigation would be ended.

The external investigator interviewed her once. Five months later, she received a two-page summary of the report with no names stating that there was no retaliation. She made an effort to discuss it with them, but the VSO told her it was over and that they would not release her from the NDA.

Esther decided to break her NDA. She was struck by the response of the second organization she and the perpetrator were connected to when she broke her NDA and reached out to tell them about her experience with him. They responded quickly, kindly, and compassionately.

F. Esther's Recommendations for Change

Policies and procedures for employers

- When the issue was raised, the VSO's initial response was horrible and negative, according to Esther. The organization accused her of trying to get money from it and denied all responsibility. If the initial response had expressed any compassion or concern for her, the entire experience would have been different.

- If someone does not want to sign an NDA that should be ok. An institution or corporation should not use it as a tool to hide wrongdoing instead of addressing it, which would be better for the corporation because you would think they would want to know about such behaviour and address it. Instead of hiding — it would be a safer, more honest, and more proud place to work at.

Government regulation

- There should be provincial legislation to prohibit the use of NDAs in cases of harassment and discrimination.

Nora

A. Description of circumstances of GBV

Nora is a young communications expert living in the Lower Mainland. She identifies as 2SLGBTQIA+. She worked in communications in the Vancouver office of a large public relations firm with offices across Canada. A new manager took over responsibility for the Vancouver office in 2020/21. A number of people left the organization over the first months of her leadership, a reflection of what was becoming a toxic environment. The manager brought in a senior vice president (SVP), George (not his real name). Nora described him as a white, married man in his 60s. Both the manager and George primarily worked out of a different office, not in Vancouver.

At first, he seemed friendly, listening to and supporting staff members' concerns about the manager. However, some of Nora's female colleagues began to share stories of uncomfortable behaviour involving the SVP including:

- In a meeting with many colleagues, the perpetrator commented on a colleague's social media post of herself in a bikini while on holiday (the colleague changed her profile to private after that).
- The SVP sent a text with an abstract painting of a naked woman to another colleague saying it reminded him of her.
- He sent that same colleague a romantic song with a similar message.

Around this time, there was a corporate team-building activity that involved forming groups of four to travel in boats, spending time together, followed by dinner. Nora was in a boat with George. Multiple times, he reached out and touched her knee and insisted on a selfie. She felt deeply uncomfortable but felt she could not do or say anything. She was not sure if the others on the boat noticed, but he was the most senior person there.

After the boating activity, everyone gathered for dinner. Nora was uncomfortable and decided to sit far from the SVP. Toward the end of the dinner, a colleague/friend offered to take her home, but before she could leave, George called her over. As there were other colleagues (all male), she felt obliged to sit down next to him. He touched her knee under the table once or twice. The others would not have been able to see.

Eventually she was able to leave, but the minute she got into her friend's car, she started crying. On her way home, George messaged her with the selfie he had taken on the boat with a message: "Thank you VERY MUCH for this".

The next day, Nora was working from home (this was near the end of the COVID-19 pandemic). George was working from the Vancouver office and randomly messaged her with a selfie of himself to say he was using her office. This was odd because there were multiple free offices he could have used.

B. Internal processes, if any

The day after the team-building activities, Nora contacted the national HR office in Toronto and asked what the policy and process were to complain about sexual harassment. The HR person tried to probe and ask about the situation, but Nora did not tell the story or say who it was about. She filed a complaint, as the HR person directed. This included signing a confidentiality agreement, which was required in order to file the complaint.

The HR person thanked her for bringing it to their attention and stated that she would interview each of them. Nora was still required to report to George until after the interviews happened and the HR person told her of their findings.

In the interview, the HR person asked her if George was just trying to get her attention to point out something while on the boat. Nora responded "No, that definitely was not the situation."

The HR person called Nora at home to say that they had concluded that it was a misunderstanding, that he was only trying to get her attention. They followed up with a letter saying that, while it may have been inappropriate touching, it was not sexual in nature. In the call, the HR person confirmed that they believed George's version of events, not Nora's. They moved her to a new supervisor that day.

Meanwhile, Nora had accepted a new, more junior role with another organization to get away from the company. She gave her two-week notice the same day the HR person shared their findings.

C. Circumstances surrounding signing of NDA

To file her complaint, Nora had to sign a confidentiality agreement in relation to the investigation in which she agreed not to discuss the matter with anyone in the company.

She was so upset about the HR person's findings that, during her first phone conversation with her new supervisor shortly afterward, she burst into tears and told him about it. He responded compassionately.

She began organizing her work and files to transition to the person who would be taking over her role. The following day, her access to her computer was locked in the middle of the day. About an hour later, she got a call from someone on the HR team and was told she did not need to complete her notice period and that someone would be coming to her house to collect any company property. She offered to drop off the company property, as a convenience, but was told that she could not do that. This was followed up by a letter reminding her of the confidentiality agreement and her obligations to keep information about the company and its employees private.

D. Impacts of GBV in the workplace

What has been the impact? “A lot of therapy and, six years later, I can discuss it without crying and curling up in a ball.”

Nora’s new position was with a trade organization supporting people in a male-dominated profession. She was anxious about every social engagement and gathering. Prior to such an event, Nora spoke to her boss about whether there were protections in place in situations with drinking and was told there were because of a past incident. After this conversation, the boss removed her from an upcoming event without explaining why or referring to Nora’s question.

