

# Did I Just Form a Contract Using an Emoji?

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The explosion of e-commerce has touched just about every commercial industry in existence. Now individuals and businesses can contract to purchase countless commodities and products such as cars and bulk raw materials by direct messaging or electronic signature service.



But when does mere conversation regarding a possible purchase become a binding contract? Can an emoji response to a buyer or seller really create a binding contract?

## Background

This was precisely the issue before the **Saskatchewan Court of Appeal** in *Achter Land & Cattle Ltd. v South West Terminal Ltd.* (2024 SKCA 115), which was denied leave to appeal to the **Supreme Court of Canada** (“SCC”).

At issue was whether a thumbs-up emoji “👍” could be used to form a binding agreement.

Here, Achter Land & Cattle Ltd. (the “Seller”), grew and sold crops that South West Terminal Ltd. (the “Buyer”) would purchase.

In this particular transaction, Buyer wished to purchase 87 metric tonnes of flax from the Seller for a price of \$669.26 per tonne.

## Contract Formation Process

The details of the transaction occurred over text message in March 2021 when a representative of the Buyer messaged the principal of the Seller with a photo of a standard form “Deferred Delivery Purchase Contract.” The essential terms of this document detailed the purchase price per tonne for the flax, and that the flax would be delivered by November.

One of the key components of deferred delivery contracts is that it means the Seller is not yet in possession of the goods being sold. In this case, the Seller had yet to grow the flax, which would be delivered once harvested.

## Pattern of Business

The Buyer and Seller were said to have formed between 15 and 20 similar contracts over the course of more than a decade. All these contracts were formed in the same way. Over a text conversation, the Buyer would provide a photo of a standardized agreement and ask that the Seller confirm the agreement. Confirmation by the Seller was habitually given by a simple phrase of agreement, for example: “ok”, “yup”, or “looks good”.

On this occasion, in place of a phrase of agreement, the Seller responded to the photo of the contract and text from the Buyer to “confirm flax contract” with a thumbs-up emoji “👍”.

## Problem

Unfortunately for the Seller, the 2021 growing season was dismal and it was unable to harvest even one bushel of flax. As a result, the Buyer was required to procure flax from an alternative source at a price of \$1,614.09 per tonne. The Buyer then sued the Seller for breach of contract based on the difference in price for the flax contracted for in March as compared to the purchase price paid in November, claiming total damages of \$82,200.21.

The Buyer claimed that an enforceable agreement had been formed, and that the terms were then breached. The Seller disagreed, claiming that the thumbs-up emoji did not constitute an agreement to the terms and was unenforceable.

## Court Decisions

The courts at the trial and appeal levels concluded that a valid contract existed and that the Buyer was entitled to damages.

In its decision, the Saskatchewan Court of Appeal reasoned that for a contract to be formed, it must be deemed that to the “objective reasonable bystander” the parties have expressed their intention to form an agreement.

Based on the facts at issue, it was not difficult for the court to agree with the conclusion of the trial judge that there was an intention to form an agreement. The long-standing relationship between the parties and their history of contracting with each other over text messages using terse phrases of agreement left little doubt as to the intention of the parties.

## Emoji as a Signature

Though intention between the parties had been found, the court still had to determine if an emoji could constitute a signature pursuant to Saskatchewan’s Sale of Goods Act and

Electronic Information and Documents Act.<sup>1</sup>

Taking a historical approach and writing for the majority, Chief Justice Leurer explored the long-standing use of symbols to sign and authenticate a document. He highlighted that at one point, people could sign and authenticate a document with an “x,” which itself is an ambiguous symbol but could nonetheless be a binding signature.

Leurer C.J.S. even went so far as to reason that signatures are just an arrangement of symbols. He emphasized that a signature is not valuable because it spells a name or provides initials but rather because it indicates an intention of a specific person or entity to be bound.

<sup>1</sup>

To demonstrate that an emoji can authenticate in the same way a signature can, the court embraced the emoji’s electronic form. The court then accepted the conclusion that the metadata submitted as evidence affirmed that the emoji was from the seller’s “unique cell phone” and was deemed to constitute a signature.

## Supreme Court of Canada

An attempt was made to appeal this matter to the SCC. However, leave to appeal was denied as of July 24, 2025.<sup>2</sup>

While denial of leave to appeal does not communicate an opinion on behalf of the SCC, it does mean that the decision from the Saskatchewan Court of Appeal will be binding in that province.

## Implications for Manitoba and Future Cases

Time will tell whether this decision is embraced and followed by **Manitoba’s courts**. It will, at minimum, be influential to future cases within our province where a party is seeking to uphold a contract based on an emoji reply. Such a decision would further clarify the formation of commercial contracts in Manitoba given nuanced differences between the laws of *Saskatchewan and Manitoba’s own Sale of Goods Act and Electronic Commerce and Information Act*.<sup>3</sup>

## Takeaways

Moving forward, though emojis can create binding contracts at law, not much has changed at law. The same principles of contract law continue to apply, and courts will consider the context of the dispute and nature of the relationship between the parties, which in this case were of central importance.

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## References

<sup>1</sup> *The Sale of Goods Act*, RSS 1978, c S-1; *Electronic Information and Documents Act*, 2000, SS 2000, c E-7.22.

<sup>2</sup> *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2025 CanLII 71474.

<sup>3</sup> *The Sale of Goods Act*, CCSM c S10, and *The Electronic Commerce and Information Act*, CCSM c E55.

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