

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.

**\*\* 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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