She took that role only as a way to get out of the past job and moved to another employer a year later. Nora now asks in job interviews what policies and protections they have in place to address sexual harassment, and she is very sure she has lost roles as a result (the prospective employer citing lack of “fit”).

A former colleague still at the same company reported to Nora that she was receiving uncomfortable texts from George, but that she was not going to complain about it to HR because of how they responded to Nora’s complaint.

E. Impacts of NDA

The NDA affects Nora during job interviews. She asks prospective employers about their sexual harassment policies, but she cannot disclose why these questions are important to her. She has not felt free to tell her story to potential and current employers.

Nora worries about other women working at the company she left. Since she is unable to warn anyone, she fears other women have been or will be negatively impacted by the man’s behaviour, especially considering that he has since been promoted and holds more power.

Nora knows that her anxiety would have been much less if she had not signed (and been formally reminded of) the confidentiality agreement.

She asked a lawyer if she could talk about it but was advised she needed to be very careful as the company or George might sue for defamation.

She eventually discovered that it was ok to talk to people completely distant from the work world she is in and that helped, but the lawyer’s advice still made her nervous talking about it.

F. Nora's Recommendations for Change

Policies and procedures for employers

- Human resource staff are too biased. In this case, head office was very resistant to responding to the toxic work environment in the Vancouver office, and they seemed to view anyone (mostly junior employees) who spoke up as the problem. The HR person acted in the interests of the employer, believing her supervisor over Nora, especially since Nora was openly friends with some of the "problem makers". She was clearly there to protect the employer. They should have brought in an external investigator.

Government regulation

- Even if NDAs are regulated, victims and employees will still feel pressured to sign.

Helen

A. Description of circumstances of GBV

Helen works in emergency services in her small town. She was alone during a shift when a colleague from another part of the organization randomly appeared at the site and accused her of reporting him. He was aggressive and threatening, cornering her and acting in ways that scared her. Helen had only worked with him once and stated clearly that she had not made any reports about him. She was frightened but he responded that he believed she was lying. He left her alone quite shaken and confused.

B. Internal processes, if any

Helen was told by many people within the organization that there was zero tolerance for this kind of behaviour. There are policies on harassment and safety. When she reported to her direct supervisor, that supervisor confronted the perpetrator and told him the behaviour was unacceptable and encouraged her to file a formal complaint. She did so and heard nothing for over a week. Because all employees have access to the locks on all sites, Helen and her supervisor were both concerned for her safety at work. She began carrying a door stopper with her to work so she could jam the doors closed in case he came back.

She then received a formal letter from the HR department requiring her to attend a meeting. The letter implied Helen has done something wrong, and that there had been a report about her filed with HR. The letter also stated that she could not talk to anyone other than her union rep about the matter. As a result, Helen could not ask her direct supervisor or her colleagues for support. The union rep was also unclear about the process of reporting harassment and did not provide any more information. The union told her to call the police if there was another incident.

At the meeting, Helen was grilled for details about the incident but provided with no information. She echoed her supervisor's concern about this colleague's access to the building and was informed that they would change all the door locks. She was told to call the police if there were further incidents. HR and management were concerned about who Helen told about the incident and asked her who she had already told. HR staff told her that "because there is an investigation, she could not talk to anyone" but she had no knowledge of the report filed against this man or the context of his behaviour. They informed her that she was not allowed to know anything about the investigation including when it would be completed or how it would help her.

When the perpetrator returned multiple times, she had to hide and was terrified. Helen was scared to call the police in case it made the situation worse. She did not know what to say to the police or what they could do for her even if she called them. When the door locks were still not changed on all the doors and there appeared to be no deterrent to prevent further harassment, Helen utilized her right to refuse unsafe work and, on the

suggestion of the union rep, reported the problem to WorkSafeBC and filed a grievance. The union set her up to get support from a peer counselling program in which a co-worker, unfamiliar with the community, suggested she was catastrophizing the situation.

The employer told Helen the perpetrator was banned from her worksite but refused to notify other staff of the ban on the basis that the employer is obliged to protect his privacy.

She changed her shopping and other social habits in the small town to avoid the perpetrator and his relations. Helen received no meaningful support from work. They seemed unmotivated to make the workplace safe or help her return to work.

In the end, a new manager took over and between him, her counsellor and the RCMP, the matter was finally resolved and everyone has permission to talk about it. The new manager informed Helen that the perpetrator had been on a leave throughout most of this period, meaning he never had access to the locks in her building throughout the relevant period.

Helen described the process she was forced into as:

- disempowering,
- lengthy,
- adversarial,
- isolating,
- unhelpful,
- unsupportive,
- burdensome for the employee, and
- misleading.

C. Circumstances surrounding signing of NDA

Helen did not sign an NDA, but was told in a letter "it is imperative that you do not discuss this matter with anyone" which was reiterated repeatedly verbally, that she was not allowed to talk to anyone other than the union rep. The process made her less safe because she was not allowed to tell her co-workers that a man was randomly showing up at her worksite and aggressively harassing her. She was not allowed to talk to her supervisor about the case. Her supervisor was deliberately excluded from the meetings with management and HR about the issue. Helen could not get any support in the

workplace. No one was watching out for her or aware of the need to report this man when he kept showing up at the worksite.

