

CANADA / JUDGMENT

Sinclair v. T.D.M.C. Holdings Ltd.

2025 BCCA 402

COURT

British Columbia Court of Appeal

DECIDED

20 November 2025

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2025 BCCA 402 Sinclair v. T.D.M.C. Holdings Ltd.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Sinclair v. T.D.M.C. Holdings Ltd.,

2025 BCCA 402

Date: 20251120

Docket: CA50786

Between:

Kenneth B. Sinclair, Betty Lee Sinclair,

and Donald R. Thonger

Appellants/

Respondents on Cross Appeal

(Respondents)

And

T.D.M.C. Holdings Ltd., 318080 Alberta Ltd.,

William Thomas Joseph Karny, and Elizabeth Karny

Respondents/

Appellants on Cross Appeal

(Claimants)

Before:

The Honourable Mr. Justice Grauer

The Honourable Justice Fleming

The Honourable Justice Mayer

On appeal from: An award of an arbitrator under the Arbitration Act, S.B.C. 2020,
c. 2, dated May 28, 2025 (T.D.M.C. Holdings Ltd. v. Sinclair).

Counsel for the Appellants/Respondents on Cross Appeal:

M. Nied

Counsel for the Respondents/Appellants on Cross Appeal:

R. W. Grant, K.C.

Place and Date of Hearing:

Vancouver, British Columbia

October 16, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 20, 2025

Written Reasons by:

The Honourable Mr. Justice Grauer

Concurred in by:

The Honourable Justice Fleming

The Honourable Justice Mayer

Summary:

The parties all seek to challenge an arbitration award. The Arbitration Act provides for appeals to the Court of Appeal where leave is granted, but it requires that applications for leave be brought within 30 days of receiving the award. The appellants applied for leave to appeal on the 30th day after receiving the award. The respondents filed a notice of cross appeal with leave required outside the Arbitration Act deadline, but within the 15-day time limit for initiating a cross appeal under the Court of Appeal Rules. They subsequently filed their leave application.

The appellants applied to have the respondents' leave application quashed, arguing the court did not have jurisdiction to hear an appeal brought outside the 30-day limit. The respondents argued that the Arbitration Act's silence on cross appeals should be interpreted to mean these are subject to the timelines in the Court of Appeal Rules. The chambers judge found in favour of the respondents and dismissed the appellants' application to quash. The appellants applied to vary that order.

Held: Application allowed and order varied; the application for leave to cross appeal is quashed.

On a correct statutory analysis, it becomes clear that the sole source of this Court's jurisdiction to hear an application for leave to bring any kind of appeal from an arbitral award is section 59 of the Arbitration Act. There is no distinction between an appeal and a cross appeal under the Arbitration Act. Applications for leave to appeal in either case must be brought within 30 days of the arbitral award. This court has no jurisdiction to extend the 30-day period once it has expired.

Reasons for Judgment of the Honourable Mr. Justice Grauer:

INTRODUCTION

- [1] If you want to appeal an arbitral award governed by the Arbitration Act, SBC 2020, c 2, it is clear what you must do. Section 59 states that there is no appeal other than as provided by that section. By section 59(2), you may appeal to this Court, but only on a question of law arising out of the award and, absent consent, only if a justice of this Court grants leave.
- [2] So the first thing you must do is bring an application to this Court for leave to appeal. By section 60(1) of the Arbitration Act, you must do so not more than 30 days after the date you receive the arbitral award.
- [3] What if the opposing party follows that route, and you wish to launch a cross appeal? Do the same provisions apply? Sections 59 and 60 do not use the term "cross appeal". The route is not so clear.
- [4] Here, the arbitral award was rendered and delivered to the parties on May 28, 2025. The appellants ("Sinclair") properly filed a notice of appeal (leave required), together with an application for leave to appeal, within the 30-day limit, but just: on June 27, 2025. The respondents ("TDMC") then decided to cross appeal, filing their notice of cross appeal (leave required) on July 14, 2025: well beyond the Arbitration Act's 30-day limit, but within (though barely) the 15-day time limit for initiating a cross appeal provided by Rule 9 of the Court of Appeal Rules, BC Reg 120/2022 [Rules]. They did not file an application for leave until August 13, 2025--nearly a month later.

