Jurisdiction and Class Actions

To what extent should a country's traditional rules for taking jurisdiction be modified to address some of the unique elements of class actions? This issue was recently considered by the Manitoba Court of Appeal in *Ward v. Canada (Attorney General)* (available here).

In *Ward* the plaintiff lived in Manitoba but in the 1970s he had been stationed in New Brunswick, where, he alleged, his employer had exposed him to Agent Orange. In one sense his claim was very much tied to Manitoba: he was there as the plaintiff, suffering damages there, and seeking to sue the Federal Crown which, by being present in every Canadian province, was present there. But he proposed, in due course, to move to have his claim certified as a class action, with a class that could cover both residents and non-residents of Manitoba.

The Crown opposed Manitoba's jurisdiction. It argued that the traditional approach to jurisdiction had to be modified in class actions, and that notwithstanding its presence as a defendant in Manitoba the plaintiff should still have to show a real and substantial connection between the action and Manitoba.

The Court of Appeal did not accept this argument. It held that the Crown's presence was sufficient for jurisdiction. The fact that a subsequent certification motion could lead to the action becoming a class action did not change, at this stage, the jurisdictional analysis.

This decision is particularly important for the guidance it provides on where, as a matter of jurisdiction, a class action can be started and the attempt made for certification. In this case, the plaintiff faced significant downside costs exposure in New Brunswick if a motion for certification was unsuccessful there, whereas in Manitoba costs are only awarded against the party moving unsuccessfully for certification in limited circumstances. This created an advantage for the plaintiff to commence putative class proceedings in Manitoba rather than in New Brunswick.