

Jurisdiction & Contempt

Civil Procedure

Lec III

Overview

I. Jurisdiction

II. Contempt

Territorial Jurisdiction: the Questions

Imagine that:

- Your client, a Canadian business, has patents registered in Canada, the United States, and Japan. A corporation with offices in Japan and the United States is engaged in patent infringement.

Where should your client start a lawsuit to protect their patent?

Which country or countries' laws will be used to resolve the dispute?

These are questions for **private international law**.

Territorial Jurisdiction

- Jurisdiction simpliciter – can this court take jurisdiction?
- *Forum conveniens* – should this court take jurisdiction?
- Practical enforcement considerations – does it make sense for the plaintiff to sue here, given the location of the defendant and/or their assets

Legal Pluralism: The Questions

Example:

- Your client, an individual, was recently excommunicated from their religious community. They want to be readmitted.

Should they sue in Canadian courts?

Should they pursue remedies according to the internal rules of the religious community?

Legal Pluralism

- Defn' “in anyone geographical space defined by the conventional boundaries of a nation state, there is more than one law or legal system”
- Examples:
 - Canadian law: Federal, Provincial, Delegated Entities
 - International law
 - Private Commercial Law
 - Religious law
 - Indigenous law

Legal Pluralism: One Example

Imagine you have a client who has a disability and they have been subject to disability-based discrimination. Consider the potential laws/complaint mechanisms that might be relevant:

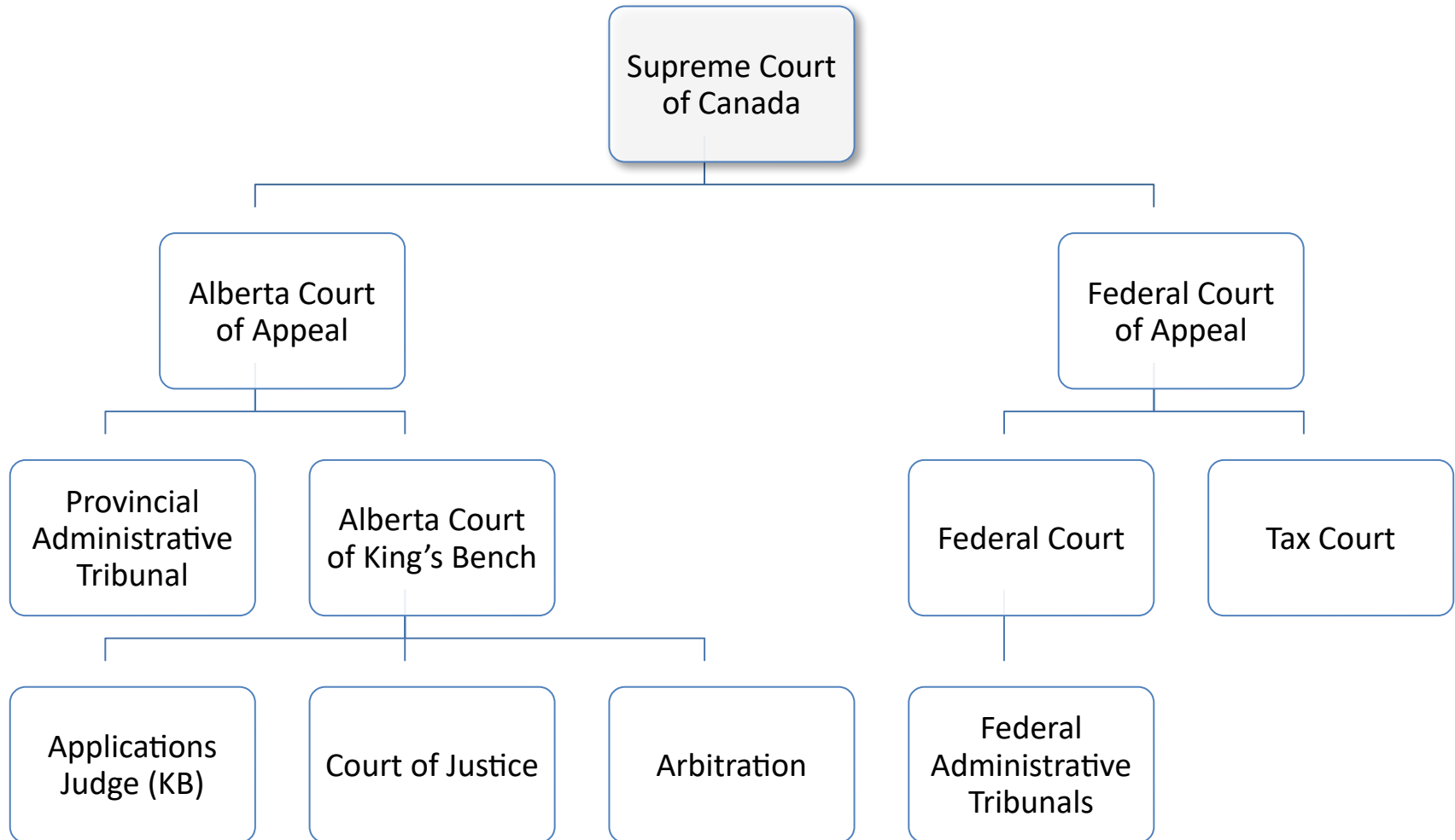
Domestic Law:

- Complaint under the *Alberta Human Rights Act*, section 20 or *Canadian Human Rights Act*, section 40
- Complaint under the *Accessible Canada Act*, section 94 (or, in most provinces other than Alberta, provincial equivalent)
- Legal challenge in superior court to legislation or state conduct under section 15 of the *Charter of Rights and Freedoms*

International Law:

- File a complaint under the Optional Protocol of the *UN Convention on the Rights of People with Disabilities* [more information [HERE](#)]

Okay, but which court do I use?



Notes: Military court system not shown; some provincial administrative tribunals provide for a right of appeal to KB or may be subject to judicial review at KB

Concurrent vs. Exclusive Jurisdiction

- **Concurrent Jurisdiction:** two or more courts/tribunals have jurisdiction over a claim
 - E.g., if a court and an administrative tribunal have concurrent jurisdiction, a plaintiff can decide to bring their claim in either the court or the administrative tribunal.
- **Exclusive Jurisdiction:** only one court/tribunal has jurisdiction over a claim
 - E.g., if an administrative tribunal has exclusive jurisdiction, a plaintiff must start their claim in the tribunal and, if they start their claim in a court, could have that claim struck.

Alberta Court of King's Bench

- Superior Court/Section 96 Court
 - British Columbia Supreme Court
 - Ontario Superior Court of Justice
 - Saskatchewan Court of King's Bench
- Plenary & Inherent Jurisdiction
 - General Rule: The Court has jurisdiction unless it has been taken away by statute
 - See *Judicature Act*, especially sections 2, 4-9
- Filing fee for claim \$300
- Process, see *Rules of Court*, ARC R 1.1
- Appeals to the Court of Appeal, ARC Part 14

Applications Judges' Jurisdiction

- Applications Judges are part of the Court of King's Bench that hear a range of civil litigation matters
- Jurisdiction
 - Jurisdiction set out in the *Court of King's Bench Act*, s 8-16
 - Can hear many applications that occur in civil litigation prior to trial, see [Notice to the Profession, November 25, 2016](#)
 - Cannot hear, *CKBA* s 9(3):
 - Trials
 - Contempt proceedings
 - Applications for injunctions (other than pre-judgment attachment orders under the *Civil Enforcement Act*)
 - Things required by statute to be done by a “judge”
- Appeals to a Court of King's Bench Justice, ARC, R 6.14
 - No direct appeal to the Court of Appeal R 14.4

Court of Justice (Civil)

- Statutory Court – jurisdiction established by statute, esp, *Court of Justice Act* but also other acts!
 - Can hear claims re: debt, damages, unjust enrichment, title to personal property, specific performance, rescission
 - Threshold amount = \$100,000, *CJA*, s 9.6 & *Court of Justice Civil Procedure Regulation*, s 2
 - Cannot hear claims re: title of land, wills, defamation, malicious prosecution, claims against police *CJA* s 9.6(2)
- Filing Fee for claim $\leq \$7500 = \100 ; $> \$7500 = \200
 - *Provincial Court Fees & Costs Regulation*, s 1
- Process, see *Court of Justice Act*, Part 4 & *Court of Justice Civil Procedure Regulation*
 - Court can supplement by applying or modifying the Rules of Court, *CJA* s 8
- Appeals to the Court of King's Bench, *CJA*, s 46

