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**NON-DISCLOSURE AGREEMENTS (NDAs)
PROGRESS REPORT OF THE WORKING GROUP**

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Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

1. Introduction

[1] With the recent attention to concerns related to the use of non-disclosure agreements (NDAs) and draft legislation being introduced in several jurisdictions since the adoption of legislation in PEI, a working group was established to consider the need for uniform legislation. Peter Lown, K.C., was asked to form and lead the working group. The working group commenced meeting in April 2023. Members of the working group are Peter Lown, K.C., Katie Armitage, Debbie Brown, Chelsea Evans-Rymes, Olivier Gadoua, Jennifer Khor, Clea Parfitt, Elizabeth Strange (until May 29, 2023), Patrick Windle (until May 29, 2023), and Michelle Lemieux (Executive Director).

2. Background

[2] Attention on the harms caused by NDAs¹ was brought into the spotlight with the #MeToo Movement. Women felt supported to speak out about the sexual harassment or sexual assault that they endured in their workplaces. Several survivors broke their NDAs to speak out about their experiences and bring attention to the serial predatory nature of perpetrators of sexual harassment and sexual assault. The case of Harvey Weinstein's sexual predation and use of NDAs to silence complainants was at the forefront of the news with Zelda Perkins, his former assistant, breaking her NDA to speak not only about how NDAs permitted the continued sexual harassment and assaults perpetrated by Mr. Weinstein but the harms that NDAs can cause to many of those who sign them. Complainants who signed NDAs, which typically never expire, often consider themselves unable to seek the support they need to move on from the trauma of the sexual harassment or assault and live in fear of breaching the NDA accidentally, as well as experiencing guilt if they learn that the perpetrator has moved on to other targets. NDAs effectively give the perpetrator continued control over complainants and serve as a constant reminder of a traumatic period in their lives. Perpetrators may not be held accountable for the wrongs they are responsible for and have the freedom to continue their wrongful conduct.

[3] As a result of the #MeToo Movement² public outcry, there were calls for banning or restricting the use of NDAs with many jurisdictions introducing legislation. (A table summarizing NDA legislation is attached as Appendix A). Consequently, many of the current examples of legislation focus on sexual harassment and sexual misconduct in the workplace context and sexual assault, restricting or banning both pre-emptive NDAs in employment contracts and settlement NDAs in situations of inappropriate sexual conduct and sexual assault. Subsequently, later legislation widened the scope of situations where NDAs were banned or restricted to include other grounds of harassment or general harassment.

¹ In this paper the term NDAs is used to refer to non-disclosure agreements used in settlement agreements, pre-emptive non-disclosure agreements often included in employment contracts, non-disparagement clauses, and generally confidentiality agreements used to prevent someone from talking about their experience. It does not extend to confidentiality agreements that prevent disclosure of a settlement amount.

² Me Too Movement, online: <https://metoomvmt.org/>

[4] Similarly, studies or consultations considering NDAs have focused on sexual harassment and sexual misconduct following the #MeToo Movement and #TimesUp.³ In the UK, the Women and Equalities Committee initially made recommendations to restrict the use of NDAs in workplace sexual harassment situations⁴ in 2018 and released a further report in 2019 addressing the misuse of NDAs in discrimination cases.⁵ The Equality and Human Rights Commission in the UK issued guidance for employers on the use of confidentiality agreements in discrimination cases in 2019.⁶ In Ireland, the report⁷ on the use of NDAs in discrimination and sexual harassment disputes was prepared because of the growing public awareness of the misuse of NDAs and the introduction of draft NDA legislation⁸. The National Inquiry into Sexual Harassment in Australian Workplaces⁹ by the Australian Human Rights Commission and subsequent Government of Victoria Ministerial Taskforce on Workplace Sexual Harassment¹⁰ were also established following #MeToo. The Manitoba Law Reform Consultation paper on NDAs¹¹ was prepared in response to the introduction of the private member's bill NDA at the recommendation of the Minister of Justice and the Attorney General of Manitoba.

[5] As the movement against NDAs gathered momentum, the wider scope of situations in which NDAs may be used to avoid accountability and hide wrongdoing is under scrutiny. Can't Buy My Silence¹², an organization founded by Zelda Perkins and Julie Macfarlane, professor emeritus, University of Windsor, has collected testimonies of persons silenced by NDAs, including in racial harassment, whistleblowing, as well as in sexual harassment and assault situations¹³. In Canada, the media exploded with coverage of Hockey Canada's use of NDAs to silence complainants of gang sexual assault leading to a freezing of public funding of Hockey Canada.¹⁴ In the UK, the Solicitors Regulatory Authority (SRA)

³ Time's Up <https://timesupnow.org/about/>

⁴ *Sexual harassment in the workplace*, Women and Equalities Committee, House of Commons (July 25, 2018), online <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/72502.htm>

⁵ *The use of non-disclosure agreements in discrimination cases*, (June 5, 2019). Online <<https://committees.parliament.uk/work/6022/the-use-of-nondisclosure-agreements-in-discrimination-cases-inquiry/publications/>>

⁶ *Guidance: The use of confidentially agreements in discrimination cases*, Equality and Human Rights Commission (October 17, 2019) <<https://www.equalityhumanrights.com/en/publication-download/use-confidentiality-agreements-discrimination-cases>>

⁷ *The prevalence and use of Non-Disclosure Agreements (NDAs) in discrimination and sexual harassment disputes*, Department of Children, Equality, Disability, Integration and Youth (February 2022) <https://assets.gov.ie/217724/f2b97bb1-dac8-4e06-9fdf-315362366dcf.pdf>

⁸ Bill 82, *Employment Equality (Amendment) (Non-Disclosure Agreements)*, Ireland, 2021 (fourth stage Seanad Eirann) online: <https://www.oireachtas.ie/en/bills/bill/2021/82/>

⁹ *Respect@Work*, Australian Human Rights Commission, (2020) Online: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

¹⁰ Ministerial Taskforce on Workplace Sexual Harassment, Government of Victoria, online <https://www.vic.gov.au/ministerial-taskforce-workplace-sexual-harassment>

¹¹ *Non-Disclosure Agreements Consultation Paper*, Manitoba Law Reform Commission (December 2022) online: http://www.manitobalawreform.ca/pubs/pdf/additional/consultation_nda.pdf

