

# Refreshing the limitation period through acknowledgement of a debt (Anderson Sheet Metal Ltd. v. Comtract Air Compressors Inc.)

Limitations Act | Litigation | Litigation & Dispute Resolution | Ontario Limitations Act

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The limitation period is the time limit by which a party must commence their claim against another party. If they fail to commence the action within the applicable limitation period, they lose the right to commence the claim, and its attendant remedies. In Ontario, the *Limitations Act, 2002* outlines a basic two-year limitation for most claims, commencing on the date on which the claim was or reasonably could have been discovered. Most often, there is a single event that triggers the countdown of the limitation period, and the date will be easily discernible. For example, in personal injury claims involving a motor-vehicle accident, the triggering event or day of discovery, is the date of the accident. There are special considerations when there are multiple potential days of discovery, and the court is called to determine the correct date.

One such example was the case of *Anderson Sheet Metal Ltd. v. Comtract Air Compressors Inc.*, 2023 ONSC 6099, a case involving a dispute over unpaid invoices. The plaintiff is a sheet metal fabricator. The plaintiff issued a series of invoices to the defendant, all of which were dated in or prior to August of 2014. The invoices were not paid, and the plaintiff commenced an action in May of 2017. Payments of debts are governed by the basic two-year limitation period. This means that the action should have been commenced at least by August 2016 in order to capture the issued invoices.

However, there was an email exchange between the parties between June 14 and 16, 2016, discussing the outstanding invoices. The issue before the court was whether this discussion renewed the limitation period, such that the new date of discovery was 16 June 2016, and the limitation date was 16 June 2018.

The court first reviewed the relevant portions of the *Limitations Act, 2002*. Section 4 sets out the general two-year limitation period which would normally apply to a case such as this. Section 5 sets out the discoverability principles that determine when a claim is discoverable. Here, the court held that the claims would be discoverable thirty days after the invoice was rendered, or when it became overdue. Section 13 sets out the law on acknowledgements of a debt:

## Acknowledgements

**13 (1)** If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made. 2002, c. 24, Sched. B, s. 13(1)

Essentially, section 13(1) states that when a person acknowledges a claim for payment of a debt, the date of discovery is deemed to be the date that the acknowledgement was made. The following subsections of section 13 set out important caveats:

- Subsection 13(8) states that this applies to an acknowledgement of liability even if the person making the acknowledgment refuses or does not promise to pay the sum owing.
- Subsection 13(9) states that the acknowledgment must be made **before** the expiry of the limitation period.
- Subsection 13(10) requires that the acknowledgment be in writing and signed by the person making the acknowledgment, or an agent.

On 14 June 2016, an employee of the plaintiff company contacted the defendant stating “[w]e have been receiving monthly payments to clear up this account as agreed to, but have not received anything since November. Please let us know when the next payment will be available.” Along with the email, the employee attached an account statement, dated 14 June 2016, showing the amounts outstanding on the various invoices. On 16 June 2016, an employee of the defendant responded, stating “...we have obviously been having some difficulties in paying off this account. I will see what I can send you in the next week or so”.

The test for an acknowledgement under section 13 of the *Limitations Act* is set out by the Court of Appeal for Ontario in *1702108 Ontario Inc. v. 3283313 Canada Inc.*, 2016 ONCA 420:

- Section 13(1) is engaged when a person acknowledges a liability for a debt
- Section 13(1) requires a “clear and unequivocal” acknowledgement of the debt claimed
- A mere offer to settle a claim, without acknowledging that any amount remained owing, does not amount to an acknowledgement of liability.

In *Lev v. Serebrennikov*, 2016 ONSC 2093, the Divisional Court held that an email may satisfy the requirements of section 13, but the court will need to determine the authenticity of the email (paragraph 24).

In this case, the use of the words “this account” in the email chain was a clear acknowledgement of the amounts owing. The email chain included the attachment of the updated account statement, so it was clear that the words “this account” referred to the money owing as outlined in the statement. The words “I will see what I can send you in the next week or so” was an acknowledgment that there had been (and continued to be) an agreement to make monthly payments to clear up the account. The court also found that the sender of the 16 June 2016 email sent the email on behalf of the defendant company and could bind the company, satisfying the authenticity requirement. Thus, the court determined that the email chain met the requirements of section 13 and refreshed the limitation period.

The last question was determining whether the refreshing occurred before the expiry of the original limitation period. Subsection 13(9) required that the acknowledgement take place **before** the original limitation period expired. Here, the debt involved five invoices. Three of the invoices were due and payable more than two years before 16 June 2016. Therefore, the acknowledgement could not refresh the limitations period under s. 13(9) for these three invoices and only the limitation period for the remaining two invoices was refreshed.

This decision is an important reminder that the limitation periods for debts can be refreshed by an acknowledgement of the debtor. The acknowledgement must satisfy specific requirements in order to refresh the limitation period. Plaintiffs who wish to commence a claim for the repayment of a debt, on the basis of an acknowledgement and a refreshed limitation period, should ensure they carefully consider these requirements to see if they have a timely claim. A PDF version is available to download [here](#).

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