

## Judges Without Borders: A Class Action Update

The BC Court of Appeal recently reversed a lower court decision and held that BC judges are not authorized to conduct judicial hearings outside of the province.<sup>1</sup> The BC Supreme Court previously considered this issue in *Endean v British Columbia*<sup>2</sup> when it examined the extent to which judges can cooperate across provincial borders in jointly hearing applications in parallel class proceedings located in a single court location. The BC Supreme Court concluded that a court's inherent jurisdiction to control its own process permits a superior court judge to preside over a hearing conducted outside of its home province, provided it has personal and subject matter jurisdiction and if, in the particular case, the interests of justice would be served.

The Province of BC appealed this decision and the appeal was allowed.

The Court of Appeal concluded that since the inception of English common law in BC, domestic courts have been prohibited from holding hearings outside of their territorial boundaries. The Court of Appeal followed the comments by Rowles J.A. in *Ewachniuk v Law Society of British Columbia* (1998)<sup>3</sup> that "[w]hile courts do project their authority beyond their boundaries through the exercise of in personam jurisdiction, domestic courts do not sit outside their boundaries."

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<sup>1</sup> *Endean v British Columbia*.

<sup>2</sup> 2013 BCSC 1074.

<sup>3</sup> 156 D.L.R. (4th) 1, 46 B.C.L.R. (3d) 203 (C.A.).

The Court of Appeal further explained that the court's inherent jurisdiction does not permit BC judges to preside over a hearing conducted outside of BC. The Court of Appeal highlighted that such a practice would create many policy and procedural issues including infringing the host's territorial jurisdiction and violating the "open court principle" which ensures that all members of the public interested in attending a hearing may do so. The Court of Appeal opined that this particular case did not justify a change to the common law. Instead, any modifications of the law to permit judges to sit outside of their home provinces should be left to the legislatures. In the meantime, however, judges not personally present in BC can conduct hearings in BC courtrooms by telephone, videoconference or other communication methods.

This result is in contrast to the current lower court case law in Ontario, and where a similar case is presently before the Ontario Court of Appeal awaiting judgment. If the appellate decision in Ontario is different than the BC result, we can expect to see that the parties will ask the Supreme Court of Canada for leave to hear the case. In the meantime, BC judges will remain within BC borders for the foreseeable future.

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#### [a cautionary note](#)

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