¹² "Who We Are" (2022), online: Can't Buy My Silence <<https://www.cantbuymysilence.com/about>>

¹³ Testimonies, online: Can't Buy My Silence <https://www.cantbuymysilence.com/testimonies>

¹⁴ Jonathon Gatehouse, Albert Leung, "Documents reveal Hockey Canada received \$14M in federal funds over the past 2 years" (June 20, 2022), online CBC News <<https://www.cbc.ca/news/canada/hockey-canada-federal-funding->

issued a warning notice¹⁵ about the improper use of NDAs in 2018 which applied to all NDAs regardless of context in which it arises. The SRA notes it had seen concerning examples of clauses in employment contracts, negligence claims, and commercial transactions. The Legal Services Board, the oversight regulator for legal services, is currently calling for evidence¹⁶ on the misuse of NDAs and how regulation may assist lawyers to meet their ethical requirements. This is particularly appropriate as the wider scope of misuse of NDAs has come to light, including in the arts, education, policing, and advertising sectors, since the #MeToo Movement brought attention to the issue.

3. Need for a Harmonized Legislative Approach

[6] In Canada, PEI became the first jurisdiction to enact NDA legislation¹⁷ in 2021. Proposed NDA bills have been introduced in NS¹⁸, Manitoba¹⁹, BC²⁰, Ontario²¹ and in the Senate.²² All are private members' bills. These bills or laws have similarities but some differences, particularly the Federal bill which not only attempts to address harassment in the federal workplace, but also in organizations that receive public funding. In Ontario, legislation has already been amended to address concerns around the misuse of NDAs related to sexual misconduct in post-secondary education institutions²³ and in regulation of real estate agents to prevent obstruction of reports to the registrar.²⁴ A harmonized approach may be desirable as there are organizations that operate across provincial borders. Additionally, as the issue of NDAs has received a fair amount of media attention, there may be more public scrutiny related to how governments choose to address the harms that NDAs cause and the use of NDAs to conceal wrongdoing.

[1.6493025](#)> Funding was restored in 2023 subject to conditions: Christian Paas-Lang, "Federal government says it will restore funding to Hockey Canada – with conditions" (April 16, 2023), online CBC News <<https://www.cbc.ca/news/politics/hockey-canada-federal-government-funding-restored-1.6812492>>

¹⁵ *Warning notice: Use of non disclosure agreements (NDAs)*, Solicitors Regulation Authority, updated 12 November 2020 (date first published: 12 March 2018). Online <<https://www.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/>>

¹⁶ "Legal Services Board launches call for evidence on the misuse of NDAs and the role of lawyers" (May 2, 2023), online: Legal Services Board <<https://legalservicesboard.org.uk/news/legal-services-board-launches-call-for-evidence-on-the-misuse-of-ndas-and-the-role-of-lawyers>>

¹⁷ *Non-disclosure Agreements Act*, RSPEI 1988, c N-3.02 ("PEI Act"). Online <https://docs.assembly.pe.ca/download/dms?objectId=9e65eec9-3f80-479b-acf2-c5a00b121d44&fileName=bill-118.pdf>

¹⁸ Bill No. 144, *Non-disclosure Agreements Act*, 1st Sess., 64th Leg., Nova Scotia, 2022. Online <https://nslegislature.ca/legc/bills/64th_1st/1st_read/b144.htm>

¹⁹ Bill 225, *The Non-disclosure Agreements Act*, 4th Sess., 42nd Leg., Manitoba, 2021-22. Online <<https://web2.gov.mb.ca/bills/42-4/b225e.php>>

²⁰ Bill M215, *Non-disclosure Agreements Act*, 4th Sess., 42nd Leg., British Columbia, 2023. Online <<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/first-reading/m215-1>>

²¹ Bill 124, *Stopping the Misuse of Non-Disclosure Agreements Act, 2023*, 1st Sess., 43rd Leg., Ontario, 2023. Online <<https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-124>>

²² Bill S-261, *An Act respecting non-disclosure agreements*, 1st Sess., 44th Parl., 2023. Online <<https://www.parl.ca/DocumentViewer/en/44-1/bill/S-261/first-reading>>

²³ *Strengthening Post-secondary Institutions and Students Act*, SO 2022, c 22, <<https://canlii.ca/t/5608b>>

²⁴ O Reg 365/22 Online <<https://www.ontario.ca/laws/regulation/r22365>>

4. Principles and Values

[7] Freedom of contract is a fundamental principle of contract law in Canada. It is based on the premise that contracting parties should have the freedom to contract on terms mutually agreeable to them with minimal outside interference. However, like other freedoms, freedom of contract is not absolute and is subject to certain limitations. Both governments and courts have created laws governing how parties exercise this freedom. Often, these laws are aimed at addressing a power imbalance between contracting parties such as in the context of employment or consumer sales.

[8] NDAs are commonplace in many forms of contracts and, indeed, serve many useful functions. For example, they can serve to protect proprietary information, intellectual property, trade secrets, and other sensitive or valuable information.

[9] NDAs are frequently used in agreements between organizations, such as contracts between buyers and sellers to prevent disclosure of confidential business information. They are also used in contracts between organizations and their employees. In the employment context, NDAs have often been coupled with non-compete and/or non-solicitation clauses aimed at protecting the employer's business from competition with former employees.

[10] NDAs have also become common as a means of ensuring confidentiality, respecting the terms and conditions by which a lawsuit or other dispute is settled and even the very existence of the dispute or settlement. This is not necessarily negative and can be desired by and benefit all parties to the dispute.

[11] The working group recognizes that NDAs have historically served and will continue to serve legitimate purposes. However, more recently, as noted above, NDAs have been used as a means of concealing information without a legitimate purpose such as to conceal wrongdoing. These NDAs are frequently used to hide misconduct, misdeeds, and even crimes and serve to oppress, intimidate, and silence complainants. It is the use of NDAs for these improper purposes that the working group intends to address.

[12] The working group will consider the impact of these NDAs on individuals. Do they take advantage of or exacerbate existing power imbalances? Do they create a barrier, real or perceived, for individuals seeking support? Do they serve to isolate or stigmatize the individual? The working group will also consider the impacts on organizations. Do they reduce transparency in the organization? Do they enable future wrongdoing? Do they impair long-term organizational development? Finally, the working group will consider the impact of these NDAs on society. Do they prevent important social issues from being addressed?

