

Seeking settlements

RIGHT SIDE OF THE LAW

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Now that former assistant football coach Jerry Sandusky has been convicted of sexual assault, the lawsuits have begun. Penn State is being sued and so is the NCAA. Both lawsuits are ongoing and will likely settle out of court. The battle will likely take years given the number of victims.

Sexual assault lawsuits do occur regularly, mainly against institutions that knew or ought to have known the deviant behaviour had taken place. I expect the U.S.

military to be the next target in light of the accusations of rampant sexual assault.

In Canada, these lawsuits have had varying degrees of success. The problem, of course, with suing the assailant is they do not have funds. That is why the institutions behind them are pursued in court. They have funds and insurance to cover the loss.

The test is if they knew or ought to have known the behaviour was going on and if they ought to have taken reasonable measures to prevent the behaviour. In the example of Penn State, the victims will have to show the university probably knew about the assaults and failed to contact the authorities or take any reasonable measures to prevent future attacks.

In these suits, the key word is “probably.” You do not have to prove beyond a reasonable

doubt that these attacks occurred, rather that they are more likely to have occurred than not. It is easier to prove fault in civil suits than criminal. A criminal conviction will certainly help proving fault, but it is not determinative.

We may never know the outcome of the settlements as they are usually confidential, but we can only hope that all those affected will get the justice they deserve. Money will never make them whole, but it will help them fund treatment and get them back on their feet. In these suits the goal is to restore them to as close to normal as possible. ■

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