Administrative Tribunals

- May have exclusive or concurrent jurisdiction

- E.g., exclusive = Workers Compensation Board, *Workers Compensation Act*, s 17, 23

- Right of appeal to Workers Compensation Appeal Commission, further right of appeal to the Court of King's Bench, *WCA* s 13.1-13.4

- E.g., concurrent = Residential Tenancy Dispute Resolution Services, *Residential Tenancies Act*, s 48, 54.2

- Landlords and tenants can also apply for relief in Court of Justice OR Court of King's Bench
 - Right of appeal to the Court of King's Bench, *Residential Tenancy Dispute Resolution Service Regulation*, s 23

- May be restricted from hearing constitutional claims, Charter claims, or other specific types of matters (e.g., human rights)

- General prohibition against provincial administrative tribunals deciding constitutional issues set out in *Administrative Procedures and Jurisdiction Act*, s 11, with some exceptions set out in *Designation of Constitutional Decisionmakers Regulation*.

- E.g., Residential Tenancy Dispute Resolution Services is prohibited from deciding matters re: constitutional law or human rights, *Residential Tenancy Dispute Resolution Service Regulation*, s 17

- May have a statutory right or appeal to a court and/or be subject to judicial review by a court.

Arbitration

- May be agreed to voluntarily or mandated by contract!
- Arbitration
 - *Arbitration Act*
 - *International Commercial Arbitration Act*
- Procedure
 - May be set out in contract
 - May be agreed to by parties
- May be able to apply to court for relief including limited right of appeal (*Arbitration Act*, s 44) or to set aside award (*Arbitration Act*, s 45)

Federal Court

- Statutory Court – jurisdiction established by statute, esp, *Federal Courts Act*, s 17-26
 - Jurisdiction to hear actions against the federal crown, intellectual property matters, maritime law, citizenship & immigration, judicial review of federal administrative bodies and intergovernmental disputes (see *Judicature Act* s 27)
 - Many areas of jurisdiction are concurrent with provincial superior court, some are exclusive e.g., administrative law remedies against federal boards, commissions and tribunals, FCA s 18
- Filing fee for claim - \$150, see *Federal Court Rules*, Tariff “A”
- Federal court has an officer that is akin to an Applications Judge called a “Associate Judge” (formerly a prothonotary)
- Process, see *Federal Courts Rules*
- Appeals to the Federal Court of Appeal, FCA, s 27

Alberta Court of Appeal

- General rule: can appeal civil matters from King's Bench without leave, ARC R 14.4 (1)
 - Some exceptions, see R. 14.5(1)
 - No appeal to CA from Applications Judge, R 14.4(4)
 - Can also hear references from the Alberta Government, *Judicature Act*, s 26
- Cost of filing an appeal? \$600, ARC Schedule "B", Division 6
- Process: *Rules of Court*, ARC R 1.1
- Appealing from an administrative tribunal's decision? Look at governing legislation
 - e.g., Appealing a municipal subdivision and development appeal board? Appellant must get "permission" from Court of Appeal, *Municipal Government Act*, s 688

Supreme Court of Canada

- Statutory Court, jurisdiction established by statute, esp *Supreme Court Act*
- Jurisdiction
 - Litigants need leave for civil appeals and some criminal matters, *SCA* s 40
 - Some appeals “of right” on criminal matters, *Criminal Code*, s 691
 - References from Federal Government, *SCA* s 53-54
- Cost of filing an application for leave to appeal? \$75 see *Rules of the Supreme Court of Canada*, Schedule B
- Process: *Rules of the Supreme Court of Canada*
- Since 1949 – no further appeal

Application Question

You are a litigator with a significant Aboriginal law practice. You are approached by a client who was a member of an Indian Band until their membership was improperly terminated by the Band Council. Where do you start proceedings to challenge the Band's decision?