[13] In developing its final recommendations, the working group will attempt to strike a balance between the principle of freedom of contract and important values such as health and safety, transparency, accountability, diversity, inclusivity, and equality.

5. Scope

[14] The working group has considered the scope of conduct or wrongdoing for which the legislation should prevent the misuse of NDAs and provide protection for complainants. Consideration was given to situations where there are unequal power relationships, areas that are fundamental to a person’s human dignity, areas in which current legislation or regulation provide some protections, and the public interest in restricting NDAs. It is helpful to consider the conduct on a continuum ranging from conduct which the working group strongly recommends should be included in scope, for example, unwanted sexual conduct, to conduct which the working group debated, e.g., consumer protection and non-personal wrongdoing.

5.1 Continuum of Conduct

| | | | | |
|-----------------------|--------------------------------------|---|---|--|
| Sexual harassment | Racial harassment | Harassment and bullying (health and safety) | Environmental Health and safety | Consumer protection: Other positions of unequal bargaining power |
| Sexual misconduct | Religious harassment | | Public interest whistleblowing | |
| | Other human rights protected grounds | | Ethical wrongdoing / Professional ethics/regulatory reporting (physicians, therapists, lawyers, counsellors, real estate agent, etc.) | |
| Whistleblowing | Whistleblowing | Whistleblowing | Whistleblowing | Whistleblowing |
| Recommended inclusion | | Likely inclusion | | Unsure |

[15] While the conduct for scope is described above as a continuum, it is recognized that there are overlapping areas within these categories of conduct rather than a linear continuum. Also, behaviour is often not easily categorized in one category or another. In situations where there is sexual harassment, there may also be racial harassment, intertwined with harassment not linked to a protected ground.

[16] Outside the continuum, there are appropriate uses for NDAs that should not be restricted, and these relate to protection of proprietary information, intellectual property, trade secrets.

[17] With the extensive public and academic discussions on the harms of NDAs related to sexual conduct: harassment and assault, the working group accepted this conduct should be captured. The working group accepted that the harms that occurred due to concealing sexual misconduct have

similarly occurred in situations of racial harassment and can be envisioned to occur in situations where an individual identifies with another protected ground under various human rights legislation. Human rights protected grounds are intended to protect the fundamental dignity of individuals and historically vulnerable and marginalized groups and should be afforded the greatest protection by inclusion in this legislation.

[18] The working group discussed the overlap of harassment protected by human rights legislation and workplace harassment and bullying, which is a health and safety issue addressed by workers' compensation and labour law legislation. While recognizing that an avenue of recourse may be provided through these legislative schemes, the resulting harm or trauma to an individual subject to bullying and harassment may be significant. Serious mental health illnesses may result from bullying and harassment. Signing an NDA in this context may be equally harmful to the individual and in possibly permitting the continued toxic behaviour of the perpetrator to harm others. As a health and safety issue, it may be that bullying and harassment in a workplace, including that linked to a protected human rights ground, must be reported to health and safety committees and the workers' compensation board. Therefore, an NDA that conceals bullying and harassment in the workplace could be void against public policy. However, many complainants are likely unaware of this. Of this legal doctrine, the working group has been unable to find examples of reported Canadian case law in this regard.

[19] The working group reviewed existing legislation and draft bills, noting that the PEI *Non-disclosure Agreements Act* addresses harassment and discrimination. Discrimination is defined as in the *Human Rights Code* of PEI while the definition of "harassment" in s. 1 is not limited to sexual conduct, and would be wide enough to capture any form of harassment:

"harassment" means any action, conduct or comment that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to a person and, without limiting the generality of the foregoing, includes actions, conduct or comments of a sexual nature, ...²⁵

[20] If individual harms of health and safety should be captured by the proposed NDA legislation, what of wrongdoing that has broader health and safety issues? Should harm that affects groups of workers or the public, such as unsafe work practices and environmental issues, be in scope? Reporting of these types of issues is also provided for in health and safety and workers' compensation legislation. This type of wrongdoing may also fall within protections provided by public disclosure legislation, or other legislation such as environmental protection. In the testimonies collected by Can't Buy My Silence, there are stories where NDAs have been used to silence whistleblowers. Whistleblowers may experience retaliation, harm from being silenced which amounts to harassment, the wrongdoer may be protected, and the wrongdoing continued.

²⁵ PEI Act, supra note 17.

[21] With reporting of any wrongdoing, complainants may face retaliatory conduct. Retaliation is specifically included in some legislation, including Washington and the draft Manitoba bill. Retaliation is an extension of the original wrongdoing and should be captured within scope.

[22] Due to the evolution of NDA legislation from the #MeToo Movement, the working group concluded that existing legislation on NDAs was not particularly helpful in considering this issue as they did not adequately address all the situations where NDAs hide wrongdoing and cause harm.

[23] As consideration of the type of conduct was further discussed, the working group recognized that there were other situations where unequal bargaining power may exist, harm may be caused by wrongdoing, and if NDAs were allowed to be used in those situations further harm may be caused to vulnerable people. During the working group's deliberations, Ontario passed amendments to the *Ontario Trust in Real Estate Services Act* code of ethics regulations that make clear that while settlements of disputes between clients and a real estate agent were still permitted, a client must still be able to complain to the Real Estate Council of Ontario.²⁶ This amendment prevents real estate agents from obstructing the reporting of any concerns that are properly within the authority of the Real Estate Council. Similar language is included in the UK SRA warning notice on NDAs to ensure NDAs do not block reporting to the SRA, other regulators, and law enforcement agencies, as well as disclosures protected by law.²⁷ It can easily be seen that similar concerns of concealing wrongdoing and greater potential harm to the public relate to other professions and in the delivery of services to the public.

5.2 Does the context of the conduct matter?

[24] Ancillary to the discussion of scope of conduct was whether the scope of the legislation would be limited to restricting NDAs in an employment context, capturing pre-emptive and settlement NDAs. It was noted that serious harms are being concealed in non-workplace situations, such as with Hockey Canada, which are in the public interest to be addressed.

