

Can I File a Civil Claim for Sexual Harassment?*

**This guide consists of legal information ONLY, and information shared in this guide is NOT considered legal advice.*



What is a Civil Claim?

A civil claim or case is a lawsuit started by an individual against one or more parties when there is a disagreement on a legal matter. The parties can be people, groups of people, businesses, and organizations. Civil claims can deal with “actions”. An action can be a:

<p>Disagreements about a contract, including an employment contract</p>	<p>Claims for damage to your property</p>
<p>Claims for personal injuries</p>	<p>Claims for damage to your reputation</p>

Depending on your circumstances, you can file a civil claim for sexual assault or an employment law claim against your perpetrator and/or your employer. You can choose to file both a civil claim and a report with the police for sexual assault. Read the **Can I Report Sexual Harassment to Police** info sheet for details about reporting sexual assault to police.

What Legal Terms Should I Remember Before Filing A Civil Claim:



Plaintiff (You): The person starting a civil claim against another person, group of persons, or business. Also known as the “plaintiff”.



Defendant: The person, group of persons, or business accused of committing violence and harassment in a civil claim.



Statement of Claim: The initial document filed by the complainant summarizing the harm committed by the defendant(s). The complainant must file the claim to the court, serve the claim to the defendant, and pay fees related to the claim to begin the civil court process.



Statement of Defence: The defendant responds to the version of events made in the statement of claim to the court.
Small Claims Court: A branch of the Superior Court of Justice handles all civil claims up to \$35,000 in financial compensation. The Small Claims Court cannot punish defendants with jail time.



Ontario Superior Court of Justice: The highest legal body overseeing criminal, family, and civil legal claims in Ontario. The Superior Court of Justice is like a supreme court but only deals with claims originating in Ontario. Civil claims of more than \$35,000 in financial compensation are filed to the Ontario Superior Court of Justice.



What are the *Rules of Civil Procedure* and the Civil Court Process?



The Rules of Civil Procedure are a set of provincial legal processes a part of the Courts of Justice Act and deal with different steps of the civil court process. Most civil claims in Ontario have these steps:



1. File and Serve a Statement of Claim You or your lawyer file a claim with the court & serve the defendant with the claim



2. Statement of Defence The defendant has the opportunity to respond to your claim. Refer to the *Rules of Civil Procedure* for timelines and other details.



3. Evidence Exchanged You and the defendant exchange evidence



4. Examination for Discovery Each party is questioned and cross examined under oath



5. Pre-Trial Conference A meeting between you, the defendant and the judge to try to settle a civil claim instead of heading to trial.



6. Trial The court trial in front of a judge to decide on a civil claim. The trial judge will not be the same judge who was a part of the pre-trial conference.

You may agree to a settlement at any time during the civil court process. However, you may want to speak to a lawyer about the financial implications of a settlement.

How Much Time Do I Have to File Civil Claim for Sexual Assault or Sexual Harassment?



You have a **two-year time limit** from the date you experienced the legal issue to file most civil claims, including most employment related civil claims. However, there is no time limit to file a claim for sexual assault.

To make sure you know the correct deadline to file, get legal advice.

Examples of Civil Claims Related to Sexual Harassment:

Example 1: A transgender worker is threatened by their employer with termination if they report the gender-based harassment and physical harassment from co-workers. The transgender worker resigns because of the continued sexual and gender-based harassment. They file a civil employment claim for constructive dismissal against the employer for physical, mental, and emotional injuries they sustained because of the harassment.



Example 2: A female worker at a salon is sexually assaulted by the owner. She reports the sexual assault to the police. Her doctor diagnoses her with post-traumatic stress disorder and refers her to a psychologist with high fees. She files a civil sexual assault claim against the owner for personal injuries.