Helen reported four incidents of harassment over four months before exercising her safe work rights. The only supportive measure offered by the employer was restricting the perpetrator's access to the worksite by changing the locks, something they did not follow through on. Since HR was maintaining this man's privacy, Helen had no information about the perpetrator. HR sent her general documents on restraining orders without any context, which made her feel more afraid, even at home. As a result of HR not telling Helen anything about the perpetrator, she assumed they were telling her she should be afraid of him and needed to take action herself to be safe.

Helen sought local counselling and it was the counsellor who escorted her to file a complaint with the RCMP. The RCMP expressed concern for the lack of a safety plan through her HR department to deal with the issue and explained how difficult it is to get a restraining order against a co-worker compared to an intimate partner. They told Helen she would not be successful with obtaining a restraining order and offered to speak with her supervisor about creating a meaningful safety plan.

D. Impacts of GBV in the workplace

Helen's supervisor told her he was not personally intimidated by the perpetrator who he had known for a long time. In the interview, HR and the management demanded that she describe the perpetrator, his size, how closely he stood to her, and other details. As a woman, she was terrified of the perpetrator. In her interview with WorkSafeBC, she clearly stated this was a gender-based issue. When out in their small community, she avoided places his relatives worked and if she saw him, she went home and left her errands for another day.

In the end, the person who had filed the original complaint turned out to be a man. The perpetrator obtained the report and physically confronted the original complainant who never reported it because he felt bad for the perpetrator. Meanwhile, Helen missed seven months of work because of harassment, the frightening impact of her colleague's behaviour, and the lack of support from her employer.

E. Impacts of NDA

This case did not involve a direct NDA, but the employer chose to protect the perpetrator's privacy and keep information about him confidential rather than help ensure Helen's safety. She was told formally and informally that she was not allowed to discuss the matter with anyone but her union rep. As a result, reporting the harassment made Helen feel less safe and removed her support systems.

As a result, Helen was even more unsafe because she could not talk to her family, friends, and co-workers to help her watch out for the perpetrator. She continues to research to try to understand what happened.

F. Helen's recommendations for change

Policies and procedures for employers

The workplace could have pursued a more effective process that was:

- timely,
- action-oriented,
- empowering for employees, and
- focused on prioritizing employee safety proactively.

Where the employer has information about a violent employee, they ought to be able to share enough information to ensure other employees feel safe.

They should follow their own policies, such as helping create a context-specific safety plan with complainants, and if they offer to change the locks (for example), they need to follow through.

Shahnaz

A. Description of circumstances of GBV

Shahnaz worked as a health and safety officer on remote oil and gas sites across Canada. She is a young, first-generation immigrant to Canada from Pakistan, and she experienced sexual harassment in her workplace in her first role and the first time she had been away from her city-based family home.

Shahnaz was at work in the site office at her desk. More than once, a senior manager showed up to her office and said odd, suggestive, and sexual things to her. The last time it happened, he stood behind her chair and said things, among them "sit on my face." Shahnaz's direct supervisor stepped in and walked the perpetrator out of the office. She went home shortly afterwards.

Shahnaz soon received an email from the perpetrator stating that her performance was not up to par and that she was expected to improve.

After that, she heard that he told people that she was not good at her work. The project was almost over, but she started getting strange assignments, told to work from home, or not assigned a desk.

B. Internal processes, if any

Shahnaz decided to file a complaint with HR. They took months, and the report she received said she had initiated the conversation and was the problem. The workplace got very toxic after she filed her complaint. Shahnaz felt like people were trying to provoke her and her male colleagues were doing things such as only being alone with her if they had another man with them. There were very few women on this site.

One situation occurred on a car trip between housing and the site. If a worker missed the one bus to the site, there was no other way to get off the site. One of the men in the car started telling Shahnaz that she was an awful person, stating why would anyone want to sit with her, and similar comments. Another man agreed and said they never should have given her a lift. Finally, she reacted with anger. The men filed a complaint against her.

The initial incidents of sexual harassment happened on a site in Alberta, then Shahnaz worked from home. The behaviour of her colleagues began and escalated on a site in BC. This became part of the company's official response — a separation of the events into different jurisdictions in order to disconnect them.

The company, a very large national one, advertised themselves as an inclusive workplace. Shahnaz felt very alone and isolated as a complainant, much of it related to the ways in which the company responded throughout.

In the end, they terminated her employment and offered her $24,000 if she signed a release. She declined and filed a human rights complaint with the Alberta Human Rights Tribunal.

The tribunal found that there probably was a gender-based breach of her human rights, but that because they offered her a reasonable settlement, there would be no finding against the employer.

C. Circumstances surrounding signing of NDA

Shahnaz did not sign an NDA, but if she had, she would have received a substantial financial settlement. However, she wanted to be free to file a human rights complaint. It seemed to her that everything was about protecting the perpetrator and pushing her out and any internal processes designed to protect him.

D. Impacts of GBV in the workplace

"To this day it shocks me. I would never have expected people who witnessed it to side with him."

Shahnaz's GBV experience undermined her trust in her colleagues and entirely changed how she currently interacts with them. She is no longer herself in workspaces and does extensive research to determine if a prospective employer is safe. She sees claims of being an "inclusive employer" as only words and it scares her. She has not determined how she is supposed to know if a workplace is truly inclusive and safe. Shahnaz will not accept a job unless someone she trusts has worked there and vouches for them.

E. Impacts of NDA

Shahnaz paid a price for choosing not to sign an NDA because her human rights case was dismissed.

