

Counsel's threat of civil proceedings results in mistrial of criminal conviction against Frank Stronach (R. v. Stronach No.5)

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After a trial in 2026, Frank Stronach was found guilty of two sexual offence charges for incidents that had occurred some 40 years earlier. Following the conviction, but before sentencing, one of the complainants had a civil lawyer write to Mr. Stronach's criminal lawyer to threaten a civil claim for damages of almost \$1 million.

Understandably, Mr. Stronach's lawyer requested either a draft claim or other statement so that she could understand the allegations seeking damages. The complainant's lawyer obliged and emailed an outline of her allegations.

Mr. Stronach's criminal lawyer then presented these emails to the trial judge and requested a mistrial on the grounds that the allegations differed from the complainant's evidence during the criminal trial.

The trial judge subsequently decided to order a mistrial relating to the conviction involving the complainant due to her serious concerns about the credibility findings that had underpinned the conviction: **R. v. Stronach #5, 2026 ONSC 4303 (CanLII)**. While the Crown may be appealing this result, this case illustrates the perils of launching or threatening a civil claim in a manner that appears inconsistent with evidence previously given in a criminal proceeding.

The timing of the events was critical. Only two weeks after the conviction reasons were released, Mr. Stronach's defence counsel received the correspondence from the complainant's civil lawyer, who advised that he had been retained by her to pursue a claim against Mr. Stronach. The lawyer's communications sought settlement of a claim which he valued at \$275,000 in damages, plus decades of interest and costs, amounting to more than \$900,000.

During the course of communications, the civil lawyer advanced factual assertions regarding the complainant's alleged trauma and long-term suffering. He stated that she had been traumatized by the incident, feared Mr. Stronach while employed by his company, Magna, suffered relationship difficulties for approximately forty years, and continued to live with the effects of the encounter. He also asserted that Mr. Stronach smirked at the complainant at work, knowing what had occurred between them.

Mr. Stronach's counsel argued that these assertions appeared to be fundamentally inconsistent with the complainant's sworn testimony at trial, which was significant since the conviction rested heavily on the trial judge's assessment that the complainant was an exceptionally fair and reliable witness.

Among the most significant factors for the trial judge was the fact that the complainant consistently minimized both the severity of the assault and its consequences. She described the assault as brief touching over her clothing, acknowledged that Mr. Stronach had ceased his conduct immediately when she objected, and spoke positively about her years working at Magna. The complainant testified that Mr. Stronach had always been polite, professional, and respectful in workplace interactions.

In assessing the complainant's credibility, the trial judge specifically found that she did not appear to be motivated by financial gain and that "[s]he had no axe to grind with Mr. Stronach."

The demand for civil damages painted a rather dramatically different picture. Rather than a complainant who minimized her experience and maintained a generally positive view of her employment history, her lawyer's communications suggested that she had lived in fear, humiliation, and emotional trauma for decades, had relationships with men which had been profoundly impaired, and had workplace experiences marked by intimidation.

The trial judge concluded that these representations directly contradicted important elements of the evidence at trial that had persuaded her to accept the complainant's testimony beyond a reasonable doubt.

The trial judge also expressed concern about the scale and nature of the proposed civil claim since the lawyer's communications for damages invoked authorities that involved serious and physical sexual assaults. In the trial judge's view, those precedents bore little resemblance to the conduct described by the complainant at trial and this discrepancy raised questions about whether she had provided her lawyer with a materially different account of either the assault itself or its impact upon her life.

The legal basis for the mistrial of the conviction was the fresh evidence of the complainant's lawyer's communications, adduced through the well-established test from *Palmer v. The Queen*, 1979 CanLII 8 (SCC), which requires that the fresh evidence must (1) not have been obtainable through due diligence at trial, (2) be relevant to a decisive or potentially decisive issue, (3) be reasonably capable of belief, and (4) be such that, if believed, it could reasonably be expected to have affected the result when taken with the other evidence adduced at trial.

The fresh evidence in this matter involved new information that was relevant, credible on its face, and potentially capable of affecting the result. Further, the evidence emerged only after conviction and therefore constituted genuinely new evidence. Most importantly, the alleged inconsistencies went directly to the overriding issue of the complainant's credibility that had affected the result by determining Mr. Stronach's guilt.

An important aspect of the ruling concerned privilege. The Crown argued that solicitor-client privilege and settlement privilege posed barriers to relying on the communications from the civil lawyer. While the trial judge acknowledged those concerns, she held that the accused's right to make full answer and defence, together with the need to avoid wrongful convictions, carried extraordinary weight.

Even assuming, without deciding, that the civil lawyer was engaged in settlement discussions on the instructions of his client, the trial judge reasoned that any settlement privilege that might have existed was greatly outweighed by the fair trial rights of Mr. Stronach, and the protection of the integrity of the justice system.

As for potential solicitor and client privilege in the communications between the complainant and her civil lawyer, the trial judge commented that this issue could not be fully assessed without providing the complainant and her lawyer with the opportunity to respond with their own evidence. However, this was not necessary in the circumstances since "all roads lead to a mistrial."

Of note, that trial judge did not conclude that the complainant had actually lied nor did she determine whether the civil lawyer's statements accurately reflected instructions received from his client. However, the conviction could not stand and the complainant's credibility needed to be assessed by another judge, based on the oft-repeated principle that "justice must not only be done, but must also be seen to be done."

The [decision](#) stands as a cautionary tale for complainants, civil counsel, and litigants generally. While there is nothing inherently wrong about a complainant pursuing civil compensation after a criminal conviction, one can appreciate issues that may arise in circumstances where a criminal process is potentially being used as a tool for leverage in civil proceedings. This is particularly the case where the criminal process is ongoing and either convictions or sentencing have yet to be determined. When credibility is a decisive issue, inconsistencies in a party's evidence or positions can transform might be a straightforward civil recovery effort into evidence capable of undermining a criminal verdict. A PDF version is available to download [here](#).

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Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com