[25] As noted previously, existing, or draft, NDA legislation is not particularly helpful in considering the breadth of scope. All existing and draft NDA legislation address employment or workplace situations. In several jurisdictions the ban or restrictions to NDAs also apply specifically to landlord tenant situations,²⁸ while others apply to broader contexts of civil rights or human rights legislation, including situations such as provision of services.²⁹ The focus of the legislation is on the behaviour rather than the context in which it occurs.

²⁶ Shane Dingman, "Ontario moves to ban use of non-disclosure agreements in real estate transactions" (March 1, 2023). Online The Globe and Mail: <<https://www.theglobeandmail.com/real-estate/article-ontario-moves-to-ban-use-of-non-disclosure-agreements-in-real-estate/>>
<https://www.ontario.ca/laws/regulation/r22365>

²⁷ Solicitors Regulatory Authority, *supra* note 15.

²⁸ See Table in Appendix A: California and Nevada.

²⁹ See Table in Appendix A

[26] Also as previously noted, there are examples of efforts made to address the concealment of wrongdoing and prevent the harms caused by NDAs that are not workplace, such as the Ontario real estate regulations, the US securities commission³⁰, and BC's *Public Interest Disclosure Act*.³¹

5.3 Is this replicating existing protections?

[27] While there are existing protections for health and safety in workers' compensation and labour legislation, and some protection for public interest disclosures, a lay complainant being asked to sign an NDA is unlikely to be aware of these protections. It is also noted that protections are not uniformly available throughout the jurisdictions of Canada. For example, BC's *Public Interest Disclosure Act* does protect a complainant who breaches a contractual agreement, such as an NDA, to obtain advice, disclose or report retaliation under the Act³², but similar legislation in other provinces does not. Furthermore, as the objective of proposed legislation is to protect people who may be in unequal bargaining power and who lack the knowledge of existing legislation, effectively these protections do not assist a complainant.

[28] The working group is unaware of reported case law in Canada that challenges an NDA on the basis of public policy. However, the working group believes that many NDAs in these situations would go against requirements of existing legislation, such as health and safety, and could be void for public policy. Allowing parties to enter NDAs and effectively contract out of protections or reporting of wrongdoing set out in legislation defeats the intent of the legislation, including health and safety, public interest disclosure, environmental protection, consumer protection, and regulation of professions or services. The courts have confirmed that reports to law enforcement or regulatory bodies are protected by privilege and therefore an NDA would not prevent reporting³³. As discussed previously, most people signing an NDA would likely not be aware of this.

[29] Capturing areas protected by other legislation within the scope of legislation to regulate NDAs may support or reinforce what existing laws are intended to ensure. Persons being asked to sign an NDA are unlikely to be aware of the protections available in other legislation, what type of disclosure is protected by privilege, and after the fact, be unable to challenge the validity of an NDA due to multiple factors including fear, lack of financial means, time and resources. Legislation in many jurisdictions include provisions that reinforce disclosures that parties are not allowed to contract out of by using an NDA.³⁴

³⁰ The U.S. Securities and Exchange Commission banned NDAs regarding securities regulation violations making it illegal not only to enforce an NDA that sought to hide a securities regulation violation but made it illegal to ask an employee to enter into such an agreement: see Rachel S. Spooner, (2020) "The Goldilocks Approach: Finding the "Just Right" Legal Limit on Nondisclosure Agreements in Sexual Harassment Cases," (2020) 37:2 Hofstra Labor & Employment Law Journal, 331 at 366.

³¹ [Public Interest Disclosure Act](#), BC, s. 45

³² *Ibid*

³³ *R. v. Leipert*, 1997 1 SCR 281 at 14

<<https://www.canlii.org/en/ca/scc/doc/1997/1997canlii367/1997canlii367.html>>; Hung v. Gardiner, 2003 BCCA 257 <<https://www.canlii.org/en/bc/bcca/doc/2003/2003bcca257/2003bcca257.html>> .

³⁴ See table in Appendix A. Examples include Arizona, Maine, New Mexico, New York

[30] The intent of any NDA legislation is to ensure that NDAs are not used to hide wrongdoing. The legislation would provide clarity and would also be preventative.

[31] The working group proposes describing the scope as behaviour that is void against public policy or wrongful conduct that is contrary to law or otherwise contrary to public policy. Concern was noted whether this was too broad and may risk capturing behaviour not intended to be captured, be less supported for implementation, and be possibly challenged for being overly broad.

[32] **Recommendation:** The working group agrees that wrongful conduct on the left and centre of the continuum in areas of harassment, violence and discrimination should be within the scope of the legislation. The working group is less sure of disclosures that may be caught by public interest disclosure legislation.

[33] **For Discussion:** Beyond harassment, violence, and discrimination, what is the extent of conduct that should be addressed by legislation regulating NDAs? Is the scope limited to specific contexts such as employment in which the conduct may occur?

6. Legislative options:

[34] The working group agrees that legislation could help prevent the misuse of NDAs and promote a harmonized approach across Canada. There are two approaches taken by jurisdictions: outright banning the use of NDAs in certain circumstances or permitting the use of NDAs if specified conditions are met. The working group has also discussed a third option: permissive legislation where the legislation articulates the situations when NDAs may appropriately be used. These options are discussed below.

[35] **Ban:** Legislation could ban the use of NDAs under any circumstances that fall within scope. Several jurisdictions have taken this approach, including Washington, Hawaii, Maryland,³⁵ and the US Congress in the *Speak Out Act*.³⁶ Banning the use of NDAs makes a clear unambiguous statement of the public policy interests that are being protected and leaves no possibility that complainants may be asked to sign NDAs that they do not fully understand and feel pressured to sign.

[36] Would an outright ban hurt some complainants by limiting their options during negotiations, and preventing them from settlements? The argument for allowing parties to have the option of choosing to enter an NDA is that the complainant is offered significantly higher settlements if they agree to an NDA so it should be up to them. Due to the secretive nature of NDAs, this is difficult to prove or disprove. Anecdotally, the times that a complainant is offered more than they may be awarded by a court or Tribunal are likely rare. Would it have a chilling effect on settlements more broadly, resulting in an

³⁵ Bill 1795, *Engrossed Substitute House Bill*, 67th Leg., Washington, 2022 (passed by the House Feb 9, 2022, passed by the Senate Mar 3, 2022), H.B. No. HD1 SD1 2495, *A Bill for an Act relating to Employment Practices*, Act 288, 31st Leg., Hawaii, 2022 (signed into law July 12, 2022), H.B. 1596, *Disclosing Sexual Harassment in the Workplace Act of 2018*, Ch. 738, Maryland, 2018 (passed May 15, 2018).

