

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Plaintiff

- and -

Defendant

PLAINTIFF'S STATEMENT OF LAW

**VOLUME 13
COLLATERAL BENEFITS**

PART I - OVERVIEW:

1. A successful personal injury victim is entitled to be made whole by the defendant, but in many cases will receive assistance from other sources which, in whole or in part, are intended to remedy the loss for which the defendant is responsible. This assistance may be in the form of gratuitous medical care, housekeeping services, or other benefits conferred without direct payment from the victim to the donor. Victims may also receive monetary support from government programs, or through private agreements with employers or insurers. These forms of assistance are collectively referred to as collateral benefits.

Lewis N. Klar, Q.C., *Remedies in Tort* (Toronto: Thomson Reuters Canada Limited, 1987, 2021), Ch 27 at §88 (Proview)
Plaintiff's Book of Authorities, Tab 29

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

S. M. Waddams, *The Law of Damages* (Toronto: Thomson Reuters Canada Limited, 2019), Ch 3 at 3.1490 (Proview)
Plaintiff's Book of Authorities, Tab 45

2. According to the Supreme Court of Canada, a collateral benefit arises when a source other than the damages payable by the defendant ameliorates the loss that was suffered by the plaintiffs at the hands of the tortfeasor. This has also been called a "compensating advantage." The receipt of collateral benefits by the plaintiff gives rise to the question of whether they should be deducted from the damages the defendant will be liable to pay.

IBM Canada Ltd. v. Waterman, [2013] S.C.J. No. 70 at paras 20 and 26
[*IBM*]
Plaintiff's Book of Authorities, Tab 23

3. Generally, Canadian personal injury law demands that compensation from alternate sources be deducted from the amounts received as damages from the tortfeasor. The policy reason behind this principle is the prevention of double recovery by tort victims, which would result if a plaintiff received both collateral source benefits in addition to the full quantum of damages assessed against a defendant tortfeasor to compensate the same loss. If the plaintiff has received some form of excess recovery for their loss, and that excess recovery is an indemnity that is sufficiently connected to the defendant's breach of duty, then the court must consider the question of deduction.

IBM, supra at paras 21-25
Plaintiff's Book of Authorities, Tab 23

Klar, *supra*, Ch. 27 at §88
Plaintiff's Book of Authorities, Tab 29

4. This principle is subject to two important exceptions at common law, arising where the source of the payment received by the plaintiff was in the nature of “private insurance” or “charity”.

Grajčevci v. Rustaie, 2017 ONSC 2535 at para 13 [*Grajčevci*]
Plaintiff’s Book of Authorities, Tab 19

**** 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.

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