

You Might Regret That Text: Text Messages and Limitation Periods in Ontario

July 15, 2021

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While the legal profession is grounded in tradition and ceremony, COVID-19 has forced courts to acknowledge the reality of the increasingly virtual way that we do business.

In [1475182 Ontario Inc. o/a Edges Contracting v. Ghotbi, 2021 ONSC 3477](#), the Court held that text messages constituted an “acknowledgment of the debt owing” as required by s. 13 of the [Limitations Act, 2002, S.O. 2002 c. 24., Sched. B](#) (the “Act”). Accordingly, the two-year limitation period was extended, and the impugned debt was enforceable.

Section 13 of the Act provides that the commencement of a limitation period may be delayed to the date on which a debtor acknowledges its indebtedness. The limitation clock begins running at the time of the acknowledgment. The acknowledgment must be in writing and signed for the exception to apply.

In this case, the appellant hired the respondent to carry out leasehold improvements to its place of business. The appellant was invoiced as work progressed; a total of three invoices were issued. The first and second invoices were paid in full, but after a partial payment was made on March 11, 2016, \$24, 521 remained owing on the final invoice. On June 2, 2016, the debt was still owing. On that date, in a chain of text messages, the appellant recognized its indebtedness but refused to make payments until the job was completed to its satisfaction.

On May 30, 2018, the respondent brought a claim at the Small Claims Court for the outstanding balance. At trial, the appellant argued that the two-year limitation period had expired because the last payment was made in March 2016. The respondent argued that the text correspondence on June 2, 2016 constituted acknowledgment of the debt pursuant to s. 13 of the Act, which meant the limitation period began on that date and the claim was commenced within the two-year limitation period.

The trial judge agreed with the respondent and found that based on the plain wording of the text correspondence and the broader context in which they were sent, the appellant had acknowledged the debt and extended the limitation period. Although the texts were not signed, the trial judge found no reason to doubt their authenticity and held that the requirements under s. 13 were satisfied. The appellant appealed the decision on the basis that the trial judge had erred in his application of s. 13.

On appeal, Justice Boswell agreed that the text correspondence was sufficient to constitute acknowledgment of indebtedness by the appellant, and the limitation period was consequently extended. However, Justice Boswell made clear that verifying a message’s authenticity was not in itself enough to satisfy the signature requirement set out in s. 13.

Instead, he held that although the text was not signed in the “traditional sense” (para. 47), s. 13 did not prescribe a particular type of signature, and the unique phone number and International Mobile Equipment Identifier (IMEI) number of the appellant were enough to constitute a digital signature.

In support of his findings Justice Boswell stated:

The world is changing. Everyone knows that. We live in a digital world now, much more than was the case when the Act came into force in 2002. It is incumbent upon the court to consider not just traditional means of affixing one's signature to a document, but other, more modern means, including digital signatures. (para. 48)

This decision is an important reminder that digital signatures can be binding in commercial agreements. More importantly, this case takes this proposition a step further, and confirms that text messages alone can be enough to bind parties. When it comes to the acknowledgement of a debt and the extension of limitation periods, if it is possible to sufficiently link a text to its sender, there is no need for a traditional signature (digital or otherwise).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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