F. Shahnaz's recommendations for change

Policies and procedures for employers

- It does not seem to matter. This company had robust internal processes they never actioned, instead they were used against her.

Government regulation

- Alberta's human rights policies need to change so that victims have the right to say "no" to an NDA and still have remedies. There should be no assumption that an NDA is necessary.

APPENDIX 2: COMMUNITY SURVEY

The Speak Out Survey is offered by **Speak Out: Ending Gender-Based Violence**, a project of the Community Legal Assistance Society. We want to learn more about:

- how policies and practices at workplaces and organizations are affecting people who have experienced, or are at risk of, gender-based violence;
- how Non-Disclosure Agreements (NDA) are affecting people who have experienced, or are at risk of, gender-based violence; and,
- how policies and laws in this area could be better, especially for diverse communities.

We will use this information to advocate for changes to how employers and organizations deal with gender-based violence. You will not be asked to give your name or any identifying information. The survey takes about 15 minutes to complete.

At the end of the survey, you will have the option of giving your email for further information about this project. If you choose to provide your email, you will also be entered in a $50 gift card draw.

More information, including how to get free legal help, is available here: <https://clasbc.net/get-legal-help/stand- informed-legal-advice-services/speak-out/>

Privacy Statement and Consent

If you do choose to share your email, we will never share any identifying information about you (such as your email) without your consent. We do not sell or share data.

Your responses in this survey are confidential and will only be used for research purposes related to the Speak Out project. We may use anonymous quotes, but no identifying information will be published. For more information, please refer to our Privacy Policy <https://clasbc.net/privacy-policy/>. By proceeding with this survey, **you confirm that you understand and consent to our privacy policy.**

CLAS is located on unceded Coast Salish territories, including the lands belonging to the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱ wú7mesh (Squamish) and sə̓lilwətaʔɬ (Tsleil-Waututh) nations.

1. Gender-Based Violence (GBV) is defined as:

Words or actions that harm someone due to their gender, gender expression, gender identity, or sexual orientation. It can include:

- physical violence and unwanted touching
- sexual assault
- sexual harassment, including online harassment
- sharing of intimate images
- threats and intimidation
- psychological harm, including bullying
- discriminatory comments or treatment

Gender-based violence sometimes happens alongside other forms of harassment and discrimination, such as racism.

Based on this definition, have you experienced gender-based violence?

- ☐ Yes
- ☐ No
- ☐ No, but I was a witness or bystander
- ☐ Unsure
- ☐ Unable to answer
- ☐ I did not experience gender based-violence, but I did experience other forms of harassment and discrimination (such as discrimination on the basis of race, or disability, or general bullying)

Resources about gender definitions can be found here (please right click to open in a new tab):

<https://egale.ca/awareness/the-genderbread-person/>

<https://indd.adobe.com/view/publication/65719803-4073-4452-ab66- df3472770f67/n6w4/publication-web-resources/pdf/English_Gendy_New.pdf>

2. **Please specify if you experienced harassment and discrimination on the basis of any of the following characteristics:**

- ☐ Indigenous identity
- ☐ Race
- ☐ Colour
- ☐ Ancestry
- ☐ Place of origin
- ☐ Political belief
- ☐ Religion
- ☐ Marital status
- ☐ Family status (such as having children or being a single parent)
- ☐ Physical or mental disability
- ☐ I experienced general harassment and bullying not based on any of the above.
- ☐ Other

3. **If you wish to share more about your experience of discrimination and harassment, please do so here:**

4. What kind of gender-based violence did you experience?

- ☐ Physical violence (includes assault)
- ☐ Unwanted sexual touching (includes assault)
- ☐ Threats, harassing comments, language, or gestures (in-person or by phone)
- ☐ Threats, harassing comments, language, or gestures (online or by text)
- ☐ Demotion, reduction of work, being fired, or other negative work conditions
- ☐ Display of sexualized materials (such as images or memes)
- ☐ Sharing of (my) intimate images
- ☐ Toxic work environment, bullying, or mobbing (bullying by a group)
- ☐ Retaliation
- ☐ Other

5. Gender-based violence can happen in combination with other forms of discrimination. Did you experience gender-based violence alongside any of the following kinds of discrimination?

- ☐ Indigenous identity
- ☐ Race
- ☐ Colour
- ☐ Ancestry
- ☐ Place of origin
- ☐ Political belief
- ☐ Religion
- ☐ Marital status
- ☐ Family status (such as having children or being a single parent)
- ☐ Physical or mental disability
- ☐ Age

6. Where did you experience gender-based violence?

- ☐ At my workplace
- ☐ At an organization that was not my workplace (such as in a sports or religious organization or community group, or while volunteering)
- ☐ In an interpersonal situation (not at a workplace or organization, but by a family member, friend, or stranger)
- ☐ Other

7. What type of workplace was it?

- ☐ Trades and related
- ☐ Sales and service (includes retail, restaurant and hospitality)
- ☐ Natural resources, agriculture, and related
- ☐ Manufacturing and utilities
- ☐ Health
- ☐ Business/financial/admin
- ☐ Natural and applied sciences
- ☐ Education, law, social services and related
- ☐ Art, culture, recreation and sport
- ☐ Senior management and legislative
- ☐ Unsure or unable to answer
- ☐ Other

8. **What type of employment did you have at the time you experienced gender-based violence?**

