

# *The Contributory Negligence Act*

*being*

[Chapter C-31](#) of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1983, c.82; 1984-85-86, c.47 and 54; 1992, c.24; 2004, c.L-16.1 and 37; and 2016, c.28.*

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER C-31

### An Act to make Uniform the Law respecting Liability in Actions for Damages for Negligence where more than one Party is at Fault

#### Short title

1 This Act may be cited as *The Contributory Negligence Act*.

#### Apportionment of damage or loss

2(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 is 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.

(2) Nothing in subsection (1) operates so as to render any person liable for any damage or loss to which his fault has not contributed.

R.S.S. 1978, c.C-31, s.2.

#### Degree of fault

3(1) Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree in which each person was at fault.

(2) Subject to section 3.1, if two or more persons are found at fault, they shall be jointly and severally liable to the person suffering damage or loss, but as between themselves, in the absence of a contract, express or implied, they are liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

R.S.S. 1978, c.C-31, s.3; 1992, c.24, s.3; 2004, c.37, s.3.

#### Apportionment of uncollectable contribution

3.1(1) In this section, “**other persons found at fault**” means:

- (a) the person suffering the damage or loss if that person has been found to be at fault; and
- (b) the other persons found to be at fault from whom the contribution can be collected.

(2) If the court is satisfied that the contribution of a person found at fault cannot be collected, the court shall, after determining the degree in which each person is at fault, make an order apportioning the contribution that cannot be collected among the other persons found at fault, proportionate to the degrees in which they have been respectively found to have been at fault.

(3) This section applies only to damages or losses caused or contributed to by a person’s acts or omissions that take place on or after January 1, 2005.

2004, c.37, s.4.

**Questions of fact**

4 In every action the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact.

R.S.S. 1978, c.C-31, s.4.

**Restriction on submissions to jury**

5 Where the trial is before a judge with a jury the judge shall not submit to the jury any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless in his opinion there is evidence upon which the jury could reasonably find that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

R.S.S. 1978, c.C-31, s.5.

**Judge without a jury**

6 Where the trial is before a judge without a jury the judge shall not take into consideration any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless he is satisfied by the evidence that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous therewith.

R.S.S. 1978, c.C-31, s.6.

**Adding party defendant**

7 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 may be made a third party to the action, upon such terms as are deemed just.

R.S.S. 1978, c.C-31, s.7.

**Abolition of merger rule**

7.1(1) Where two or more persons are jointly and severally liable with respect to the same loss or damage, a judgment, discontinuance, settlement or release with respect to one of them does not preclude judgment against any other in the same or a separate action.

(2) Where a person who has suffered loss or damage brings two or more actions with respect to the loss or damage, the person is not entitled to costs in any of the actions except the first action in which judgment is obtained, unless the court is of the opinion that there were reasonable grounds for bringing more than one action.

(3) Subject to subsection (4), this section applies to all actions, whether commenced before or after the coming into force of this section.

(4) This section does not apply to actions:

(a) in which judgment has been given before the coming into force of this section; or

(b) that have been settled before the coming into force of this section.

1992, c.24, s.4.

**8 Repealed.** 1984-85-86, c.54, s.2.

**9 Repealed.** 1984-85-86, c.47, s.3.

**Recovery as between tortfeasors**

**10** A tortfeasor may recover contribution or indemnity from any other tortfeasor who is, or would if sued have been, liable in respect of the damage to any person suffering damage as a result of a tort by settling with the person suffering the damage, and thereafter commencing or continuing action against the other tortfeasor, and in such event the tortfeasor who settled the damage shall satisfy the court that the amount of the settlement was reasonable, and if the court finds that the amount of the settlement was excessive it may fix the amount at which the claim should have been settled.

R.S.S. 1978, c.C-31, s.10; 2016, c28, s.7.

**11 Repealed.** 2004, c.L-16.1, s.44.

**Apportionment of liability for costs**

**12** Unless the judge otherwise directs, the liability for costs of the parties to every action shall be in the same proportion as their respective liability to make good the damage or loss, and where as between two persons, one is entitled to a judgment for an excess of damage or loss and the other to a judgment for an excess of costs there shall be a set-off of the respective amounts and judgment shall be given accordingly.

R.S.S. 1978, c.C-31, s.12.

**Application to the Crown**

**13** This Act applies to actions by and against the Crown, and Her Majesty is bound thereby and has the benefit thereof.

R.S.S. 1978, c.C-31, s.13.

**Construction of Act**

**14** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

R.S.S. 1978, c.C-31, s.14.

