

EXECUTIVE SUMMARY

In the *Contributory Fault: Tortfeasors and Contributory Negligence Act* report, the Manitoba Law Reform Commission sets out 25 recommendations to modernize the law of contribution among tortfeasors and the rules relating to contributory negligence.

Tort law deals with civil wrongs and how persons who have been injured by the wrongful conduct of others should be compensated. A person may be liable to compensate another under tort law as a result of his or her negligent or intentional conduct, or under principles of strict liability. When the elements of tort are established, the costs of the injury resulting from the tort are allocated between defendant(s) at fault, and the plaintiff who suffered the harm if he or she contributed in some way to the injury. The rules relating to contribution among tortfeasors and contributory negligence determine this allocation of damages.

In 1939, Manitoba enacted legislation to alleviate the harsh common rules governing contribution among tortfeasors and contributory negligence. The Act has been amended only twice since that time, in 1973 and in 1980. The Commission suggests that a revision of Manitoba's *Tortfeasors and Contributory Negligence Act* is now appropriate, given the developments in the law in the decades since the early reforms. It recommends the enactment of a new statute entitled the *Contributory Fault Act*.

The Commission's recommendations include the following important clarifications:

- The new Act should refer to a person's fault, rather than negligence, and include a definition of the term "fault".
- The new Act should clearly abolish the last clear chance doctrine.
- The new Act should extend the principles of contributory fault to intentional torts, strict liability torts, fault for which a person is vicariously responsible, and breach of contract.

In addition, the Commission makes several recommendations to improve the fairness and efficiency of rules governing contribution among tortfeasors, and to clarify the limitation periods applicable to claims for contribution.

Significantly, the Commission does not recommend the extension of principles of contributory fault to breaches of fiduciary duty. In reaching this decision, the Commission considered the continuing evolution of the law in this area, and recommends that the statute be clear that it does not affect a remedy available in equity.

The Commission also declined to recommend that the rules of contributory fault be extended to breaches of statutory duty that create a liability for damages.

The Commission considers that the recommendations in this report will help to modernize, rationalize and improve the fairness and efficiency of the rules governing allocation of damages among civil litigants in Manitoba.