- ☐ Regular employee (permanent job, full or part time)
- ☐ Term employee (employed for a certain period of time)
- ☐ Casual or on-call
- ☐ Contractor
- ☐ Student or intern
- ☐ Volunteer
- ☐ Self-employed
- ☐ Other

More information on non-workplace (organizational) gender-based violence

9. **If you experienced gender-based violence in an organization in a non-work role (such as in a sports or religious organization or community group, or while volunteering), you can provide more information here.**

More information on interpersonal gender-based violence

10. **If you experienced gender-based violence in an interpersonal situation (not at a workplace or organization, but by a family member, friend, or stranger) you can provide more information here.**

Policies and practices about gender-based violence for those who have experienced GBV:

11. **(A) Did you report the gender-based violence to your employer or organization?**

- ☐ Yes
- ☐ Unsure
- ☐ No
- ☐ Unable to say

11. (B) In terms of policies and practices on the issue of gender-based violence, please share how helpful or unhelpful they were at your workplace or organization. If the policy or practice was not in place or you were not aware of it, simply leave that row blank.

- ☐ Very unhelpful
- ☐ Somewhat unhelpful
- ☐ Neither helpful nor unhelpful
- ☐ Somewhat helpful
- ☐ Very helpful

- **Written policies** that define and prohibit gender-based violence
- **Information on how and where to report** gender- based violence
- Ways for **witnesses and bystanders** to report gender- based violence
- **Investigation steps were clear** and process was transparent
- **Safety planning** during investigation (e.g. changing work locations or schedules)
- **Speed** of concluding investigations
- Ways of **dealing with retaliation** for making a complaint
- **Consequences** for people who engaged in gender-based violence
- **Communication from leadership** about gender-based violence prevention
- Information on available **support services**
- **Diversity in the organization** (including in senior positions, equal opportunities for learning and promotion, etc.)
- **Overall prevention of and response** to gender- based violence

11. (C) If your workplace or organization did have policies, were they applied as you expected? (for example, timelines met, policies followed, privacy protected).

- ☐ Yes
- ☐ Unsure
- ☐ No
- ☐ Unable to say

11. (D) If your workplace or organization did have policies, were they applied in a culturally safe and competent manner?

- ☐ Yes
- ☐ Unsure
- ☐ No
- ☐ Unable to say

11. (E) Please feel free to expand on your answers or share any other information about how your workplace or organization handles gender-based violence.

What made policies helpful or unhelpful?

What else could a workplace or organization do to address this issue?

Policies and practices about gender-based violence for those who experienced gender based violence and did not report, and for those who did not experience gender based violence, are unsure, or unable to say

12. (A) For each of the following factors, please give your opinion on how helpful or unhelpful it is for preventing and responding to gender-based violence in workplace and organizational situations.

- ☐ Very unhelpful
- ☐ Somewhat unhelpful
- ☐ Neither helpful nor unhelpful
- ☐ Somewhat helpful
- ☐ Very helpful

- **Written policies** that define and prohibit gender-based violence
- **Information on how and where to report** gender- based violence
- Ways for **witnesses and bystanders** to report gender- based violence
- **Clarity of investigation steps** and transparency of process
- **Safety planning** during investigation (e.g. changing work locations or schedules)
- **Speed** of concluding investigations
- Ways of **dealing with retaliation** for making a complaint
- **Consequences** for people who engaged in gender-based violence
- **Communication from leadership** about gender- based violence prevention
- **Diversity in the organization** (including in senior positions, equal opportunities for learning and promotion, etc.)
- **Overall prevention and response** to gender-based violence

12. (B) Please feel free to expand on your answers or share any other information about how polices and practices could prevent and respond to gender-based violence.

What made policies helpful or unhelpful?

What else could a workplace or organization do to address this issue?

Non-disclosure agreements and gender-based violence *(for those who said they had experienced GBV)*

13. (A) A Non-Disclosure Agreement is an agreement not to talk about what happened, usually as part of a settlement of a complaint or legal action.

Did you sign a Non-Disclosure Agreement in relation to your experience? *

- ☐ Yes
- ☐ Unsure
- ☐ No
- ☐ Unable to respond

13. (B) Did you experience any of the following negative impacts after signing a Non-Disclosure Agreement? (You can check all, or none — whatever is applicable).

- ☐ I experienced negative mental health impacts because the Non-Disclosure Agreement limited my ability to speak about what happened (could include depression, anxiety, trauma, self-esteem, or other mental health impacts)
- ☐ My ability to get medical or counselling services was limited because I could not speak about what happened
- ☐ The employer, organization, or person was not held accountable
- ☐ Others were harmed or at risk of harm because they could not be warned
- ☐ I was unable to explain my departure from my workplace when I needed to (for example, to new employers)
- ☐ I felt I had no real choice when signing
- ☐ The public and/or the government might not be sufficiently aware of gender-based violence or other forms of discrimination and harassment because of Non-Disclosure Agreements
- ☐ My personal relationships were negatively affected
- ☐ My work relationships were negatively affected
- ☐ Other

13. (C) Please feel free to share more about your answers, or list any other negative effects of signing a Non-Disclosure Agreement.

13. (D) Did you experience any of the following positive impacts after signing a Non-Disclosure Agreement? (You can check all, or none — whatever is applicable).

- ☐ I experienced positive mental health impacts
- ☐ I felt a sense of closure and was able to move on
- ☐ I was glad to remain anonymous after making a complaint
- ☐ My work relationships were positively affected
- ☐ My personal relationships were positively affected
- ☐ Other

13. (E) Please feel free to share more about your answers, or list any other positive effects of signing a Non-Disclosure Agreement.

