

UNIFORM APOLOGY ACT

The Resolution on this topic as adopted by the Conference at the Annual meeting 2007:

That the *Uniform Apology Act* and commentaries be adopted and recommended to the jurisdictions for enactment as a stand alone statute or as an amendment to the jurisdiction's *Evidence Act*.

Contents

Section

1. **Definitions**
2. **Effect of apology on liability**

Comment: As an alternative to a separate statute, a jurisdiction may wish to enact the provisions of the *Uniform Apology Act* as an amendment to its Evidence Act.

Definitions

1 In this Act:

“apology” means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;

Comment: “Apology” is defined to include admissions of fault, as distinct from being limited to expressions of sympathy. The breadth of the definition is intended to strengthen the usefulness of apologies in the resolution of disputes and in the furtherance of inter-personal reconciliation.

[“court” includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity.]

Comment: “Court” is given an extended definition to encompass administrative tribunals, arbitrators, and persons acting in a judicial or quasi-judicial capacity. The definition is square bracketed in order to indicate that, for reasons of local policy or statutory interpretation, it may vary among individual jurisdictions.

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Effect of apology on liability

- 2 (1) An apology made by or on behalf of a person in connection with any matter**
- (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter,**
 - (b) does not constitute [a confirmation of a cause of action or acknowledgment of a claim] in relation to that matter for the purposes of [appropriate section of the applicable limitation statute],**
 - (c) does not, despite any wording to the contrary in any contract of insurance and despite any other enactment or law, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and**
 - (d) may not be taken into account in any determination of fault or liability in connection with that matter.**

Comment: Subsection 2(1) sets out the scope and substance of the protection accorded to apologies. The Act applies to all persons, natural and corporate. The application of the Act is not limited to certain types of wrongdoing such as negligence.

Subsection 2(1) declares that an apology, whether express or implied, is not an admission of fault or liability, and accordingly must not be taken into account in any determination thereof. To ensure the general efficacy of the Act, it is also provided that an apology cannot be used as confirmation or acknowledgment of a cause of action to extend a limitation period; and that an apology does not void or injure any insurance coverage available to the person making the apology. The square brackets in paragraph (b) indicate that the particular terminology may vary among individual jurisdictions.

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(2) Despite any other enactment or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter.

Comment: Subsection 2(2) expressly addresses and clarifies the status and scope of an apology for evidentiary purposes by providing that, despite any other law, an apology is not admissible in court as evidence of the fault or liability of the person apologizing. The Act does not prevent an apology from being admitted for other purposes, such as the determination of damages.