- [5] Sinclair applied to a justice in chambers for an order quashing TDMC's application to cross appeal on the ground that this Court lacked jurisdiction to entertain it because it was brought outside the 30-day time limit provided by the Arbitration Act. This position is consistent with what was recently said by Justice Newbury in *Desert Properties Inc v G&T Martini Holdings Ltd*, 2024 BCCA 24 (Chambers).
- [6] Chambers decisions, however, do not bind other judges sitting in Court of Appeal Chambers, nor do they bind a division of this Court (see, for instance, *TK v RJHA*, 2014 BCCA 445 at para 25). In the present case, the chambers judge noted that Newbury J.A.'s remarks were obiter, and he came to a different conclusion. His reasons for judgment are indexed at 2025 BCCA 322. In his opinion, section 59 of the Arbitration Act confers jurisdiction on this Court, but "does not specify the procedures to be followed once an appeal is brought" (at para 23). It followed, in his view, that once an appeal had been commenced and this Court had acquired jurisdiction, the Arbitration Act did not impose time limits, and the procedural provisions of the Court of Appeal Act, SBC 2021, c 6 [CA Act] and the Rules would thereafter apply--including those governing the bringing of cross appeals.
- [7] The judge therefore dismissed Sinclair's application to quash, finding that the application for leave to cross appeal was "properly brought under s. 14 of the Court of Appeal Act and was filed in time".
- [8] Sinclair applies to vary that order and quash TDMC's application for leave to cross appeal. Though I hesitate to come to a conclusion different from that of my highly esteemed colleague, I would allow the application for the reasons that follow.

2. THE LEGISLATIVE CONTEXT

- [9] The question is whether this Court has jurisdiction to hear TDMC's application for leave to cross appeal from the arbitral award. The chambers judge accepted, as did Newbury J.A. in *Desert Properties*, that this Court, being a statutory court, has only that jurisdiction conferred by statute. In this case, the relevant statutes are the Arbitration Act and the CA Act.
- [10] I begin by setting out sections 59 and 60 of the Arbitration Act, which govern appeals from arbitral awards:

59 (1) There is no appeal to a court from an arbitral award other than as provided under this section.

- (2) A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award if
- (a) all the parties to the arbitration consent, or
 - (b) subject to subsection (3), a justice of that court grants leave to appeal under subsection (4).

- (3) A party to an arbitration may seek leave to appeal to the Court of Appeal on any question of law arising out of an arbitral award unless the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award.
- (4) On an application for leave under subsection (3), a justice of the Court of Appeal may grant leave if the justice determines that
 - (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
 - (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
 - (c) the point of law is of general or public importance.
- (5) If a justice of the Court of Appeal grants leave to appeal under subsection (4), the justice may attach to the order granting leave conditions that the justice considers just.
- (6) On an appeal to the Court of Appeal, the court may
 - (a) confirm, amend or set aside the arbitral award, or
 - (b) remit the arbitral award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

60 (1) Subject to subsection (2), an appeal under section 59(2)(a) or an application for leave to appeal under section 59(3) must be brought no more than 30 days after date on which the appellant or applicant receives the arbitral award, correction, interpretation or additional award on which the appeal or application is based.

[Emphasis added.]

- [11] As both the chambers judge and Newbury J.A. observed, these sections use only the term "appeal". They do not mention a "cross appeal". It is also important to note that the requirements in these provisions concern applications for leave to appeal. A cross appealing respondent, at least under the CA Act and Rules, has an independent obligation to apply for leave to appeal where leave to appeal is required: *Avon Canada Inc v British Columbia (Minister of Finance)*, 1986 CanLII 802 at para 17 (Chambers).
- [12] Nothing in the CA Act confers jurisdiction on this Court to hear appeals from arbitral awards beyond what jurisdiction is provided by another statute--here, the Arbitration Act. Under the heading "Appellate jurisdiction", section 13 of the CA Act provides as follows:

13(1) An appeal may be brought to the court

- (a) from an order of
- (i) the Supreme Court, or

- (ii) a judge of the Supreme Court, or
- (b) in any matter for which jurisdiction is given to the court under an enactment of British Columbia or Canada.
- (2) Despite subsection (1), an appeal may not be brought to the court
 - (a) from a limited appeal order, unless leave to appeal is granted by a justice, or
 - (b) from an order of an associate judge of the Supreme Court.
- (3) If another enactment of British Columbia or Canada provides that there is no appeal or a limited right of appeal from an order or matter referred to in subsection (1), that enactment prevails.
- (4) If leave to appeal is granted for a limited appeal order under subsection (2) (a), the appeal is deemed, for all purposes, to have been brought on the date that leave is granted.

[Emphasis added.]

- [13] It follows from sections 13(1)(b) and 13(3) of the CA Act, read with section 59 of the Arbitration Act, that when it comes to appeals from arbitral awards under the Arbitration Act, this Court has only that jurisdiction that the Arbitration Act provides, and no more. That is not controversial. The effect of that proposition, however, is.
- [14] The Arbitration Act does require that parties wishing to appeal apply to this Court for leave to appeal in the absence of consent. Section 13(2) of the CA Act, on the other hand, refers to applications for leave to appeal only in the context of limited appeal orders. Rule 11 of the Rules prescribes what orders are "limited appeal orders". They do not include arbitral awards.
- [15] The Arbitration Act does not mention "cross appeals"; the CA Act and the Rules do. The CA Act refers to cross appeals in section 14. This is the provision the chambers judge concluded authorized TDMC's cross appeal from the arbitral award in this case:

14 (1) A respondent may bring a cross appeal to request that the court vary any part of an order being appealed.

- (2) Subject to the rules, a cross appeal must be treated as an appeal for all purposes of this Act.

[Emphasis added.]

- [16] Under the Rules, Part 3 deals with "Steps at the Start of an Appeal". Division 1 governs "Bringing and Responding to an Appeal", while Division 2 governs "Bringing and Responding to a Cross Appeal". Rule 8 explains when a cross appeal may be filed:

8 A respondent may file a notice of cross appeal only if the respondent

- (a) has filed a notice of appearance in Form 2,

- (b) is seeking to vary the order being appealed, and
- (c) is seeking relief from the court that is different from the relief sought by the appellant, as described in the notice of appeal.

[17] Under the CA Act and Rules, then, a cross appeal is an appeal brought by a respondent who requests the Court to vary the order being appealed from (as is the case with an appeal), and who is seeking relief different from that being sought by the appellant as described in the notice of appeal (so it is not superfluous). The cross appeal is otherwise to be treated as an appeal.

[18] When it comes to time limits, section 15 of the CA Act governs the time limit for commencing an appeal or an application for leave to appeal:

15 A person must commence an appeal or application for leave to appeal within the following time limit:

- (a) unless paragraph (b) applies, within the time limit specified in the rules;
- (b) if another enactment specifies a time limit in relation to the appeal, within the time limit specified in that other enactment.

[Emphasis added.]

[19] If CA Act section 15(b) does not apply, Rule 9 of the Rules specifies the time limit to commence a cross appeal: a respondent must file a notice of cross appeal and serve it not more than 15 days after being served with the notice of appeal. I should add that, if leave is a prerequisite, the forms require only the ticking of a box that says "yes" in answer to the question, 'is leave to (cross) appeal required' on either the notice of appeal or the notice of cross appeal.

[20] Rule 15 governs "Bringing and Responding to Applications for Leave to Appeal":

15 Unless a justice or the registrar orders otherwise, if the appellant and one or more respondents apply for leave to appeal in relation to the same order, those applications must be heard at the same time.

[Emphasis added.]