³⁶ *Speak Out Act*, 42 U.S.C. Ch. 164

<https://uscode.house.gov/view.xhtml;jsessionid=C6D031F552B450CBCECF3E56687F1953?path=&req=%28title%3A42+section%3A19401+edition%3Aprelim%29+OR+%28granuleid%3AUSC-prelim-title42-section19401%29&f=treesort&fq=&num=0&hl=false&edition=prelim>

increase in litigation burdening the courts and Tribunals? With respect to the argument that settlements will be less likely to occur, parties still benefit from reduced costs, time, and not having a published decision if settlements are made, however some members of the working group continue to have concerns on the potential chilling effect. Conversely, it was noted that by allowing parties to enter into NDAs, this does result in a chilling effect on reporting wrongdoing.³⁷

[37] While banning NDAs outright in some circumstances may result in some complainants receiving less compensation, it would ensure all complainants are protected from the pressure of entering agreements, forcing them to keep silent which may still occur if NDAs are permitted under any circumstances. There are stories of people regretting signing an NDA years after as the real impact and restrictions of an NDA are not readily apparent when in the moment of signing.

[38] Banning NDAs in certain circumstances is a public policy decision. There are legitimate uses for NDAs in protecting intellectual property, trade secrets, or other confidential business information that should not be interfered with.

[39] **Restrict:** Legislation that permits parties to enter NDAs list conditions that must be met for an NDA to be binding. These conditions are intended to provide some assurance that the complainant or party in the weaker bargaining position has been provided some protection to ensure the NDA is their choice. For example, under the PEI legislation an NDA is enforceable when it is “the expressed wish and preference of the relevant person concerned” and the following conditions are met:

- (a) the relevant person has had a reasonable opportunity to receive independent legal advice;
- (b) 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;
- (c) the agreement does not adversely affect
 - (i) the health or safety of a third party, or
 - (ii) the public interest;
- (d) 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
- (e) the agreement is of a set and limited duration.³⁸

[40] Illinois provides a 21-day cooling off period and 7 days to change their minds after receiving legal advice³⁹ while the Equality and Human Rights Commission in the UK recommends employers pay for legal advice.⁴⁰ It is noted that these measures will not address the reality that the impacts of agreeing to an NDA may not become apparent to someone until many years later.

³⁷ Spooner, *supra* note 30, at 370.

³⁸ PEI Act, *supra* note 17, s. 4(3).

³⁹ *Workplace Transparency Act*, 820 ILCS 96, sec. 1-30.

<<https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=4008&ChapterID=68>>

⁴⁰ Equality and Human Rights Commission, *supra* note 6, at 22-23.

[41] **Permissive legislation:** As the true scope of misuse of NDAs is not known, but increasingly stories are being shared that demonstrate their use in concealing wrongdoing and harm in a broad range of areas, the working group discussed the option of legislation that defines the circumstances where NDAs are appropriate and permissible to be used rather than attempting to articulate when it should not be used. This approach avoids possible gaps that may be missed if legislation defines situations for which NDAs are banned or restricted. It provides more clarity on when NDAs are permissible, protecting interests where use of NDAs is essential in facilitating investment in developments as in intellectual property, and protecting proprietary rights. The working group may still have to clarify scope in “confidential” information that is appropriately proprietary, e.g., lists of customers or pricing agreements likely appropriately recognized as confidential business information, while blanket clauses providing that all business discussions may be confidential would run afoul of the legislation if discussions or communications hide wrongdoing such as sexual harassment.

[42] Defining scope for this legislation may be easier. This approach is more likely to avoid the risks of the proposed legislation being either overbroad and capturing unintended situations, or not broad enough, resulting in the exclusion of people and situations that should be protected against the misuse of NDAs and requiring consideration of amendments to legislation in the near future.

Recommendations and Issues for Discussion:

[43] **Recommendations:** There should be no situation where an NDA could prevent someone from going to law enforcement, or a regulator from making a disclosure or complaint that is provided for in law or is against public policy.

[44] Some wrongdoings, such as sexual harassment, sexual assault and racial discrimination, may be so egregious that the use of NDAs should be prohibited.

[45] **For Discussion:** Should the legislation ban NDAs for public policy reasons in situations within scope or allow parties to enter NDAs if certain conditions are met? Are there situations where NDAs may be acceptable with sufficient safeguards? Alternatively, should we consider legislating the permissible uses of NDAs: proprietary interests, trade secrets and intellectual property rather than what is not permissible?

7. Next Steps

[46] If there is agreement on the need to develop legislation to restrict the misuse of NDAs, with feedback from the ULCC August 2023 annual meeting to the questions posed in this paper, the working group will hold further discussions to clarify issues that remain. The plan would be to draft model legislation for the ULCC August 2024 annual meeting.

[47] Additional areas that have been raised and that need further discussion include preventative measures, limited retroactivity, and penalties.

[48] The working group looks forward to the advice and assistance of the Section.

Appendix A: NDA Legislation Summary Chart (Updated June 27, 2023) ⁴¹

CANADA: PASSED

| Jurisdiction | Date | Prohibits NDA pre-claim | Prohibits NDA in settlement | NDA permitted on request of Complainant | Specific exclusions | When does legislation apply? | Applies retro-actively | Other |
|---|--|-------------------------|---|---|---------------------------|--|------------------------|--|
| Ontario Amendments to Acts in respect of postsecondary education | Royal Assent: December 8, 2022 Most substantive sections in force: July 1, 2023 | Yes | Renders void any agreement terms that stop the institution or “related people” from disclosing allegation or complaint. | Yes, with certain conditions (legal advice, no undue influence, future chance to waive confidentiality, and set and limited duration) | No additional categories. | Applies to publicly-funded universities and colleges Applies to private career colleges For both types, applies to sexual misconduct in relation to students | No | Also does the following: -provides authority for discharge or discipline, -prohibits re-employment, -disentitles harasser from termination pay, and -prohibits substitute penalties (e.g. from a labour arb) |
| Ontario | Passed and comes into force | Yes | Prohibits registrants from | No. | No additional categories | -Applies to registrants under the <i>Real Estate</i> | No | -part of a general update of the regulations and |

⁴¹ An earlier version of this table was included in Jennifer Khor, et al., “Challenging Non-Disclosure Agreements (NDAs) and the Harm they Cause: Paving the Way for more Trauma-Informed Approaches,” (October 27, 2022) prepared for *The Continuing Legal Education Society of British Columbia*, Human Rights Law Conference 2022.