Non-Disclosure Agreements *(for those who did not identify themselves as having experienced gender based violence, or who did not sign an Non-Disclosure Agreement or are unable to answer.)*

14. (A) Consider the following situation:

Jean worked as a produce manager for a large grocery chain for years. She experienced race and gender harassment at her workplace from another manager for a period of six months. Because of this, Jean had significant mental health impacts, including depression, insomnia, and intrusive thoughts. She started counselling to help with these symptoms.

She reported the harassment using the employer's harassment policy, and an investigator found that there was harassment. The employer issued a five-day suspension to the person who harassed her. Jean did not feel comfortable with this, and she filed a human rights complaint.

The employer then offered to pay her one year of salary plus an extra $10,000, but only if she agreed to leave her employment. The employer said Jean would also have to sign a Non-Disclosure Agreement (NDA). The NDA would require Jean to:

- ☐ never talk about the harassment or the terms of settlement to anyone, unless required by law (to give evidence in court)
- ☐ never say anything negative about the employer, the harasser, or her experience there, to anyone-if she did say anything, she would have to repay the settlement money
- ☐ Based on this situation, do you think there would be any negative impacts if Jean signed the Non-Disclosure Agreement? (You can check all, or none — whatever is applicable)
- ☐ She would likely experience negative mental health impacts because the NDA limits her ability to speak about what happened (could include depression, anxiety, trauma, self-esteem, or other mental health impacts)
- ☐ Her ability to get medical or counselling services would be limited because she could not speak about what happened
- ☐ The employer was not held accountable for changing its culture
- ☐ Others would be harmed or at risk of harm because they could not be warned
- ☐ She would be unable to explain her departure from that workplace when she needed to (for example, to new employers)
- ☐ She would feel she had no real choice when signing
- ☐ The public and/or the government might not be sufficiently aware of gender-based violence, or other forms of harassment and discrimination, because of Non-Disclosure Agreements
- ☐ Her personal relationships would be negatively affected
- ☐ Her work relationships would be negatively affected
- ☐ Other

14. (B) Please feel free to share more about your answers, or list any other negative effects of signing a Non-Disclosure Agreement.

14. (C) Do you think there would be any of the following positive impacts for Jean after signing a Non-Disclosure Agreement? (You can check all, or none — whatever is applicable).

- ☐ She would likely experience positive mental health impacts
- ☐ She would likely feel a sense of closure and be able to move on
- ☐ She would likely be glad to remain anonymous after making a complaint
- ☐ Her personal relationships would be positively affected
- ☐ Her work relationships would be positively affected
- ☐ Other

14. (D) Please feel free to share more about your answers, or list any other positive effects of signing a Non-Disclosure Agreement.

Changing the Law on Non-Disclosure Agreements (for all survey respondents)

15. Right now, employers, organizations, and individuals can use Non-Disclosure Agreements freely in situations of gender-based violence, harassment, and discrimination in British Columbia.

There is an ongoing conversation about whether the law should change to stop or limit the use of Non-Disclosure Agreements in these situations.

Please share your opinion on how the law should be. You can give your opinion on multiple options, and can leave options blank if you prefer.

- ☐ Disagree strongly
- ☐ Disagree somewhat
- ☐ Neutral
- ☐ Agree somewhat
- ☐ Agree strongly
- ☐ NDAs **should not be allowed** in any situation of gender- based violence, harassment, or discrimination.
- ☐ NDAs **should be allowed without any limits** – no need to change the law
- ☐ NDAs should be **allowed**, but only if the complainant expresses a **clear preference** for this.
- ☐ NDAs should be **allowed**, but only if they do not limit the complainant's ability to **talk to certain people** (doctors, lawyers, counsellors, close family members, spiritual advisors, etc.)
- ☐ NDAs should be **allowed**, but only with a **mandatory time limit** and after that the complainant can speak freely
- ☐ NDAs should be **allowed**, but with a **cooling off period** (such as two weeks) for complainants to change their mind after signing.
- ☐ NDAs should be allowed, but only if the complainant gets **meaningful legal advice** (including on alternatives to NDA)
- ☐ NDAs should be allowed, but only if **there is no risk to the health or safety of any third party.**

- ☐ NDAs should be allowed, but only with wording that makes clear the complainant can still **report to police or other authorities** including under whistleblower laws.
- ☐ NDAs should be allowed but only if **confidentiality applies to the complainant, the employer, and the harasser**. Keep in mind that there may be other ways to ensure confidentiality (without an NDA).
- ☐ NDAs should **not be allowed** if they include a requirement **to pay back settlement money** or other financial penalties for speaking.
- ☐ NDAs should **not be allowed** if the party offering the NDA **pressured, coerced, or misled** the complainant to sign.

16. If you think that NDAs should be allowed only with a mandatory time limit, after which the complainant can speak freely, how long should that time limit be?

- ☐ 2 years
- ☐ 5 years
- ☐ 10 years
- ☐ 15 years
- ☐ 20 years

17. Right now, there is no limit on who can use an NDA, and no penalties (such as issuing a monetary fine to an employer) for misusing an NDA. Please rate how much you agree or disagree with the following ideas:

1. **Disagree strongly**
2. **Disagree somewhat**
3. **Neutral**
4. **Agree somewhat**
5. **Agree strongly**

- Publicly-funded agencies (e.g. branches of government, universities, groups that receive government funding) should not be allowed to use NDAs in cases of gender-based violence, or other forms of harassment and discrimination.

