



BRINGING A CIVIL LAWSUIT Not Okay Project

This fact sheet is one in a series produced by Barbra Schlifer Commemorative Clinic for the Not Okay Project, in partnership with Women's College Hospital and Aboriginal Legal Services. Not Okay was funded by the Department of Justice.

BRINGING A CIVIL LAWSUIT

You can sue the person who sexually assaulted you in civil court either instead of or as well as pursuing criminal charges against him. A successful civil suit can result in financial compensation for the harm and losses you experienced. You can also sue "third parties," who are people or institutions (e.g. a hospital, school board or religious institution) that created the circumstances in which the sexual assault was possible or failed to take steps to prevent it from happening.

You are entitled to three types of compensation, if you are able to prove your case:

- » General damages: to compensate you for the emotional and psychological pain you suffered
- » Pecuniary damages: to compensate you for any loss of wages in the past, present or future related to the sexual violence
- » Ongoing expenses for any medical treatment and/or psychological counselling (including future care costs)

ADVANTAGES

- » The civil case is likely to be settled without having to go to trial.
- » The majority of civil lawsuits are settled out of court. Only two to three percent of claims actually go to trial. Both parties benefit by avoiding the high cost and risks of civil trial. For you, a settlement avoids the especially painful experience of cross-examination in court.
- » There is a lower burden of proof than in a criminal trial.
- » In a civil trial, you must prove that the events happened, that the defendant was responsible for the actions and that there was harm "on a balance of probabilities." The decision-maker must decide who they believe more.
- » You have greater control and power in a civil proceeding than in a criminal case.
- » In a civil case, you are a party to the lawsuit and can have your own lawyer who represents only your interests. As a result, you can decide what you want to do, how far you want to pursue the case, whether or not you want to accept a settlement, and so on. You, through your lawyer, can call witnesses and ask the defendant questions about the assault that he has to answer.

THE REMEDY IS MORE SURVIVOR-FOCUSED.

- » The monetary compensation of a civil lawsuit can help you move on by assisting you with therapy costs, medical costs, any income you may have lost from taking time off work, costs of returning to school, and more.

DISADVANTAGES

- » It can take a long time and the legal costs will add up.
- » Civil litigation can be delayed for many reasons and can take 1 to 2 years or more to be completed.

BRINGING A CIVIL LAWSUIT

- » If your case goes to trial and is not successful, you may be responsible for paying some or all of the defendant's legal costs. Even if you are successful at trial, your own legal costs may be substantial. The court can order the defendant to pay some or all of your legal costs, but it can take years to collect this money.
- » You may be able to find a lawyer to take on your case pro bono (no cost) or on a contingency fee basis (takes a fixed percentage of the compensation you are awarded).

THE DEFENDANT MAY BE "JUDGMENT PROOF."

- » The remedy, or outcome, of a civil lawsuit is monetary compensation. If the defendant does not have enough income or property to cover the award, they are called "judgment proof." While your case may be successful, you may have a difficult time collecting the award in such a situation.

A CIVIL SETTLEMENT WILL NOT LEAD TO A CRIMINAL RECORD.

- » The only way for someone to get a criminal record is for them to be found guilty in a criminal court. A guilty finding in criminal court is helpful evidence in a civil lawsuit, but a successful outcome in a civil case has no impact on the criminal case.
- » Some civil settlements include terms that require the defendant to compensate you but without an admission of liability and/or with a confidentiality agreement. These are sometimes called Non Disclosure Agreements (NDAs).

IT IS AN EMOTIONALLY AND MENTALLY DIFFICULT PROCESS.

- » Throughout the civil process, you will be asked to disclose a lot of personal information, to provide the details of the assault(s), and to answer some difficult questions during cross-examination. For some, this may be painful and feel quite intrusive. For others, this can be therapeutic and offer a sense of closure at the end. For many, it is a bit of both, creating a roller-coaster of emotions. It is important to be emotionally prepared before starting a civil law suit. You might find it helpful to have a strong support system, including both friends and family as well as professionals, in place throughout your case.

STEPS IN THE CIVIL PROCESS

INITIAL STAGE

Once you have a lawyer, they will likely begin the process by sending a letter to your assailant and any third party outlining the situation and asking if they are willing to negotiate a settlement. It may be in the assailant's best interest to settle depending on many factors, including the strength of the evidence and the defendant's desire to preserve their public reputation.

BRINGING A CLAIM

- » If this is not successful, your lawyer will begin the civil proceeding by filing a "statement of claim" in court, which includes a brief explanation of the relevant facts you are using for your claim. This will be served on the defendant(s).
- » The defendant(s) must prepare a "statement of defence" and serve it on you within 20 days, if they live in Ontario, to respond to your claim. They can also respond by trying to settle all or part of the claim, counterclaim (make a claim against you), cross-claim (make a claim against,
- » another defendant in the action), or start a third-party claim (make a claim against someone not yet a party to the action).
- » If a defendant fails to deliver a statement of defence within the prescribed time, they may be "noted in default." This means that the defendant will be deemed to admit all allegations of fact in your statement of claim. At this point, your lawyer can request a default judgment against the defendant.

BRINGING A CIVIL LAWSUIT

DISCOVERY

- » During the discovery process, each side gets information about the opposing party's evidence before trial. There are two main types of discovery: a) discovery of documents, and b) examinations for discovery (where each party is asked questions by the other party's lawyer). The parties must agree on a discovery plan if they wish to get evidence this way.
- » The parties must deliver an affidavit that lists all relevant documents in the party's power, possession or control to the other party(ies). Copies of the documents must be made available if requested. Documents not disclosed during the discovery process cannot be used as evidence at trial.
- » A party may serve a "notice of examination" on an opposing party, indicating a time and place where the party must attend to answer questions under oath. The examination is recorded and, where requested, transcribed. Generally, only parties to the action may be examined for discovery.

SETTING AN ACTION DOWN FOR TRIAL

- » Once you are ready, you can have your case set down for trial by serving and filing a "trial record." This notifies the court that the case is ready to be tried, and the trial scheduling process can begin. Either party can do this. A trial record includes a copy of all pleadings and orders relating to the trial.

PRE-TRIAL CONFERENCE

- » The parties must attend a pre-trial conference before a judge or court officer to attempt to settle the case or simplify some of the issues. If you are still unsuccessful in reaching a settlement at this point, then you will go to trial.

TRIAL

- » A civil trial may proceed before a judge alone, or before a judge and jury. The trial begins with opening statements, through which each party introduces their case.
- » You and the defendant will both testify and be cross-examined. Each party presents evidence by calling witnesses, entering documents and objects as exhibits, and bringing experts to help support their argument.
- » In closing arguments, each party summarizes the evidence heard during the trial and outline how the law applies to their case.

AT THE END, THE COURT WILL DECIDE:

1. whether the sexual abuse/assault is proven on a balance of probabilities;
2. whether the defendant is the person responsible for the sexual abuse/assault
3. if proven, the extent to which the abuse caused you harm; and
4. whether the harms caused have resulted in you suffering various losses (the extent of the liability).

A judge may give their decision in immediately after the case is completed or, more often, may "reserve judgment" and give it at a later time.

For more information, visit: https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/suing_and_being_sued_main.php