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| Regulation 365/22 made under the Real Estate and Business Brokers Act | by specific proclamation of coming into force of s. 31(1) Bill 145 , which appears to be law (Canlii) | | obstructing or inducing a person to withdraw a complaint to the registrar or make agreements that include requirement to withdraw or refrain from complaint | | | <i>and Business Brokers Act.</i> -Applies to all potential complaints to the registrar (not limited to harassment/discrimination) | | standards of conduct. |
| PEI Non-Disclosure Agreements Act | In force May 17, 2022 | Yes | Yes, unless "expressed wish and preference" | Yes, subject to certain conditions (same as above) | Same as above. | -All allegations of harassment or discrimination -All contexts | No | |

CANADA: NOT YET PASSED

| Jurisdiction | Date | Prohibits NDA pre-claim | Prohibits NDA in settlement | NDA permitted on request of Complainant | Specific exclusions | When does legislation apply? | Applies retro-actively | Other |
|--|---|-------------------------|---|--|--|--|------------------------|--|
| British Columbia Bill M 215 – 2023, Non-Disclosure Agreements Act | First reading March 9, 2023 (Private Member’s bill), Not yet law as of June 26 2023. | Yes | Yes, unless “expressed wish and preference” | Yes, subject to certain conditions (independent legal advice, no adverse effect on third party or public interest, etc.) | NDAs are void to the extent that they restrict: -Disclosure protected/require under legislation -artistic expression -Communication w certain classes of persons (e.g., lawyer, physician, elder, etc.) | -All allegations of harassment or discrimination -In all contexts | No | Requirement for NDAs to be drafted in ‘clear and understandable’ language. |
| Manitoba Bill 225 – the Non Disclosure Agreements Act | Introduced April 26, 2022 (Private Member’s Bill) Not yet law as of June 26 2023. | Yes | Yes, prohibits non-compliant NDAs. | Yes, subject to certain conditions (independent legal advice, no adverse effect on third party or public interest, etc.) | NDAs are unenforceable to the extent that they restrict: -Disclosure protected/require under legislation -artistic expression -Communication w certain classes of persons (e.g., lawyer, physician, elder, social worker, | -All allegations of harassment or discrimination -In all contexts | No | Text substantially borrowed from PEI legislation |

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| | | | | | victim services, etc.) | | | |
| Nova Scotia Bill No 144 Non Disclosure Agreements Act | First reading April 7, 2022 (Private Member's Bill) Not yet law as of June 26 2023. | Yes | Yes, unless "expressed wish and preference" of victim | Yes, subject to certain conditions (same as above) | Same exclusions as listed above | -All allegations of harassment or discrimination -All contexts | No | Text substantially borrowed from PEI legislation |
| Ontario Bill 124, Stopping the Misuse of Non-disclosure Agreements Act | Carried at first reading June 6, 2023 (Private Member's Bill) Not yet law as of June 26 2023. | Yes | Yes, unless "expressed wish and preference" | Yes, subject to certain conditions (same as above) | Same exclusions as listed above. | -All allegations of harassment or discrimination -In all contexts | Yes, partially: applies listed situations where NDA prohibited to *existing* agreements (legislation, artistic expression, certain classes) and general communications with prospective employer) | Text substantially similar to PEI legislation. |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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|--|--|-----|---|---|----------------|--|----|--|
| Federal (Canada) Bill S-261 An Act respecting non-disclosure agreements (Can't Buy Silence Act) | Carried at first reading (May 9 2023) (Senate Bill) | Yes | Yes, unless "specific and voluntary written request" after opportunity to obtain legal advice | Yes, but only if opportunity to obtain independent legal advice includes advice on alternatives to NDA for protecting confidentiality | Same as above. | -All allegations of harassment or discrimination -Applies to federal government departments, departmental corporations, and Crown corporations -Applies to House of Commons, Senate, Library of Parliament, Parliamentary Protective Service | No | This bill also includes: -restrictions on spending – grantees cannot use public money for NDA settlements or to litigate NDAs against complainants - reporting requirements on how many NDAs and dollar amounts of NDAs without divulging identity of complainants |
|--|--|-----|---|---|----------------|--|----|--|

UNITED STATES: PASSED

| Jurisdiction | Date | Prohibits NDA pre-claim | Prohibits NDA in settlement | NDA permitted on request of Complainant | Specific exclusions | When does legislation apply? | Applies retro-actively | Other |
|--|-------------------|-------------------------|-----------------------------|---|--|---|------------------------|--|
| Arizona House Bill 2020 | Passed April 2018 | No | No | Yes | -Responding to a peace officer or prosecutor -Making a statement not initiated by the | Only in cases of sexual assault or sexual harassment (criminal context) | No | Public monies cannot be used as consideration for a sexual assault related NDA |