- There should be penalties for employers, organizations and individuals who try to use an NDA in situations where they are not allowed to (under new laws)
- More public education is needed to understand the possible impacts of NDAs on the people who sign them.

18. Please share any other thoughts you have about NDAs and the law.

Demographic information

(We ask for this information to understand better how gender-based violence and the law could affect diverse groups of people.)

19. What is your age? *

- ☐ 15-19
- ☐ 20-24
- ☐ 25-29
- ☐ 30-34
- ☐ 35-39
- ☐ 40-44
- ☐ 45-49
- ☐ 50-54
- ☐ 55-59
- ☐ 60-64
- ☐ 65-69
- ☐ 70-74
- ☐ 75+
- ☐ Prefer not to answer

20. Do you belong to any of the following Indigenous groups?

- ☐ First Nations
- ☐ Métis
- ☐ Inuit
- ☐ Other Indigenous

21. Do you belong to any of the following groups?

- ☐ White
- ☐ South Asian (e.g., East Indian, Pakistani, Sri Lankan)
- ☐ Chinese
- ☐ Black
- ☐ Filipino
- ☐ Arab
- ☐ Latin American
- ☐ Southeast Asian (e.g., Vietnamese, Cambodian, Laotian, Thai)
- ☐ West Asian (e.g., Iranian, Afghan)
- ☐ Korean
- ☐ Japanese
- ☐ Other

22. What is your gender? *

- ☐ Woman
- ☐ Trans+
- ☐ Man
- ☐ Prefer not to say
- ☐ Non-binary
- ☐ Other

23. Do you identify as 2SLGBTQIA+ (Two-Spirit, Lesbian, Gay, Bisexual, Trans, Queer, Intersex, Asexual+)

☐ Yes ☐ No ☐ Prefer not to say

24. Are you a person with disabilities? *

☐ Yes ☐ No ☐ Prefer not to say

25. What is your immigration status? *

☐ Non-status

☐ Temporary Resident (includes study permit, work permit, visitor visa)

☐ Permanent Resident

☐ Canadian Citizen

☐ Refugee

☐ Other

26. Do you live in an urban or rural area? *

☐ Urban area (1,000 or more people)

☐ Rural area (Less than 1,000 people)

27. If you would like to hear more about this project, including what we propose for law reform, please enter your email here. You will be entered in a gift card draw as a participant in this study. Your email will not be used for any other purpose.

28. If you would like to share more about your story by completing a longer, in-depth confidential interview, please enter your email here. Your email will not be used for any other purpose.

APPENDIX 3: LAWYER SURVEY

Thank you for agreeing to take time to share your experience working with Non-Disclosure Agreements (NDAs). As a lawyer, you probably know that NDAs are used in settlement agreements of all kinds as well as part of ongoing employment contracts.

Speak Out: Ending Gender-Based Violence is a project of the Community Legal Assistance Society (CLAS). It is premised on concerns about NDAs in the context of gender-based violence (e.g. sexual harassment, sexual assault, gender-based discrimination). We are seeking to understand the perspective of the legal community on the extent, reasoning, and impact of NDAs.

Your responses are anonymous unless you choose to share your contact info, in which case your individual responses will still be kept confidential to the researcher only.
If you have any concerns of questions, please reach out to the Speak Out team at standinformed@clasbc.net. To learn more about our project, visit our website.

Note: We are using the term 'NDA' to include non-disparagement clauses, confidentiality agreements, and any clause in a contract or agreement that requires parties to keep silent about some or all of the underlying facts or events, or what they may know or believe about the other party.

1. Share your area of legal practice (you can choose all that apply):

- ☐ Employment/Labour – employee
- ☐ Employment/Labour – employer
- ☐ Human Rights – complainant
- ☐ Human Rights – respondent
- ☐ Corporate/commercial
- ☐ Intellectual property
- ☐ Civil litigation – General
- ☐ Civil litigation – Sexual assault Administrative/Regulatory
- ☐ Workplace investigations
- ☐ Mediation and/or arbitration
- ☐ Family Law
- ☐ Criminal
- ☐ Other (please specify):

2. **What percentage of your practice overall includes drafting documents or negotiating settlements in which an NDA might be involved? A rough estimate is fine!**

_____

3. **Thinking just about the past 12 months, what percentage of settlement agreements you were involved with included an NDA? (Again, a rough estimate is fine).**

_____

4. **Do you think the frequency of NDA use has changed over the years you have practised law?**

   ☐ Yes

   ☐ No

   ☐ Not sure

   - **If so, please describe:** _____

5. **Have you advised your client to accept an NDA in the following circumstances: (for each statement, respondents could choose one of a-e)**

   a. **Never**

   b. **Rarely**

   c. **Regularly**

   d. **Often**

   e. **All the time**

   - Employment termination/severance agreements
   - Employment contracts
   - Harassment or discrimination claims
   - Personal injury claims
   - Human Rights cases
   - Commercial or business disputes
   - Protection of trade secrets/confidential business information
   - Other?