3. OPPOSING VIEWS

[21] In *Desert Properties*, Newbury J.A. succinctly set out her reading of the legislative context, concluding that the relevant period for bringing a cross appeal is that specified in section 60(1) of the Arbitration Act in relation to appeals. In her view, the 15-day period for bringing a cross appeal provided by Rule 9 of the Rules was inapplicable:

[28] The Arbitration Act does not provide any particular procedure for the processing of appeals or cross appeals under the Act, and indeed as Desert notes, the Act does not mention cross appeals at all. It is reasonable to assume that the Court of Appeal Act and Rules are engaged

once a notice of appeal (containing an application for leave) has been initiated, subject always to the fact that a time limitation specified in an enactment may not be extended under the authority of the Rules. Nor, in my view, can the Rules reduce a statutory time limitation. Given this, the 15-day period referred to in R. 9, headed "How to bring a cross appeal" is not applicable, the relevant period being specified by s. 60(1) of the Arbitration Act. This accords with s. 15 of the Court of Appeal Act, which confirms that where another enactment specifies a time limit "in relation to the appeal", the statutory limitation applies.

[Emphasis added.]

- [22] The primary issue decided in *Desert Properties*, however, was different from the issue before us. It concerned when the 30-day time under the Arbitration Act begins running.
- [23] In the present case, the chambers judge observed that this Court has no jurisdiction to extend appeal time limits set in other statutes, such as section 60 of the Arbitration Act:
- [13] Because appeals are statutory in nature, courts have no inherent jurisdiction to extend limitation periods: *Cimolai v. British Columbia (Medical Services Commission)*, 2022 BCCA 396, at paras. 4 (quoting from para. 9 of the chambers decision), 16 and 18. As there is no provision in the Arbitration Act allowing for an extension of time, an appeal brought out of time will be quashed (*Math4Me Learning Inc. v. 1099615 B.C. Ltd.*, 2024 BCCA 369 (Chambers) at para. 10; see also *Desert Properties* at para. 25).
- [14] Section 32(2) of the Court of Appeal Act allows a judge of the Court to extend a time limit for commencing an application for leave to appeal, but it applies only to time limits established in that Act or in the Court of Appeal Rules. It provides no authority to extend time limits for appeals where those limits are set in other statutes.
- [24] He then noted that the decision in *Desert Properties* primarily turned on a different issue from what we are considering here. After considering the relevant CA Act provisions, the chambers judge went on to say this:
- [23] The Arbitration Act confers jurisdiction on this Court to entertain appeals, but does not specify the procedures to be followed once an appeal is brought. In my view, the drafters recognized that this Court is experienced in running appeals, and that there are comprehensive provisions in place. There was no need to "reinvent the wheel". Further, the drafters almost certainly recognized the necessity of allowing the Court, subject to the Act, Rules, and other applicable legislation, to be the master of its own procedures.
- [24] As I read s. 59 of the Arbitration Act, it is designed to specify the jurisdiction of the Court, and to place time constraints on the commencement of appeals. It does not purport to govern procedures (other than to require that leave be obtained before an appeal can proceed), and does not impose time limits once this Court has acquired jurisdiction. It seems to me that in order for the appeal provision to be practical, it must be assumed that procedural provisions in the Court of Appeal Act and Rules will apply once an appeal is brought.

