

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Plaintiff

- and -

Defendant

PLAINTIFF'S STATEMENT OF LAW
VOLUME 12
CAUSATION AND PRE-EXISTING CONDITION

PART I - OVERVIEW

1. Causation is the link between the defendant's breach and the harm suffered by the plaintiff. The causation analysis is undertaken only after the plaintiff has proven that the defendant has breached the standard of care owed to the plaintiff.
2. Causation is assessed in two respects: (1) the source of the loss giving rise to the damages claimed and (2) the extent to which the damages claimed can be attributed to the defendant's breach. To determine the source of the plaintiff's loss, the plaintiff must establish on a balance of probabilities that, but for the defendant's breach of the standard of care, the plaintiff would not have suffered.

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

3. The legal or ultimate burden remains with the plaintiff, although positive or scientific proof of causation is not required. A common sense inference of causation may be drawn by applying a robust and pragmatic approach to the evidence.

4. The “but for” test of causation is applicable in all cases whether the source of the loss is caused by one or more defendants. However, where two or more defendants have breached the standard of care exposing the plaintiff to an unreasonable risk of harm, and each is potentially responsible for that harm, causation may be established by application of the test of material contribution to the risk of harm. The latter test establishes causation in law where factual causation is impossible. Impossibility arises where the plaintiff is unable to prove that any one of the defendants was the necessary cause of injury because each of the defendants can point to the other as the possible “but for” cause of the harm.

** 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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