

Plaintiff is Required to Mitigate

A Helpful Guide to Understanding the Duties to Take Steps to Reasonably Minimize Losses

The law despises waste and the doctrine of mitigation, being the duty to mitigate, is the mechanism that imposes an obligation upon a harmed party to take reasonable steps to minimize or control avoidable losses. This principle applies in all matters of law including tort law, contract law, [employment law](#), and [construction law](#), among others, and as was said in general by the Supreme Court in *Southcott Estates Inc. v. Toronto Catholic District School Board*, [\[2012\] 2 S.C.R. 675](#):



[23] This Court in *Asamera Oil Corp. v. Seal Oil & General Corp.*, 1978 CanLII 16 (SCC), [1979] 1 S.C.R. 633, cited (at pp. 660-61) with approval the statement of Viscount Haldane L.C. in *British Westinghouse Electric and Manufacturing Co. v. Underground Electric Railways Company of London, Ltd.*, [1912] A.C. 673, at p. 689:

The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps.

[24] In *British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38 (CanLII), [2004] 2 S.C.R. 74, at para. 176, this Court explained that “[l]osses that could reasonably have been avoided are, in effect, caused by the plaintiff’s inaction, rather than the defendant’s wrong.” As a general rule, a plaintiff will not be able to recover for those losses which he could have avoided by taking reasonable steps. Where it is alleged that the plaintiff has failed to mitigate, the burden of proof is on the defendant, who needs to prove both that the plaintiff has failed to make reasonable efforts to mitigate and that mitigation was possible (*Red Deer College v. Michaels*, 1975 CanLII 15 (SCC), [1976] 2 S.C.R. 324; *Asamera; Evans v. Teamsters Local Union No. 31*, 2008 SCC 20 (CanLII), [2008] 1 S.C.R. 661, at para. 30).

[25] On the other hand, a plaintiff who does take reasonable steps to mitigate loss may recover, as damages, the costs and expenses incurred in taking those reasonable steps, provided that the costs and expenses are reasonable and were truly incurred in mitigation of damages (see P. Bates, “Mitigation of Damages: A Matter of Commercial Common Sense” (1992), 13 Advocates’ Q. 273). The valuation of damages is therefore a balancing process: as the Federal Court of Appeal stated in *Redpath Industries Ltd. v. Cisco (The)*, 1993 CanLII 3025 (FCA), [1994] 2 F.C. 279, at p. 302: “The Court must make sure that the victim is compensated for his loss; but it must at the same time make sure that the wrongdoer is not abused.” Mitigation is a doctrine based on fairness and common sense, which seeks to do justice between the parties in the particular circumstances of the case.