- [25] While I accept that s. 14 of the Court of Appeal Act, which deals with cross appeals, is not purely procedural, it is concerned with management of the appeal. I see nothing in the section that conflicts with the provisions of the Arbitration Act. Like other provisions of the Court of Appeal Act and Rules, it was intended to be incorporated into appeals from arbitral awards. The section neither extends nor abridges the time limit for appeals. Rather, it provides that where a party has invoked the jurisdiction of the Court by bringing an application for leave to appeal, the responding party may bring an application to cross appeal within 15 days. Again, I do not see such an interpretation as infringing any of the provisions of the Arbitration Act.
- [26] It seems to me that other provisions of the Court of Appeal Act and Rules must also apply to appeals from arbitrations--for example, the power of the Court to allow notices of appeal to be amended, or to order that parties who have been left out of the appeal be added. Such powers are essential to the efficient handling of appeals, and, again, do not interfere with or contravene the express provisions of the Arbitration Act.
- [27] While I regret that my conclusion in this respect differs from what was said by my esteemed former colleague in *Desert Properties*, I do note that nothing in this judgment would have affected the result in that case. I would also observe that the issue was merely a sidelight in *Desert Properties*. Understandably, the judge addressed it in only a single paragraph, and in an offhand way.
- [28] I wish to mention, before concluding, that I have not ignored the appellants' references to the purposes of the Arbitration Act, and I have read the Hansard excerpts they have referred to. I fully accept that, in general, the statute was designed to streamline and expedite the appeal process. That is, I think, made clear by the fact that appeals under the statute now come directly to this Court, are confined to pure issues of law, and must be brought expeditiously. I do not, however, read the statute, or the Hansard excerpts, as precluding a party who has been brought before the Court as a respondent from bringing a cross appeal if it does so in a timely manner.
- [29] The 15-day limitation period provided for in Rule 9 of the Court of Appeal Rules will not affect the time it takes an appeal to proceed through the Court. It is highly unlikely that an appellant's leave application could come on for hearing before the 15-day period expires. In any event, as the 15-day period is established by the Rules, it would seem to be open to the Court to abridge it in exceptional circumstances.

[Emphasis added.]

- [25] The chambers judge then turned to practical considerations, which the respondent vigorously commends on this appeal:
- [30] As the respondents have argued, practical considerations strongly favour an interpretation of the legislative matrix that allows for cross appeals to be brought (expeditiously) after an appeal has been filed. Respondents should not be encouraged to file free-standing appeals

out of fear that they will be precluded from cross appealing if they wait until a proceeding has started. By the same token, appellants should not be encouraged to wait until the last possible moment to file their appeals, with the goal of precluding respondents from seeking additional or alternative changes to the arbitral award.

[31] As I read the legislative matrix, it takes the practical approach of limiting appeals in the Arbitration Act, and leaving the timing and mechanism for bringing cross appeals in the Court of Appeal Act and Rules.

[Emphasis added.]

[26] In the chambers judge's view, then, his conclusion did not involve extending a time limit set by the Arbitration Act, which he accepted this Court has no authority to do. Rather, because a cross appeal as contemplated by the CA Act and Rules was something to be brought after the initiating appeal, an application for leave to cross appeal should, procedurally, be subject to the CA Act and Rules, not the Arbitration Act. It follows that a cross appeal must be something different from an "appeal" as contemplated by the Arbitration Act. Regrettably, as I shall explain, I am unable to agree with this proposition.

4. ANALYSIS

4.1 Overview and standard of review

[27] In my respectful view, the question of whether this Court has jurisdiction to hear TDMC's application for leave to cross appeal from the arbitral award turns on the source of that jurisdiction, and the meaning of the word "appeal" in sections 59 and 60 of the Arbitration Act.

[28] The chambers judge here did not address that fundamental issue of whether, as a matter of statutory construction, "appeal" includes "cross appeal" for the purposes of the Arbitration Act. Rather, he seems to have assumed that it did not, addressing instead the question of to what extent the Arbitration Act was intended to govern procedures:

[24] As I read s. 59 of the Arbitration Act, it is designed to specify the jurisdiction of the Court, and to place time constraints on the commencement of appeals. It does not purport to govern procedures and does not impose time limits once this Court has acquired jurisdiction.

[29] In doing so, the chambers judge did not address the question of whence comes this Court's jurisdiction to hear an application for leave to cross appeal from an arbitral award.

[30] Conversely, Newbury J.A., who was not required to address the point fully, would appear to have assumed that "appeal" does include "cross appeal" for the purposes of the Arbitration Act.

[31] This Court recently described the applicable standard of review in *Tennant v Dhillon*, 2025 BCCA 313:

- [10] The standard of review on an application for an order varying or cancelling an order of a justice in chambers is highly deferential. For a review division to interfere with the order of a justice, the appellant must demonstrate that the chambers justice was wrong in law, wrong in principle, or misconceived the facts. If such errors are not demonstrated, the application must be dismissed: *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia*, 2017 BCCA 386 at paras. 5-7.
- [32] In my respectful opinion, that standard has been met. The question before the chambers judge required an interpretation of the term "appeal" as used in sections 59 and 60 of the Arbitration Act in the context of the source of the jurisdiction to hear the application. It was an error in principle not to have undertaken this statutory analysis. As I shall explain, I conclude that the error was material because the correct analysis would have led to a different result.

