# A Court's Inherent Jurisdiction to Sit Outside its Home Territory

Another step in the evolution of the common law on this issue has been taken by the Court of Appeal for Ontario in *Parsons v Ontario*, 2015 ONCA 158 (available here). The court disagrees in some respects with the earlier decision, on the same issue, of the British Columbia Court of Appeal in *Endean v British Columbia*, 2014 BCCA 61 (available here) (discussed by me over a year ago here). It may be that in light of this conflict the Supreme Court of Canada will end up hearing appeals of either or both decisions.

People infected with the Hepatitis C virus by the Canadian blood supply between 1986 and 1990 initiated class actions in each of Ontario, Quebec and British Columbia. These actions were settled under an agreement which provided for ongoing administration of the compensation process by a designated judge in each of the three provinces. In 2012 the issue arose as to whether the period for advancing a claim to compensation could be extended. Rather than having three separate motions in each of the provinces before each judge to address that issue, counsel for the class proposed a single hearing before the three judges, to take place in Alberta where all of them would happen to be on other judicial business. In the face of objections to that process, motions were brought in each province to determine whether such an approach was possible. The initial decision in each province was that a court could sit outside its home province. The Quebec decision was not appealed but the other two were.

The Court of Appeal for Ontario has now released its decision on the appeal, and the three judges are quite divided. They divide even over a preliminary issue, namely whether the order made below is "final" or "interlocutory" for purposes of the appeal route. If it is the former, the appeal is properly brought to the Court of Appeal, but not if it is the latter (in which case the appeal would be to the Divisional Court). The judges split 2-1 in deciding the order is final.

Turning to the merits, the judges remain divided. Justice LaForme upholds the order below. He concludes the court has the inherent jurisdiction to sit outside Ontario and that it can do so without violating the open court principle, even in the absence of a video link to an Ontario courtroom (for spectators and perhaps

some lawyers). Justice Lauwers agrees that the court has the inherent jurisdiction to sit outside Ontario, but that doing so without a video link back to Ontario would be a violation of the open court principle. He reverses the order below, but only to the extent that he insists on such a link. Justice Juriansz agrees with the result reached by Justice Lauwers but his reasoning is quite different. He relies on Ontario's Rules of Civil Procedure which allow for a motion to be heard by video-conference. In his view, the proposed hearing outside of Ontario falls within these rules if there is a video link back to an Ontario courtroom. No resort to inherent jurisdiction is required and the open court principle is not impaired.

I remain somewhat skeptical that the court has the jurisdiction to sit outside the province. I would rather see such a process addressed by statute rather than through invocation of the court's inherent powers. I am also concerned that Justice Juriansz's approach is something of a fiction, using the video-conference rules to in essence pretend that the hearing is actually being held in the courtroom to which the video feed is transmitted. I consider such a video link essential, but for me it goes to the question of the open court principle and not to jurisdiction.

A side note: this is my first post in many months. My sense, and that of many of my colleagues in Canada, is that we have had a dearth of interesting developments in private international law over the past year.