

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Plaintiff

- and -

Defendant

PLAINTIFF'S STATEMENT OF LAW

**VOLUME 9
FUTURE LOSS OF CAPACITY – HOUSEKEEPING AND HOME MAINTENANCE**

PART I - OVERVIEW

1. Past loss of homemaking capacity for work left undone may give rise to a claim for pecuniary and non-pecuniary general damages. In either event, it may take into account the cost of replacement services.
2. Past loss of homemaking capacity for work done with difficulty or in pain will form part of the claim for non-pecuniary general damages.
3. Past loss of homemaking capacity for the reasonable cost of replacement labour is recoverable as a special damage and is pecuniary in nature. Where work is

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

done gratuitously by family members, it is recoverable on sufficient proof of the loss.

4. Loss of future homemaking capacity is a separate head of pecuniary damages, the purpose of which is to compensate for the loss of the value of the work that would have been performed by the plaintiff.
5. Damages may be calculated using a “cost of care” model by estimating the cost of employing domestic help for the plaintiff’s estimated period of disability, regardless of whether or not he or she actually uses the award to employ domestic help.
6. Alternatively, damages may be estimated based on a loss of capacity to work model similar to lost earning capacity. This method has gained acceptance in Ontario.
7. It does not matter whether the plaintiff will actually hire help in the future. The plaintiff is entitled to use the award of damages as he or she sees fit.
8. The weight of authority strongly suggests that, under the *Insurance Act*, the defendant enjoys no protection from liability for loss of homemaking capacity. The definition of “health care expense” found in the *Act* and its Regulation does not encompass housekeeping and home maintenance, but treats it as a separate head more properly described as “other pecuniary loss”.

**** 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.