

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.

“Sexual assaults are about power and it's about taking away power from somebody else and the thought of giving up power is something that a lot of people don't necessarily want to do,” says Jellinek, whose firm Jellinek Law specializes in sexual assault cases.

“In the civil system ... they have more power with regards to what is it they want to do, how far they want to pursue it, whether or not they're going to accept a settlement or not.”

Victims are also a party to the lawsuit, entitling them to their own lawyer, versus the criminal system in which they are considered a witness to the Crown's case.

“The Crown has a very different job than what somebody like me has in any kind of civil litigation case,” says Jellinek.

That fact was on display last year when the Crown's case against disgraced CBC Radio star Jian Ghomeshi dissolved in spectacular fashion, with his accusers crumbling on the stand as bombshell disclosures emerged, all without Ghomeshi himself having to testify.

“Had those women decided to pursue civilly, I think there would have been a very, very, very different outcome,” says Jellinek.

In a lawsuit, a victim can call witnesses and force the defendant to answer questions about the alleged assault.

“Which is a very powerful tool to get to the actual truth of things,” says Jellinek.

“If (the case) goes to trial then (Weinstein) will take the stand, there is no doubt about it. Absolutely, absolutely, and my guess is that's the last thing that he wants to have happen.”

If Weinstein wants to avoid the stand, he would have to settle, she says, adding that “more often than not” these types of cases end up as negotiated settlements.

The Canadian claim is among a slew of sexual harassment allegations Weinstein faces from several women. The Oscar-winning producer was fired from his namesake company Oct. 8, days after the *New York Times* reported several allegations of sexual harassment.

Weinstein's representative Sallie Hofmeister has said he denies all allegations of non-consensual sex.

None of the allegations in the proposed statement of claim have been proven in court. Weinstein's representative could not immediately be reached for comment.

The Ontario actress is seeking millions of dollars in damages, claiming she has suffered mental distress, extreme social anxiety and depression.

“Some may say, 'Well, this is all about money,’” says Joanna Birenbaum, a litigator specializing in sexual assault law at Ursel Phillips Fellows Hopkinson LLP in Toronto.

“In my experience, the choice to pursue civil remedies is frequently not just about money. ... Often, in conjunction with a damages award, what plaintiffs are seeking is accountability.”

Jellinek agrees, summing it up this way: “In a criminal case, the only remedy is to punish the perpetrator. In a civil case, the remedy is to try to help the survivor.

“It's about trying to help the person whose life has been completely — almost always completely — damaged and all the ramifications of that to get to a situation where they are able to afford, for instance, good therapy and they are able to afford going back to school if their schooling was disrupted.”

But there are downsides, and risks: The costs can be prohibitive unless a lawyer takes the case pro bono or on a contingency fee basis. If the victim loses, they're on the hook for the defendant's legal costs, too.