



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **CONTRIBUTORY NEGLIGENCE ACT**

## PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## CONTRIBUTORY NEGLIGENCE ACT

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## CONTRIBUTORY NEGLIGENCE ACT

### CHAPTER C-21

#### 1. Apportionment of liability

- (1) Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault, but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

#### Limitation on construction of section

- (2) Nothing in this section shall operate so as to render any person liable for any loss or damage to which his fault has not contributed. *1978, c.3, s.1.*

#### 2. Liability for mutual fault

- (1) Where damage has been caused by the fault of two or more persons, the court shall determine the degree in which each was at fault, and where two or more persons are found at fault, they shall be jointly and severally liable for the fault to the person suffering loss or damage, but as between themselves in the absence of any contract express or implied, they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

#### Judgment for contribution

- (2) Where in any proceeding two or more parties are found liable for the same damage, judgment for contribution may be given
- (a) on motion when judgment in the proceeding is given; or
  - (b) subsequently on summary application. *1978, c.3, s.2.*

#### 3. Questions of fact

In any action the amount of damage or loss, the fault, if any, and the degrees of fault shall be questions of fact. *1978, c.3, s.3.*

#### 4. Last clear chance abolished

This Act applies to all cases where damage is caused or contributed to by the act or omission of any person notwithstanding that another person had the opportunity of avoiding the consequences of that act or omission and negligently or carelessly failed to do so. *1978, c.3, s.4; 1980, c.17, s.1.*

**5. Third party added to action**

When it appears that a person not a party to an action is or may be wholly or partly responsible for the damages claimed, he may be added as a party defendant or third or subsequent party upon such terms as are deemed just. 1978, c.3, s.5.

**6. Extension of time**

- (1) Where a person who has suffered damage commences an action or effects a settlement in respect to that damage
- (a) no proceeding by counterclaim, including the adding of a new party by counterclaim, in the action;
  - (b) no third party proceeding in the action; or
  - (c) no proceeding based on the settlement,

is defeated by reason only of the expiration, on or after the date of the commencement of the action or the conclusion of the settlement, of any period limited for the bringing of an action by the person suffering the damage if such proceeding is brought not later than one year from the date of the settlement or of the final judgment in the action, as the case may be.

**Idem**

- (2) Where any person brings a proceeding pursuant to subsection (1) which in the absence of that subsection would be out of time, a counterclaim or other action relating to or connected with the subject matter is deemed to be within time if brought within one year of the commencement of the proceeding.

**Survival of Actions Act prevails**

- (3) This section is subject to the provisions of the *Survival of Actions Act* R.S.P.E.I. 1988, Cap. S-11 relating to the time for the bringing of any action under that Act. 1978, c.3, s.6; 2015, c.36, s.20(2).

**7. Multiple actions**

- (1) Where two or more persons are or may be responsible for the same damage
- (a) no action by the person suffering that damage against any person responsible for that damage shall be barred by reason only of the existence of a judgment in respect of that damage against any other person responsible for that damage;
  - (b) no action by the person suffering that damage against any person responsible for that damage shall be barred by reason only of the existence of a release of, or accord with, any other person responsible for that damage unless such release or accord indicates that the release or accord shall have that effect and, for this purpose, the taking of money out of court that has been paid in by a defendant is deemed conclusively an accord and satisfaction with that defendant;
  - (c) if more than one action is brought in respect to that damage by or on behalf of the person by whom it was suffered, or for the benefit of his estate, against any person liable for that damage, the sums recoverable as damages under the judgments shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any action other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of the opinion that there was a reasonable ground for bringing that action; and
  - (d) any payment by any person toward the full damages agreed by the party suffering that damage or adjudged by the court as the damages due to him in respect to that

damage shall discharge, to the extent of the payment, the liability to the person suffering the damage of any other persons responsible for that damage whether or not such other persons were party to the agreement or judgment but subject to any right to contribution or indemnity.

