



HOUSE USE ONLY

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2nd SESSION, 66th GENERAL ASSEMBLY
Province of Prince Edward Island
70 ELIZABETH II, 2021

(Bill No. 118)

Non-disclosure Agreements Act

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PRIVATE MEMBER'S BILL

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Charlottetown, Prince Edward Island



NON-DISCLOSURE AGREEMENTS ACT

BILL NO. 118

2021

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Definitions

In this Act

- (a) “**discrimination**” means discrimination as defined in the *Human Rights Act*, R.S.P.E.I. 1988, Cap. H-12;
- (b) “**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, including but not limited to
 - (i) sexual solicitations or advances,
 - (ii) sexually suggestive remarks, jokes or gestures,
 - (iii) circulating or sharing inappropriate images,
 - (iv) unwanted physical contact,
 - (v) any action, conduct or comment that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or a promotion, or
 - (vi) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance;
- (c) “**Minister**” means the member of the Executive Council charged by order of the Lieutenant Governor in Council with the administration of this Act;
- (d) “**non-disclosure agreement**” means a provision in writing in a settlement agreement, however described, between a relevant person and
 - (i) the party responsible, or
 - (ii) the person who committed or is alleged to have committed the harassment or discrimination,whereby the relevant person agrees not to disclose any material information about the circumstances of a dispute between them concerning allegations of harassment or discrimination that are unlawful under an enactment or Act of the Parliament of Canada;
- (e) “**party responsible**” means a person who has an obligation in law to take reasonable steps to prevent harassment and discrimination in the place where the harassment or discrimination occurred or is alleged to have occurred;

- (f) “**relevant person**” means the person who has experienced or made allegations about harassment or discrimination;
- (g) “**settlement agreement**” means an agreement between two or more parties that disposes of one or more issues in dispute between the parties in relation to allegations of harassment or discrimination.

2. Administration of Act

The Minister is responsible for the administration of this Act.

3. Purpose

The purpose of this Act is to regulate the content and use of non-disclosure agreements.

4. Non-disclosure agreement

- (1) Other than in accordance with subsection (2), no party responsible or person who committed or who is alleged to have committed harassment or discrimination shall enter into a non-disclosure agreement with a relevant person where
 - (a) the relevant person has experienced or made allegations of harassment or discrimination; and
 - (b) the non-disclosure agreement has the purpose or effect of concealing the details relating to a complaint of harassment or discrimination.

Non-disclosure agreement permitted

- (2) A party responsible or person who committed or who is alleged to have committed harassment or discrimination may only enter into a non-disclosure agreement with a relevant person in accordance with this section if such an agreement is the expressed wish and preference of the relevant person concerned.

Enforceability of agreement

- (3) Where a non-disclosure agreement is made under subsection (2), the agreement shall only be enforceable where
 - (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.

Separate agreement prohibited

- (4) A party responsible shall not enter into a separate non-disclosure agreement with the person who committed or is alleged to have committed the harassment or discrimination for the purpose of preventing a lawful investigation into a complaint of harassment or discrimination.



Agreement null and void

- (5) Where a non-disclosure agreement following an allegation or incident of harassment or discrimination is made that does not comply with subsections (3) or (4), that non-disclosure agreement is null and void.

Non-application

- (6) An agreement made in accordance with subsection (2) shall not apply to
- (a) any disclosure of information protected or required under the *Employment Standards Act*, R.S.P.E.I. 1988, Cap.E-6.2, the *Human Rights Act*, the *Occupational Health and Safety Act* R.S.P.E.I. 1988, Cap. O-1.01, or any disclosure protected or required under another enactment or Act of the Parliament of Canada;
 - (b) artistic expression by the relevant person that does not identify
 - (i) the party responsible or the person who committed or is alleged to have committed the harassment or discrimination, or
 - (ii) the terms of the non-disclosure agreement;
 - (c) any communication relating to the harassment or discrimination between the relevant person and
 - (i) a person whose duties include the enforcement of an enactment or Act of the Parliament of Canada, with respect to a matter within the person's power to investigate,
 - (ii) a person authorized to practise law in the province pursuant to section 20 of the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1,
 - (iii) a medical practitioner as defined in the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8.1,
 - (iv) a psychologist or psychological associate as defined in the *Psychologists Act* R.S.P.E.I. 1988, Cap. P-27.2,
 - (v) a registered nurse or nurse practitioner as defined in the Registered Nurses Regulations (EC350/18) under the *Regulated Health Professions Act* R.S.P.E.I. 1988, Cap. R-10.1,
 - (vi) a social worker as defined in the *Social Work Act* R.S.P.E.I. 1988, Cap. S-5;
 - (vii) a person who provides victim services pursuant to the *Victims of Crime Act* R.S.P.E.I. 1988, Cap. V-3.1,
 - (viii) a community elder, spiritual counsellor or counsellor who is providing culturally specific services to the relevant person,
 - (ix) the Office of the Ombudsperson within the meaning of the *Ombudsperson Act* R.S.P.E.I. 1988, Cap. O-5.01,
 - (x) a friend, a family member or personal supporter as specified or approved in the non-disclosure agreement, or
 - (xi) a person or class of persons prescribed in the regulations.