4.2 Practical considerations

- [33] As we have seen, the chambers judge referred to the "practical considerations" he outlined as supporting his "interpretation of the legal matrix" (at para 30). He observed that "[r]espondents should not be encouraged to file free-standing appeals out of fear that they will be precluded from cross appealing if they wait until a proceeding has started", and appellants should not be encouraged "to wait until the last possible moment to file their appeals, with the goal of precluding respondents from seeking additional or alternative changes to the arbitral award".
- [34] TDMC, while acknowledging that the chambers judge had not specifically undertaken an interpretation of the meaning of the word "appeal" in the Arbitration Act, nevertheless reiterated that the procedure of a cross appeal serves an important and separate purpose, and is not the same as an appeal. It pointed out that every party to litigation is entitled to look at the decision in question and decide if they wish to appeal it. That typically involves a balancing exercise: am I sufficiently unhappy losing the points I lost to go to the expense of commencing an appeal, knowing the other side may wish to cross appeal the points I won? The answer may be, no!--unless the other side chooses to appeal, in which case it will be worth my while to cross appeal.
- [35] An extended time for filing a cross appeal, TDMC submits, is therefore critical to the proper functioning of an appeal process. It has a restraining effect. Otherwise, there would be a perverse incentive: you must appeal to preserve your rights in case the other side also wishes to appeal, even if you would not otherwise do so.
- [36] Moreover, TDMC asserts, the process of a cross appeal crucially ensures that all issues are before the Court of Appeal, so the Court may deal with the issues arising in the litigation as a whole.

- [37] It follows, TDMC argues, that sections 59 and 60 of the Arbitration Act cannot fairly be read as intending to eliminate the unique process of a cross appeal. Surely the legislature would not have been so subtle had that been the intention. Rather, TDMC says, the sections were intended merely to facilitate direct appeal to the Court of Appeal, a route that previously wound through the Supreme Court.
- [38] A fair reading of the Arbitration Act, TDMC contends, thus yields the result the chambers judge reached.
- [39] I accept the value of these considerations. I agree that a cross appeal as contemplated by the CA Act and Rules serves a useful purpose as TDMC describes, and that one should hesitate to interpret the legislation in a way that would yield the problems the chambers judge delineated. But, in my respectful opinion, that requires a conclusion that in using the word "appeal" in sections 59 and 60, the Legislature did not intend to include all and any kinds of appeal, including what is described in the CA Act and Rules as a cross appeal. As I see it, the mischief resulting from such a conclusion far outweighs the considerations outlined by both the judge and TDMC.

4.3 What is meant by "appeal"?

- [40] Here is the problem. The word "appeal" appears throughout sections 59 and 60 of the Arbitration Act, beginning with the overarching opening sentence of section 59(1): "There is no appeal to a court from an arbitral award other than as provided under this section."
- [41] On the interpretation of the chambers judge, the word "appeal" in that sentence cannot include a "cross appeal". If it did, it would be impossible to have regard to section 14 of the CA Act and the time limits prescribed for filing cross appeals in the Rules.
- [42] But if "appeal" in subsection 59(1) does not include a "cross appeal", then the word "appeal" as used throughout section 59 cannot include a "cross appeal". This would include where "appeal" is used in subsection (2), which limits any appeal to a question of law, in subsection (3), which requires seeking leave to appeal, and in subsection (4), which specifies the factors to be considered by a justice on an "application for leave under subsection (3)".
- [43] With respect, that is not a tenable interpretation. Otherwise, it would follow that while section 59 of the Arbitration Act imposes all of those limitations on an originating appeal, they would not apply to a cross appeal--unless the word "appeal" is given a different meaning depending upon which subsection it appears in.
- [44] I observe as well that the approach of the chambers judge was based principally on the proposition that while the Arbitration Act confers jurisdiction on this Court to entertain appeals, it does not specify the procedures to be followed once an appeal is brought (at para 23). The judge reasoned that while section 59 "is designed to specify the jurisdiction of the Court, and to place time constraints on the commencement of appeals [i]t does not purport to govern procedures and does not impose time limits once this Court has acquired jurisdiction" (at para 24).

