

Being unable to locate Weinstein won't stop lawsuits

By Jennifer Pritchett, Associate Editor



Even if plaintiffs launching lawsuits against Harvey Weinstein are unable to locate him to serve the legal papers, it won't prevent those matters from moving forward against him, says Toronto civil litigator [Sarah O'Connor](#).

Being unable to locate a defendant is not an obstacle to a lawsuit moving forward because of the processes available to dispense of the requirement to serve, and the relatively new ability to serve someone online via email or social media, she tells [AdvocateDaily.com](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments after the [National Post](#) reported that lawyers for an Ontario actress who has launched a lawsuit against the Hollywood film mogul have been unable to serve him because they can't find him.

The woman, who cannot be named as she is seeking a publication ban on her identity, alleges that he sexually assaulted her while she had a part in a movie being filmed in and around Toronto, says the newspaper.

"The actress is seeking millions of dollars in damages, claiming she has suffered mental distress, extreme social anxiety and depression, as well as social isolation and feelings of guilt, worthlessness and shame as a result of what happened," says the article.

She filed a statement of claim with a Toronto court, it says. Her lawyer told the newspaper that they tried but failed to locate Weinstein at his Westport, Conn. home and they believe that he could be in Arizona or somewhere in Europe, says the article.

None of the allegations has been proven in court. According to the *Post*, no statement of defence has been filed.

O'Connor says it's not uncommon for parties to be unable to locate defendants in lawsuits. Generally, lawyers do not accept service on behalf of clients unless they have received specific instruction to do so, she adds.

"It happens sometimes when people are trying to avoid service," she says.

Generally, O'Connor says, a plaintiff has six months to serve the defendant after the statement of claim is filed. Lawyers, if unable to reach the defendant in that time frame, can ask the court for an extension, she adds.

In recent years, courts have been accepting service via email or social media messages such as on Twitter or Facebook, she says.

O'Connor points to an [article](#) about serving via cyberspace that references a 2009 unreported estates case in Alberta where a party was sent notice of the action via Facebook.

A 2015 Ontario [case](#) also highlights how a respondent was reached via Facebook message and by email, and it was noted she "would not cooperate to reveal her location and employers and family members could not or would not give her location."

If a defendant is still unable to be located, plaintiff lawyers can go to court to argue for a motion to dispense with the requirement to serve the legal papers, O'Connor says. Lawyers will have to show how and when they attempted to reach the person, she adds.

"The courts will often say 'Yes, we will dispense with service if you can prove that the defendant may know of the claim and is simply trying to avoid service,'" she says. "These would be cases where it is impractical or unnecessary to continue to try to serve someone."

The process around online serving through email or social media, substitute service and for dispensing with service is set out in the Ontario [Rules for Civil Procedure](#) s. 16.04, O'Connor notes.