

1950

## c 252 Negligence Act

Ontario

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CHAPTER 252

The Negligence Act

1. In this Act,

Interpre-  
tation.

- (a) "action" includes counterclaim;
- (b) "defendant" includes a plaintiff against whom a counterclaim is brought;
- (c) "plaintiff" includes a defendant who counterclaims.  
R.S.O. 1937, c. 115, s. 1.

2.—(1) Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, except as provided by subsections 2 and 3, where two or more persons are found at fault or negligent, they shall be jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each shall be liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

Extent of  
liability,  
remedy  
over.

(2) In any action brought for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from a motor vehicle other than a vehicle operated in the business of carrying passengers for compensation, and the owner or driver of the motor vehicle which the injured or deceased person was being carried in, or upon or entering, or getting on to, or alighting from is one of the persons found to be at fault or negligent, no damages, contribution or indemnity shall be recoverable for the portion of the loss or damage caused by the fault or negligence of such owner or driver, and the portion of the loss or damage so caused by the fault or negligence of such owner or driver shall be determined although such owner or driver is not a party to the action.

Where  
plaintiff is  
passenger.

(3) In any action founded upon fault or negligence and brought for loss or damage resulting from bodily injury to, or the death of any married person where one of the persons found to be at fault or negligent is the spouse of such married person, no damages, contribution or indemnity shall be recoverable for the portion of loss or damage caused by the

Where plain-  
tiff is spouse  
of negligent  
person.

fault or negligence of such spouse, and the portion of the loss or damage so caused by the fault or negligence of such spouse shall be determined although such spouse is not a party to the action. R.S.O. 1937, c. 115, s. 2.

Recovery  
as between  
tort feorsors.

**3.** A tort feorsor may recover contribution or indemnity from any other tort feorsor 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 such damage, and thereafter commencing or continuing action against such other tort feorsor, in which event the tort feorsor settling the damage shall satisfy the court that the amount of the settlement was reasonable, and in the event that the court finds the amount of the settlement was excessive it may fix the amount at which the claim should have been settled. 1948, c. 61, s. 1.

Plaintiff  
guilty of  
contributory  
negligence.

**4.** In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff which contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively. R.S.O. 1937, c. 115, s. 3.

Where  
parties to  
be deemed  
equally at  
fault.

**5.** If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent. R.S.O. 1937, c. 115, s. 4.

Adding  
party  
defendant.

**6.** Whenever it appears that any person not already a party to an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant or may be made a third party to the action upon such terms as may be deemed just. R.S.O. 1937, c. 115, s. 5; 1939, c. 47, s. 23.

Jury to  
determine  
degrees of  
negligence  
of parties.

**7.** In any action tried with a jury, the degree of fault or negligence of the respective parties shall be a question of fact for the jury. R.S.O. 1937, c. 115, s. 6.

When  
plaintiff may  
be liable for  
costs.

**8.** Where the damages are occasioned by the fault or negligence of more than one party, the court shall have power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just. R.S.O. 1937, c. 115, s. 7.

Limitation  
of actions.

**9.** Where an action is commenced against a tort feorsor or where a tort feorsor settles with a person who has suffered damage as a result of a tort, within the period of limitation

prescribed for the commencement of actions by any relevant statute, no proceedings for contribution or indemnity against another tortfeasor shall be defeated by the operation of any statute limiting the time for the commencement of action against such other tortfeasor provided,

- (a) such proceedings are commenced within one year of the date of the judgment in the action or the settlement, as the case may be; and
  - (b) there has been compliance with any statute requiring notice of claim against such tortfeasor. 1948, c. 61, s. 3.
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