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| | | | | | party in a criminal proceeding | | | |
| California SB-820 | Passed Nov 8, 2018 | No | Yes | Yes, unless a gov't agency is a party to the agreement | Not specified | -Only in cases of sexual assault or sexual harassment -Only in employment context | Yes | |
| California SB-331 | Passed October 7, 2021 | Yes | Yes | Yes, unless a gov't agency is a party to the agreement | Not specified | -In all instances of harassment/discrimination -In employment and landlord/tenant context | Yes | |
| Colorado SB – 23053 Colorado Revised Statutes ss. 22-1-135.5, 24-50.5-105.5 | Governor signed June 2, 2023 Date in force not confirmed— not in force per Colorado Revised Statutes | Yes | Yes | Yes | -NDA allowed if: - required to prevent disclosure of employee's (complainant) identity and this is the wish of the complainant -legislative data privacy requirements or privilege -trade secrets, security arrangements | Applies to: - School boards, districts, and boards of cooperative services (public bodies) -State departments, agencies etc. -Local government | Not specified | -includes provisions for costs against employers to seek to enforce prohibited NDAs |
| Hawaii H.B. No 2495 | Effective July 12, 2022 | Yes | Yes | No | Not specified | - Only in cases of sexual assault or harassment | No | |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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| | | | | | | -Only in employment context | | |
| Illinois 820 ILCS 96 Workplace Transparency Act | Effective Jan 1, 2020 | Yes | Yes | Yes, subject to conditions (right to legal advice, 21 days to consider, 7-day period to change their mind) | right to testify in administrative, legislative, judicial proceeding re criminal conduct or alleged unlawful employment practices | -Unlawful discrimination and harassment -Only in employment context | Yes | Employees are entitled to “reasonable attorney’s fees and costs incurred” |
| Maine H.P. 711 Act Concerning Nondisclosure Agreements in Employment | Passed May 12, 2022 | Yes | Yes, in certain circumstances | Yes | Individual must retain right to report to federal/state agencies and testify in court proceedings | -All employment discrimination -Only in employment context | No | |
| Maryland House Bill 1596 Disclosing Sexual Harassment in the Workplace Act of 2018 | Passed May 15, 2018; effective Oct 1, 2018 | Yes | Yes | No | Not specified | -Sexual harassment and retaliation -Only employment context | Yes | -Specifically prohibits retaliatory action by employer -Sets out that certain employers are liable for attorney’s fees - requires reporting of settlements to |

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| | | | | | | | | Commission on Civil Rights |
| Nevada NV Rev Stat S. 10.195 (2019) | Effective July 1, 2019 | No | Yes | Yes, unless a gov't agency is a party to the settlement | Not specified. | -Only sexual harassment/discrimination on the basis of sex -Employment and landlord/tenant context | No | |
| New Jersey NJ Stat. S 10:5 -12.8 | Effective March 18, 2019 | Yes | Yes | Not specified. | -NDA allowed for non-compete and proprietary information | -All claims of discrimination, retaliation, or harassment -Only employment context | Yes | Note: NDAs are unenforceable against employee, but still enforceable against employer unless employee reveals identity of employer. |
| New Mexico HB0021 | Passed Feb 20, 2020; effective May 20, 2020 | Yes | Yes, under certain circumstances | Yes | -NDA can't prevent disclosure of information in a "judicial, administrative, or other governmental proceeding" | -Sexual harassment, discrimination, and retaliation claims -Only employment context | Yes | |
| New York General Obligations Chapter 24-A, Article 5, | Effective October 12, 2018 | Yes | Yes | Yes, subject to conditions (plain language, 21 days to consider, 7-day period to change their mind) | NDA void to the extent that it prevents participation in gov't investigation or disclosing any facts necessary to | -All types of discrimination -Only in employment context | No | |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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|---|---|-----|----------------|-----|--|---|-----|--|
| Title 3, S. 5-336 | | | | | receive unemployment insurance, Medicaid, etc. | | | |
| Oregon Senate Bill 1586 | Effective Jan 1, 2023 | Yes | Yes | Yes | Not specified | -All types of discrimination -Only in employment context | Yes | |
| Rhode Island SB 342 Proposed Amendment to ss. 28-5-6 and 28-5-7 of General Laws (“Fair Employment Practices”) | Passed House and Senate – transmitted to Governor June 19, 2023. Likely very close to becoming law. Not published as law | Yes | Yes | No | None specified | -All types of discrimination/ “violations of civil rights” -Only in employment context | Yes | Embedded in general human rights code. |
| Tennessee Tennessee Code Title 50 Ch 1 50-1-108 | Passed in 2018. | Yes | Not specified. | No | Not specified | -Only sexual harassment -Only in employment context (restricts employers from making NDAs a condition of employment) | No | |

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| Vermont H707 An Act Relating to the Prevention of Sexual Harassment | Passed May 28, 2018 | Yes | Yes | Yes | An NDA must expressly state that it does not prohibit lodging a sexual harassment complaint w/ a government agency, testifying in court, or exercising any collective bargaining rights | -Only sexual harassment -Only in employment context | Yes | |
| Virginia Title 40.1 Ch 3 Art 1 S 40.1-28.01 | Effective July 1, 2019 | Yes | Yes | Yes(?) | Not specified | -Only sexual assault -Only employment context | Yes | |
| Virginia – update to existing law HB 1895 | Approved by Governor March 23, 2023 Not yet in online version of Code of Virginia but is approved | Yes | Yes | Yes | Not specified | -Amended to add sexual harassment to the above law -Amended to specifically include nondisparagement agreements | Yes, as above. | |
| Washington House Bill 1795 | Effective June 9, 2022 | Yes | Yes | No | Not specified | -All forms of discrimination, harassment, or retaliation -Only employment context | Yes | |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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| US (Federal) Speak Out Act | Approved, Dec 7, 2022 | Yes | Yes | No | Not specified | -Only sexual assault/harassment (which violates the law) -All contexts | Yes | |
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UNITED STATES: NOT YET PASSED

| Jurisdiction | Date | Prohibits NDA pre-claim? | Prohibits NDA in settlement? | NDA permitted on request of Complainant | Specific exclusions | When does legislation apply? | Applies retroactively | Other |
|---|---|--------------------------|---|---|---------------------|---|-----------------------|---|
| Arizona HB 2369 Amends Title 23, Ch. 2, Article 1 (Arizona Revised Statutes) (Note: deals with employment contexts – additional law already passed above re: criminal assault and harassment) | Second reading in the House, January 26, 2023 Not yet law at the time of writing per Arizona Revised Statutes online | Yes | No - specifically allows NDA in settlement and specifically allows confidentiality provisions | No (although note that settlement NDAs are specifically allowed) | None specified | -Employment contexts only -Applies to work-related sexual harassment and sexual assault -Appears to only apply to nondisclosure agreements as a condition of employment | No. | More limited than most of the other legislation as it does not restrict NDAs used in settlement, but only prohibits making NDA a condition of employment. |