Non-application, hiring

- (7) An agreement made in accordance with subsection (2) that relates to a previous employment relationship does not apply to a relevant person's communication with a prospective employer for the purpose of obtaining employment and providing information about the relevant person's employment history, including

- (a) disclosure of the fact that a settlement agreement was reached with the party responsible or the person who committed or is alleged to have committed the harassment or discrimination; and
- (b) that the settlement agreement includes a non-disclosure agreement if the communication does not state the particulars of the harassment or discrimination that occurred or is alleged to have occurred.

Plain language

- (8) A non-disclosure agreement made under subsection (2) shall, insofar as is possible, be written in plain language.

Non-disparagement agreement

- (9) In this section, all references to a non-disclosure agreement shall be taken to also refer to a non-disparagement agreement where the non-disparagement agreement has the effect or purpose of concealing details relating to an allegation or incident of harassment or discrimination.

Disclosure of amount paid

- (10) Subject to subsection (6), nothing in this section prohibits the inclusion or enforcement of a provision in a settlement agreement that precludes the disclosure of the amount paid in the settlement of a claim.

5. Existing agreements

Notwithstanding the provisions of a non-disclosure agreement entered into before the coming into force of this Act, no such agreement shall apply to disclosures permitted under subsections 4(6) and 4(7).

6. Offence

A party responsible or person who committed or is alleged to have committed harassment or discrimination who, after the coming into force of this Act, enters into a non-disclosure agreement that is not made in accordance with section 4, is guilty of an offence and is liable on summary conviction to a fine of not less than \$2,000 or more than \$10,000.

7. Regulations

The Lieutenant Governor in Council may make regulations

- (a) defining terms used but not defined in this Act;
- (b) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act; and
- (c) prescribing persons or classes of persons to whom a non-disclosure agreement does not apply under subsection 4(6).

8. Appropriation required

The moneys required for the purpose of this Act shall be paid out of moneys appropriated for that purpose by the Legislature.



9. Commencement

This Act comes into force six months following Royal Assent or on a date to be proclaimed by the Lieutenant Governor in Council, whichever is earlier.

EXPLANATORY NOTES

SECTION 1 establishes definitions to be used for the purposes of the Act, including definitions of “discrimination”, “harassment”, “Minister”, “non-disclosure agreement”, “party responsible” “relevant person” and “settlement agreement”.

SECTION 2 provides that the Minister is responsible for the administration of the Act.

SECTION 3 establishes that the purpose of the Act is to regulate the content and use of non-disclosure agreements.

SECTION 4 sets out various requirements governing non-disclosure agreements and provides that agreements that do not comply with the requirements are null and void.

SECTION 5 provides that a non-disclosure agreement that was made before the coming into operation of the Act, does not apply to permitted disclosures set out in section 4.

SECTION 6 establishes an offence for a party responsible or person who committed or is alleged to have committed harassment or discrimination who, after the coming into force of this Act, enters into a non-disclosure agreement that is not made in accordance with section 4 of the Act.

SECTION 7 establishes regulation-making powers for the purpose of the Act.

SECTION 8 provides for the moneys needed for the purpose of this Act to be paid out of moneys appropriated for that purpose by the Legislature.

SECTION 9 provides for the commencement of the Act.



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<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Colin LaVie, Speaker

Joseph Jeffrey, Clerk

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