Section 96 of the Constitution

96 The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Courts have interpreted this section of the constitution as preventing either the provincial or the federal government from transferring essential judicial functions from the superior courts to a different court of administrative tribunal:

- In *Reference re Code of Civil Procedure (Quebec)*, 2021 SCC 27 the SCC held that the legislation granting the Court Quebec's (an inferior court) exclusive jurisdiction over civil claims up to \$85,000 violated s 96
- In *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2022 BCCA 163 [leave to SCC denied] the court held that the grant of "special" jurisdiction to an online tribunal to hear motor vehicle accident claims up to \$50,000 did NOT violate s 96 (overturned lower court decision)

Application Question

You are in-house counsel at the provincial Ministry of Justice. To expedite dispute resolution, the Ministry would like to set up an entirely-online dispute resolution service, where provincially appointed adjudicators will hear all claims for \$75,000 or less. How would you design this service to avoid a constitutional challenge?

Alberta Rules of Court

- Apply in *Court of King's Bench and Court of Appeal*, ARC R 1.1
- Regulation provided for by section 28 of the *Judicature Act*
- Substantially re-written in 2010. Alberta Law Reform Institute Reports on “New Rules” a very good resource when researching rules
 - <https://www.alri.ualberta.ca>

Civil Contempt

Power to hold in contempt:

- Court of King's Bench, *ARC*, R 10.51-10.53, 10.55
- Court of Justice, *PCA*, s 9.61
- Remembers: Applications Judges cannot hold someone in contempt, *CKBA*, s 9(3)(d)

Three part test from *Carey v. Aitken*, 2015 SCC 17:

(1) The order alleged to have been breached must state clearly and unequivocally what should and should not be done

(2) The party alleged to have breached the order must have had actual knowledge of it

(3) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels

Court retains discretion to find “no contempt” even when all three elements made out to find, if holding party in contempt would work an injustice.

In *Evacon v 829693 Alberta Ltd.*, 2018 ABCA 31 the Court of Appeal confirmed that a court should not hold someone in contempt if they have a reasonable excuse for not complying with an order, i.e., they took all reasonable steps to comply but were still unable to.

Application Question

You are a corporate solicitor. A longstanding client of yours recently lost a wrongful termination lawsuit brought by a former employee (the lawsuit was handled by your partner, a litigator). Your client has now been served with a court order from the Alberta Court of King's Bench requiring him to provide information to the former employee about his business' assets. He doesn't want to provide this information.

- a. What advice do you give him? Do you need more information from the client?
- b. If you are the employee's lawyer, before whom are you making the contempt application? What evidence do you need to put before the court to succeed on your application?

Coming Up

Friday – Office Hours 2-3pm, in-person or online

For Next Week:

- Topic: Commencing an Action
- Reading:
 - Pleadings 1.0
 - Côté, 9-12, 19-21

Optional Courthouse Observation Assignment on Canvas, Due Sept 26, 2025 at 5pm

Think About

1. You are approached by a senior citizen. For many years, he lived with his nephew on a rural property. Three years ago, he required more support and moved into a group home in the city. His group home worker connected him to a psychologist, and he disclosed to the psychologist that his nephew was physically violent with him. His psychologist has suggested that he sue his nephew for compensation for the physical violence. Has he run out of time to file a civil complaint?

2. Service Corp provides services to Deals Ltd. Normal practice is that Service Corp issues an invoice and Deals Ltd pays it w/i 45 days

- March 20-31, 2024 – Service Corp provides services to Deals Ltd.
- April 1, 2024 – Service Corp issues invoice to Deals Ltd.

If Deals Ltd does not pay the invoice, by when must Service Corp file its commencing documents?

3. You are approached by the sole director and shareholder of a corporation. She is thinking about retiring and wants to sell the company. She had been organizing old corporate documents, when she came across some inexplicable financial discrepancies. She hired a forensic auditor to examine the documents and the auditor concluded that a former bookkeeper may have stolen significant amounts of money from the company. The bookkeeper left her job 6 years ago. Has the director and shareholder run out of time to file a civil complaint? What if the bookkeeper left her job 11 years ago?

4. You are approached by a client who was fired from a job 18 months ago. Her employer says that she was fired after a series of unexplained absences. She suffered from untreated alcoholism. She advised her employer of her addiction, but the employer dismissed this information as being irrelevant. She believes she was improperly fired and would like to seek relief. Has she run out of time to file a human rights complaint? A civil complaint?