

Lecture 11, Mar 23, 2026

Dispute Resolution

- Primary methods of dispute resolution:
 - Negotiation
 - * The parties have full control over the process, and is private, less costly
 - Mediation: a more formal process, using a third-party mediator
 - * Communications at mediation and negotiation are *privileged*, i.e. parties cannot talk about what happened in court
 - Arbitration: uses an appointed arbitrator, like a private trial
 - * Parties lose control of terms of resolution
 - * Can be mandatory/binding or voluntary/non-binding, based on what is agreed on prior to the resolution
 - * Has the advantage of privacy, but all parties need to agree
 - * All parties need to agree on the arbitrator that was imposed, which can be hard to get everyone to agree on
 - Litigation: outcome decided by a judge/jury
 - * Parties cede control of the entire process to the court
 - * Time consuming and expensive, and always risky
 - * Typical process consists of: pleadings (statements of claims and defence are set out) → mandatory mediation (often done after discovery) → disclosure of documents → discovery (gathering of evidence) → pre-trial conference → trial → appeal
- Most disputes are resolved with just negotiation or mediation, since arbitration or going to court is cost and time intensive
- Engineers can be called for technical evidence or as experts

Labour and Employment Law

- Labour law typically deals with union-management or employee-union relationships
 - Governed by provincial legislation (*Labour Relations Act* in Ontario)
 - * The act makes unions the sole representation of its members, and prevents employers from penalizing employees for unionizing
 - Trade unions, established in the *Trade Unions Act*, gives workers the right to strike
- Employment law deals with employer-employee relations
 - Generally governed by contract law, which can be written, oral, or part oral and part written
 - Provincial (Employment Standards Act in Ontario) sets out minimums for wages, benefits, etc
 - Terms can be express or implied; if the contract terms are too vague or missing, the court can imply terms when making decisions
 - Implied terms can include employee's duties of loyalty, competence, and to mitigate breaches, and the employer's duty to give adequate notice/severance
 - Restrictive covenants are terms that requires the employee not perform certain types of work for a specific period after termination (e.g. working for competitors, in a geographic region, etc)
- Independent contractors do not have typical employment rights such as reasonable notice, overtime, compensation, etc
 - The test for whether a worker is an independent contractor typically depends on the degree of control the employer has on the worker
 - Vicarious liability does not exist for independent contractors, i.e. the employer is not liable for the actions of the worker
- Employers have a duty to keep employees safe pursuant to the Occupier's Liability Act
 - Courts will determine what is considered reasonable protection based on factors such as the "reasonable person" test, industry standards, etc
 - This can override terms set out in the contract, e.g. COVID delays
- Every province also has a Human Rights Code, which establishes a complaint process for discrimination, culminating with hearings before a human rights tribunal

- This also prohibits harassment
- Federally the *Canadian Human Rights Act* applies to government employees

Environmental Law

- Environmental law is a mixture of common law and statutory regulation
- Provincial and federal statutes create funds for contamination cleanup and impose criminal or quasi-criminal fines

Aboriginal Law

- There is a duty to consult with native groups to accommodate the interests of people affected by proposed activities
- Treaty obligations exist
- Special rules apply regarding contracts