

More civil cases involving sex assaults expected: O'Connor



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TORONTO — There are several advantages to an Ontario woman's plan to sue Harvey Weinstein over alleged sexual assaults, say legal experts who believe civil court offers better prospects for a victim.

The unnamed actress announced earlier this week that she's pursuing a proposed civil suit against the Hollywood producer, alleging he sexually assaulted her nearly two decades ago.

Her proposed statement of claim says she reported the allegations to Toronto police Oct. 23. But in the meantime, she's planning to go after the mogul in a Toronto court with a hearing in the case set for Monday.

In an interview with [AdvocateDaily.com](#), Toronto civil litigator [Sarah O'Connor](#) says she expects the number of civil cases involving sexual assault allegations in Canada to grow in the coming years.

"I think more people will look to the civil courts for remedies in these types of cases," she says. "People, I believe, may move away from the criminal courts to the civil courts. In the past, I don't think many in Canada knew that they could sue for damages related to a sexual assault. They believed it's something people could do in the United States but not here."

That's changing, she adds.

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), says most people first associate these types of allegations with criminal court as the venue to access justice. But even if a conviction isn't rendered after a criminal proceeding, that doesn't preclude a complainant from taking the matter to a civil court."

O'Connor says the civil court could prove to be a more palatable option for some.

"The criminal cases are for the good of society. In civil court, it's all about holding somebody accountable," she says.

O'Connor, who handles these types of civil matters, notes that the *Ontario Limitations Act* was amended in March 2016 to remove the limitation period for civil matters involving sexual assaults. She believes this will allow more cases to proceed.

And many civil cases will only move forward if it is determined that the defendant has assets, she adds.

"That could be a barrier for some if the defendant has no assets," she says.

For those who don't want to go through the civil courts for a remedy, they can choose the [Compensation for Victims of Crime Act](#), which provides up to \$25,000 in compensation to victims via the [Criminal Injuries Compensation Board](#), O'Connor says.

"You don't need a criminal conviction to access compensation there," she says.

Karen Busby, a law professor at the University of Manitoba, says a big reason some victims prefer the civil route is that it can be easier to get a ruling in the plaintiff's favour.

"In a criminal case, the Crown must prove the case beyond a reasonable doubt. So if there's some doubt raised as to what happened, then the doubt is resolved in favour of the accused person," Busby says, noting a civil case does not preclude a criminal trial from also unfolding.

"In a civil case, it's a balance of probabilities — so on balance, who do you believe more? Him or her? A very, very, very different standard."

Another big draw is the fact victims retain control over how a civil case proceeds, unlike a criminal case which is largely out of their hands — the police decide whether or not to lay charges, the Crown decides whether or not to continue on to trial.

Since the heart of the complaint is often centred on who has control and how it was used, that difference can be immense for a victim, says Toronto lawyer Simona Jellinek.