#### **Judgment, reference**

- (2) In subsection (1) a reference to a judgment as “first given” shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal be construed a reference to that judgment as so varied. *1978, c.3, s.7 2015,c.36,s.20(3).*

#### **8. Indemnity**

No person shall be entitled to recover contribution under this Act from any person entitled to be indemnified by him in respect of the liability for which contribution is sought. *1978, c.3, s.8.*

#### **9. Separate judgment on counterclaim**

- (1) Where a counterclaim is allowed in actions arising out of the operation of motor vehicles, unless the court otherwise orders,
- (a) no judgment shall be given for any balance but separate judgments shall be given for each party against the other, to the extent that any party is successful, so that the plaintiff shall have judgment on the claim for a specified amount and the defendant, the plaintiff by counterclaim, shall have judgment on the counterclaim for a specified amount; and
- (b) costs shall be awarded to each party in the same proportion as the damages.

#### **Third or subsequent parties**

- (2) Subsection (1) applies with the necessary changes, where a third or subsequent party has been added. *1978, c.3, s.9.*

#### **10. Costs**

- (1) Unless the court otherwise orders, where a person against whom any judgment is obtained in respect to any damage, brings a proceeding for contribution or indemnity he shall not be entitled to
- (a) the costs of the proceeding for contribution or indemnity; or
- (b) contribution or indemnity in respect to the costs of the proceeding in which judgment was rendered against him,

except where the proceeding for contribution or indemnity is commenced before judgment is obtained against him.

#### **Idem**

- (2) Unless the court otherwise orders, any contribution for costs of the proceeding referred to in clause (1)(b) shall be in the same proportion as liability for the damage. *1978, c.3, s.10.*

#### **11. Execution on judgment for contribution**

Where two or more persons are responsible for the same damage and judgment for contribution or indemnity is given in respect of that damage, unless the court otherwise orders, execution shall not issue on the judgment until

- (a) after satisfaction by the person obtaining the judgment of such proportion of the total damages as the court may order; and
- (b) the court makes provision for the payment into court of the proceeds of the execution on the judgment to the credit of such persons as the court may order. *1978, c.3, s.11.*

## 12. Evidence

- (1) Where an action is brought against two or more persons who are responsible for the same damage, each defendant shall have the right to present evidence against the other or others.

### Appeal where judgment satisfied

- (2) Where
- (a) an action is brought against two or more persons responsible for the same damage;
  - (b) the plaintiff obtains judgment; and
  - (c) the judgment is satisfied by one defendant,
- another defendant may appeal against the judgment notwithstanding that it has been satisfied.

### Plaintiff fails to contest appeal

- (3) Where
- (a) an action has been brought against two or more persons as persons responsible for the same damage;
  - (b) the plaintiff obtains judgment; and
  - (c) one defendant appeals against the judgment,
- the other defendant upon giving such notice as may be required by the rules of court may contest the appeal as respondent.

### Appeal by unsuccessful defendant

- (4) Where
- (a) an action is brought against two or more persons as persons responsible for the same damage; and
  - (b) the plaintiff succeeds against one or more and fails against another or others,
- any unsuccessful defendant may appeal against any judgment in favour of a successful defendant. *1978, c.3, s.12; 2008, c.20, s.72(14).*

## 13. Settlement

- (1) Any person against whom a claim is made, whether or not he is liable, may settle any claim in respect to the damage or contribution therefor and may then bring or continue an action for contribution or indemnity against any person responsible for the damage who, at the time of the settlement, is, or would if sued have been, liable in respect to that damage.

### Unreasonable settlement

- (2) In any action under subsection (1) the person claiming contribution or indemnity shall satisfy the court that the settlement was reasonable having regard to its amount and the circumstances alleged to establish any liability of the person concluding the settlement, and if the court finds the amount of the settlement was excessive it may fix the amount at which the claim should have been settled for the purposes of the action for contribution or indemnity. *1978, c.3, s.13.*



**14. Crown bound**

This Act binds the Crown. *1978, c.3, s.14.*

**15. Pleading**

- (1) This Act applies whether or not contributory negligence is pleaded in the defence to any action or counterclaim.

**Criminal acts**

- (2) This Act applies notwithstanding that any act causing or contributing to the damage is also a crime. *1978, c.3, s.15.*