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| Connecticut SB697 | Introduced Jan 2019 On Senate calendar as of April 2019 Entry on Connecticut General Assembly Appears not to be law yet. | Yes | Yes | No | Not specified | -Only sexual harassment/assault -Only employment context | No | |
| Kansas HB2324 | Died May 21, 2020 Entry on trackbill.com | No | Yes | No | Not specified | -Only sexual harassment/abuse -Only employment context | Yes | |
| Massachusetts HD 1377 Amending Chapter 151B of the General Laws to add S. 11 Note: an identical bill appears to | Senate concurred, Feb 16, 2023 Not yet published online as of June 26, 2023. | Yes | Yes | Yes — allows provisions that protect the claimant’s identity, and related facts, only on “written, informed” request of the | | -Covers sexual offenses, sexual harassment, discrimination based on sex or SOGI, retaliation, -Only employment context | Partial – prior agreements that would run afoul of this law cannot be used to invalidate | -Parties who attempt to enforce prohibited NDAs will be liable for costs. -Public funds cannot be used to settle claims against public employees -A lawyer who insists on |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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| be labelled as HD1778 . | | | | claimant, but cannot be construed to limit the right of the claimant to disclose. | | | compensation claims or force claimant to return compensation | prohibited clauses may be subject to professional discipline |
| New Jersey S1380 Amending PL 1993 c. 65 and supplementing Title 52 of the Revised Statutes | Introduced in Senate and referred to Committee Feb 10, 2022 (not yet included in online version of Title 52 as of June 26 2023) | Yes | Yes | No | None specified | -Applies to state officers and employers, Legislature and candidates -Applies to sexual assault and harassment claims, and definition includes nonsexual conduct if it is based on the sex of an individual | No | No campaign contributions can be used for settlement of sexual assault or harassment claims |
| New York S4516 Amending the General Obligations Law S. 5-336 (described above) | Passed Assembly and Returned to Senate after Third Reading June 3, 2023 | Yes | Yes | Yes, only if “the condition of confidentiality is the complainant’s preference” | -Adds nonenforceability of NDAs that restrict ability to speak to attorney general | -Only employment context -Adds independent contractors -Adds “harassment or retaliation” to existing law that includes all forms of discrimination | No | -Specifically prohibits: - the use of liquidated damages clauses for breach of an NDA -forfeiture of compensation for breach of NDA |

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| | (Not yet included in legislation online as of June 26, 2023) | | | | | | | -any clause or requirement requiring the complainant to state that there was no discrimination |
| New York Amending the General Obligations Law S. 5-336 (described above) S4233 *possibly superceded or inconsistent with S4516 | Referred to Judiciary Feb 6, 2023 Not included in legislation online yet as of June 26, 2023 | Yes | Yes | No | -allows NDA provisions that restrict disclosure of monetary amounts paid in settlement -allows provisions that stop the employer from disclosing identity of complainant -allows provisions about trade secrets, etc., and confidential information that is not about labour law violations. | -Only employment context -Adds independent contractors, volunteers, etc., -Adds "violation of labour law" | | -settlement agreements must say the complainant gets a copy in their primary language -cannot require NDA as condition of employment. |
| New York Amending the General Obligations Law S. 5-336 A2555 (described above) | Amend and Recommit to Judiciary March 20, 2023 | Substantively similar to S4233 | | | | | | |

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|---|--|--|--|------------|----------------------|---|------------|--|
| <p>Pennsylvania HB 938</p> | <p>Referred to House committee March 17, 2021, passed moved to Senate committee May 2021 Entry on trackbill.com Cursory search shows this as not published as of June 26, 2023</p> | <p>Yes</p> | <p>No, if voluntary</p> | <p>Yes</p> | <p>Not specified</p> | <p>-Only sexual harassment -Only employment context</p> | <p>No</p> | |
| <p>Texas HB 4309 Amending the Labor Code, adding Chapter 25</p> | <p>Passed in House and referred to Senate, which referred to committee May 23 2023 If passed, will be effective Sept 2023</p> | <p>Yes, prohibits clauses that stop complainants from reporting to police or discussing facts of the claim</p> | <p>No – Does not apply to “negotiated settlement agreements”</p> | <p>No</p> | <p>Not specified</p> | <p>-Applies to sexual assault and harassment, including “conduct” that unreasonably interferes with work/creates poisoned environment</p> | <p>Yes</p> | |

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| | Not included in Labor Code online as of June 26 2023 | | | | | -Applies in employment contexts only | | |
|--|--|--|--|--|--|--------------------------------------|--|--|

OTHER JURISDICTIONS

| Jurisdiction | Date | Prohib its NDA pre-claim | Prohibits NDA in settlement | NDA permitted on request of Complainant | Specific exclusions | When does legislation apply? | Applies retro-actively | Other |
|--|---|--------------------------|---|--|--|--|------------------------|---|
| Ireland Bill 2001 Employment Equality (Amendment (Non-Disclosure Agreements) Bill 2001 | Seanad fourth stage as of July 6, 2022 (not passed yet) | No | Yes, unless “expressed wish and preference” of employee | Yes, subject to certain conditions (independent legal advice, no adverse effect on third party or public interest, etc.) | NDA will not apply to disclosure of information under Protected Disclosures Act, or to certain protected classes of person (lawyer, doctor, family member, etc.) | -Sexual harassment and other forms of discrimination -Only employment context | Yes | NB: agreements made before this legislation that do not conform to it are void; an employer that makes an NDA that does not conform after it passes is guilty of an offence |
| Victoria, Australia Victorian Government Response to the Ministerial | Reforms proposed and accepted, but no set timeline | ? | ? | ? | ? | -Only sexual harassment -Only employment context | ? | Task force recommended legislative amendments to restrict the use of NDAs in re workplace sexual |

Non-Disclosure Agreements (NDAs) – Progress Report of the Working Group

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|---|--|-----|---|--|----------------|---|----|---|
| Taskforce on Workplace Sexual Harassment | | | | | | | | harassment. The government accepted the recommendation in principle. Legislation to be developed. |
| England Bill 131 2022-23 Non-Disclosure Agreements Bill | First reading 29, June 2022. Schedule d for second reading November 24, 2023 | Yes | Yes, unless “expressed wish and preference” of employee | Yes, subject to certain conditions (independent legal advice, no adverse effect on third party or public interest, etc.) | None specified | -Bullying, harassment, and discrimination. -No limits on context, although employment is specifically mentioned. | No | -Requires plain language in any agreement -Applies to England, Wales and Scotland. |

Appendix B: Additional Resources

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