

The Weinstein case and the ABCs of civil litigation

By Jennifer Pritchett, Associate Editor



It isn't unusual that Harvey Weinstein would ask an Ontario court to dismiss a sexual assault lawsuit filed against him by a Toronto actress, but those wishes are rarely granted so early in the process, Toronto civil litigator [Sarah O'Connor](#) tells [AdvocateDaily.com](#).

"While it's basically standard practice for defendants to deny the allegations, rarely does the court dismiss the case outright," she says.

"By putting this position in the statement of defence, it makes it clear that the defendant wants the action to be dismissed from the start."

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), is not involved and comments generally on the matter after a CBC [article](#) reported that Weinstein is arguing in court documents that he denies "each and every" one of the woman's allegations.

O'Connor notes that the article clearly lays out the basic litigation procedures in a claim and, in particular, highlights these legal issues:

1. the regularity that defendants request the court to dismiss claims,
2. proper jurisdiction matters,
3. the motion to strike the pleading option for Weinstein, and
4. next steps in the claim.

O'Connor says that while the court now has more leniency as a gatekeeper if it's a vexatious claim to strike the pleading, generally, the defendant must bring a separate motion to do that. The defendant would then have to make arguments on why they want to have the action dismissed, she says.

"It's called a Rule 21 motion and it can be a useful tool, but it can be difficult to get," she says.

O'Connor notes the court applies four principles in deciding Rule 21 motions. Those principles come from two decisions, one by the [Supreme Court of Canada](#) in 1990 and another by Ontario's [Superior Court of Justice](#) in 2003.

The Superior Court decision summarized the principles in this manner:

1. The statement of claim should not be struck out unless it is "plain and obvious" that the claim discloses no reasonable cause of action.
2. The allegations in the statement of claim are to be taken as true or capable of being proven unless they are patently ridiculous or incapable of proof.
3. The statement of claim is to be read generously with due allowance for drafting deficiencies.
4. The court should not at this stage of the proceedings dispose of matters of law that are not fully settled in the jurisprudence (for example, a novel area of litigation).

O'Connor notes there's no information available to suggest that Weinstein has filed a Rule 21 motion before the court.

"And I don't think he will," she says.

It's not unusual for defendants to bring forward such motions, O'Connor says.

"Sometimes there are partial successes on motions to strike pleadings," she says.