

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Plaintiff

-and -

Defendant

PLAINTIFF'S STATEMENT OF LAW
VOLUME 11
LOSS OF EARNING CAPACITY and THE BURDEN OF PROOF

PART I - OVERVIEW:

1. Loss of earning capacity should be viewed as the loss of a capital asset. It is a pecuniary head of damages; accordingly, the principle of full compensation applies.
2. Loss of future earnings and loss of competitive position may be separately calculable heads of damage. Whether both or all apply in a particular case will

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* As of the February, 2017 release date, this Statement of Law has been updated by TVA

depend on the evidence adduced. Where the plaintiff has an earnings history, future loss of income is one appropriate approach. Where the plaintiff is young, and has no earnings history, loss of capacity is an appropriate approach. In either case there may be a loss of competitive advantage.

3. A plaintiff only has to show a real and substantial risk of future loss to be entitled to compensation.
4. Loss of earning capacity may be compensated for even if the plaintiff suffers no reduction in income or earns more after the accident than before he or she was injured.
5. A plaintiff may prove the quantification of the loss of earning capacity either on an "earnings approach" or a "capital asset approach". The earnings approach is more useful when the loss is more easily measurable, whereas the capital asset approach is said to be more useful when the loss is not easily as measurable.
6. Damages may properly be assessed using gender-neutral statistics.
7. Positive and negative contingencies will generally offset one another but are a matter of evidence.

**** END OF SAMPLE ****

The remainder of this statement of law contains written submission on this issue and is written like the law portion of a factum.