Awards and Remedies I May Receive from a Civil Claim*:

**Remedies and awards are determined on a claim-by-claim basis.*

- 1. Moral Damages in Civil Employment Claims:** Money awarded when there is emotional or psychological harm done to an employee. Moral damages are meant to compensate a worker for the harm suffered because of the employer’s handling of the worker’s experience of workplace sexual harassment or dismissal.
- 2. Special Damages:** Money awarded when there is a financial loss or expense that can be calculated in connection to the sexual harassment or sexual assault. For example, you are paying for psychotherapy to treat depression and post-traumatic stress disorder you developed after multiple incidents of sexual harassment and a serious incident of sexual assault in the workplace. You would not have this expense if this sexual harassment and sexual assault did not occur.

Speak to an employment lawyer or a lawyer experienced in civil litigation to learn more about the types of damages available for civil employment and civil sexual assault claims.

Things I Should Remember Before Filing a Civil Claim for Sexual Harassment:



- Think about the outcomes you want to achieve (e.g., do you want to send the perpetrator to jail or receive financial compensation or another remedy). Depending on the outcomes, different legal forums might apply for your situation or work better for you than a civil legal option.



- Most civil claims will settle out of court. Both parties benefit from avoiding the high costs of civil trials through settlement negotiations. For you, a settlement helps prevent the experience of cross-examination and re-traumatization during the trial.



- There is a lower burden of proof in civil claims than in a criminal trial. The burden of proof in civil claims is a balance of probabilities. In contrast, in a criminal claim, the burden of proof is beyond a reasonable doubt.



- You have greater control in a civil proceeding than a criminal court claim.

- You cannot start a civil claim about sexual harassment alone. A claim related to an employment contract such as wrongful dismissal or constructive dismissal is required.

- Financial awards can help pay for costs such as medicine, therapy, lost income, and other costs related to the sexual assault or harm committed.

- Civil claims can take a long time to complete, and the legal fees can start to add up.

- You may have difficulty collecting an award from a defendant who may not have the income or property to pay for the award decided in a civil claim.

- A civil settlement will not lead to a criminal conviction. A civil claim is separate from a criminal claim; criminal trials are structured and tried very differently from civil court trials.

What Resources Can I Use to File a Civil Claim about Sexual Harassment?

1. Access four hours of free, confidential **Independent Legal Advice** from a civil lawyer with vouchers from the Ontario government. Call 1-855-226-3904 with questions about applying for Independent Legal Advice or visit their website for details: <https://www.ontario.ca/page/independent-legal-advice-sexual-assault-victims#section-0>

2. Contact the **Human Rights Legal Support Centre (HRLSC)** for free, confidential legal advice, information, and resources about all your options for workplace sexual harassment.

Tel: (416) 597-4900

Toll Free: 1-866-625-5179 (Press "4" for Indigenous Services)

TTY: (416) 597-4903

TTY Toll Free: 1-866 612-8627

<https://www.hrlsc.on.ca/>

3. Find your community legal clinic for further support on the **Legal Aid Ontario** website: <https://www.legalaid.on.ca/legal-clinics/>

4. For Sexual Violence Supports Contact Your Local Sexual Support Centre for Counselling and Other Supports

Ontario Coalition of Rape Crisis Centres:

<https://sexualassaultsupport.ca/>

Fem'Aide (Francophone and French speaking):

<https://femaide.ca/>

Talk4Healing (Help Line for Indigenous Women):

1 855 554 HEAL (4325) or LiveChat:

<https://www.talk4healing.com/>

5. Visit the **WSIB Ontario** website to report an injury or file a claim: <https://www.wsib.ca/en>





Read more about other legal options you can use to address workplace sexual harassment with these helpful info sheets:

**Can I File a Human Rights
Complaint for Sexual
Harassment?**

**Can I File a Human Rights
Complaint for Sexual
Harassment? (FEDERAL)**

**Can I File a Complaint
of Workplace Sexual
Harassment under the
Occupational Health
& Safety Act?**

**Can I Report Sexual
Harassment to Police?**

