

## PUBLICATION

### How to Know When You Have Entered into a Contract

Breton Gaunt

June 23, 2020

It is good practice to have a written agreement in place before entering into a business relationship. One of the foundational principles of contract law is that contracts form out of a *meeting of the minds*.

The easiest way to show there is an agreement between two parties is to put it down on paper. But in reality, many contracts are entered into without a written agreement in place.

Unwritten contracts can be formed through verbal agreements but there is also potential that a contract can be created through the *actions* of the parties. A contract can be implied where a Court is satisfied that the parties agreed to the essential terms of the agreement even though the terms were never discussed.”<sup>1</sup>

For example, in a [2019 case](#), the Ontario Superior Court discussed implied contracts in the decision of *Goderich-Exeter Railway Company v. Shantz Station and Parrish & Heimbecker*. The railway company argued that it was an industry norm to charge fees for delays in unloading railcars. Even without a written contract, the contract for payment of the fees was implied. The Court found in favour of *Parrish & Heimbecker* who had expressly stated they would *not* pay the fees from the outset and, therefore, there was no *meeting of the minds* and no implied contract existed. Without this implied intent, it would have been open to the Court to find *Parrish & Heimbecker* liable for payment of the fees.

Whether you need help drafting or enforcing a contract, or determining if you have entered into an unwritten agreement, we are here to help. Feel free to contact any lawyer in our [Business Law](#) or [Business Litigation](#) groups.

<sup>1</sup> *GEXR v. Shantz Station and Parrish & Heimbecker*, 2019 ONSC 1914, at para. 108