6. **Please share the most common circumstances in which you advise the use or acceptance of an NDA:**

7. **There are common rationales that are given for including an NDA. They are listed below. Please indicate which (if any) of these have been raised — by you, opposing counsel, or a party to the agreement — as the reason for including or accepting an NDA in cases you have been involved in.** ***(respondents could choose one of three responses to each rationale)***

   ☐ Yes, has been raised

   ☐ No, has not been raised

   ☐ I'm not sure

   - To protect the employer's reputation
   - To protect employee's privacy
   - To ensure the finality of an agreement and no further claims
   - To protect confidential business information (trade secrets)
   - To prevent public disclosure of misconduct allegations
   - To prevent the complainant from speaking publicly
   - To achieve a settlement that is higher than what might be achievable in court
   - To encourage the other party to settle and thereby avoid going to court

8. **Of these same rationales, which do you think might be successfully addressed by a specially worded confidentiality clause, is already addressed by existing regulation/ common law, or absolutely requires an NDA? (pick best option for each)**

   ☐ Confidentiality clause would resolve

   ☐ Existing regulation/common law covers it

   ☐ Only NDA addresses it

   ☐ I'm not sure

- To protect the employer's reputation
- To protect the employee's privacy
- To protect a complainant's privacy
- To ensure the finality of an agreement and no further claims
- To protect confidential business information (trade secrets, etc.
- To prevent public disclosure of misconduct allegations
- To prevent the complainant from speaking publicly
- To encourage the other party to settle and thereby avoid going to court
- To achieve a settlement that is higher than what might be possible in court
- Other: Please specify

9. Please share a description of a case that would not have settled without the inclusion of an NDA (if you know of one). Why or why not:

10. Concerns have been raised about negative impacts of NDAs by individuals who have signed one, organizations, lawyers and others. Do you agree or disagree that the use of NDAs raise any of the following concerns:

- ☐ Agree
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Disagree
- ☐ I don't know

- Workplace safety of current and future employees
- Preventing the reporting of criminal acts
- The mental health of a party to the NDA who needs emotional support

- Perpetuate systemic inequalities
- Cover-up the wrong-doings and information it would be in the public interest to know
- Prevent employers from disclosing wrongdoing when asked for a reference

Comments or other impacts you are concerned about?

11. How often have you seen a case in which one or more of the above has been the impact of an NDA.

- ☐ Never
- ☐ Once
- ☐ Occasionally
- ☐ Often
- ☐ Not sure

Please explain:

12. Section 4(3) of the PEI Non-Disclosure Agreement Act (2022) states that an NDA is only enforceable where:

- the relevant person has had a reasonable opportunity to receive independent legal advice;
- there have been no undue attempts to influence the relevant person in respect of the decision to include a requirement not to disclose any material information;
- the agreement does not adversely affect (i) the health or safety of a third party, or (ii) the public interest;
- 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
- the agreement is of a set and limited duration.

In your opinion, would similar regulations in your jurisdiction will it prevent parties from settling?

☐ Yes, it will decrease settlements and increase hearings and trials

☐ No, settlements will still happen at a similar rate

☐ It depends

☐ I don't know

Comments:

13. **In the media and research, stories are being shared about how a party to the NDA doesn't understand what it means —- stories that show they didn't feel they had a choice, they thought they couldn't talk to anyone, they found they were unable to get support to process the experience and move on, stories that illustrate negative impacts of NDA's in certain situations.**

In your opinion, do you agree or disagree with the possible regulations listed below? NDAs should be allowed when...

- ☐ Agree, this is a reasonable limitation on NDAs
- ☐ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Disagree, this is not a reasonable limitation on NDAs
- ☐ I don't know

- Both parties have received independent legal advice
- Clear exemptions are set out in (law enforcement, regulators etc.)
- It includes a way for the complainant to waive confidentiality
- There is a time limit set on the NDA (so it expires)
- Other (please describe):

14. **In cases of gender-based violence (sexual assault and/or harassment), there have been different responses in different jurisdictions. Please check any of the options below you would support:**

- ☐ Ethical guidance through the Law Society (as per UK Solicitor Regulatory Authority) Legislation such as the PEI Non-Disclosure Agreement Act
- ☐ Training through CPD courses (CLE, CBA etc)
- ☐ No change needed, leave it the parties and contract and common law
- ☐ I don't know
- ☐ Other (please specify)

15. Years of practice

- ☐ 1 year or less
- ☐ 1-5
- ☐ 6-10
- ☐ 10-20
- ☐ 20+
- ☐ Non-practising

16. Practice type

- ☐ Private large firm (25+ lawyers)
- ☐ Private small firm (under 25)
- ☐ Sole practitioner
- ☐ In-house government
- ☐ Non-profit/public interest lawyer
- ☐ In-house corporate
- ☐ Non-practising status
- ☐ Other (please specify)

17. Have you participated in any professional development training that included NDAs? If so, please share the program and provider:

18. Demographic information. Please check any that apply to you:

- ☐ Gender – woman
- ☐ Gender – man
- ☐ Gender – non-binary 2SLGBTQIA+
- ☐ Racialized
- ☐ Indigenous
- ☐ Person with a disability

19. Geographic location (either city or region and province)

_____

20. Anything else you would like to share about your experience of NDAs?

21. Would you be willing to participate in an interview to explore these questions further? If so, please share your name and email address. If you would like to be entered into the draw for a $50 gift card, share your contact info below or, to keep your responses anonymous, email researcher at [address removed]

☐ Yes, contact me to talk more about this topic

☐ No

If yes, please share your name and phone # and/or email info:

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