- [45] As I see it, however, it is precisely the specification of jurisdiction that matters. How else does TDMC's application come before this Court? It can do so only through section 59 of the Arbitration Act. Nothing in the CA Act or Rules requires leave for what they describe as a cross appeal. We are not dealing with a limited appeal order as contemplated by section 13(2) (a) of the CA Act and Rule 11 of the Rules, but rather with a leave requirement provided by another enactment, as contemplated by section 13(3) of the CA Act and Rule 12(b). Accordingly, there is nothing in the CA Act that provides such jurisdiction other than section 13(1)(b), which allows an appeal to be brought to this Court "in any matter for which jurisdiction is given to the court under an enactment of British Columbia or Canada."
- [46] The only enactment that provides the necessary jurisdiction in this case is section 59(4) of the Arbitration Act, which grants jurisdiction to a justice of the Court of Appeal to grant leave to appeal under specified circumstances. If, in that context, "leave to appeal" does not encompass "leave to cross appeal", then there is no jurisdiction at all in relation to a cross appeal from an arbitral award.
- [47] Looking at the legislative matrix, I come back to the question of what is a cross appeal? In its essence, it is simply an appeal brought from a judgment or award where another party has appealed first, and which raises different grounds of appeal from those underlying the first appeal. Instead of having two separate files in the court registry, they are combined as one, with the second in time being designated a "cross appeal". It must nevertheless be treated as an appeal for all purposes of the CA Act in accordance with section 14(2) of that statute. Because, after all, it is an appeal. Why should it not be treated as an appeal for the purposes of the Arbitration Act? If it is not so treated, it becomes a kind of free-floating procedure untethered to any jurisdictional anchor and ungoverned by the clear limits the Legislature imposed on appeals from arbitral awards.
- [48] In my view, the words of the statute, which must be "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (see *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at para 21), yield only one interpretation: an appeal of any kind from an arbitral award can only be brought as provided by section 59 of the Arbitration Act. Any such appeal is limited to a question of law and may only be brought if a justice of the Court of Appeal grants leave. By section 60, such an application for leave to appeal must be brought within 30 days of the award, regardless of whether any other application for leave appeal has been brought. The distinction between an appeal and a cross appeal is simply not part of the Arbitration Act.
- [49] In arguing that cross appeals were not included in sections 59 and 60, TDMC suggested that, while section 59(4) would therefore not apply, nevertheless judges would have regard to that subsection in exercising their discretion in deciding whether to grant leave to cross appeal. But that subsection is clear. A justice of the Court of Appeal's discretion arises only where the justice determines that one of the factors set out in paragraphs (a), (b), or (c) applies. On TDMC's interpretation, discretion to grant leave to cross appeal would be unfettered by

those factors--surely not a state of affairs the Legislature intended. But where would such discretion come from? There is no basis for a justice of this Court to entertain an application for leave to appeal from an arbitral award if not pursuant to section 59 of the Arbitration Act.

- [50] I conclude that, notwithstanding the practical considerations discussed in section 4.2 of these reasons, an appeal described as a "cross appeal" under the CA Act and Rules is included within the meaning of "appeal" as used in sections 59 and 60 of the Arbitration Act. It follows that an application for leave to appeal must be brought within 30 days of the arbitral award, whether it could be described as a "cross appeal" or not. As both the chambers judge and Newbury J.A. observed, this Court has no jurisdiction to extend the 30-day period once it has expired.
- [51] The value of those practical considerations, however, leads me to urge the Legislature to give careful consideration to amending the Arbitration Act to include a separate time limit for the filing of a cross appeal as that procedure is contemplated in the CA Act. I agree with the chambers judge that to do so would have no more than a negligible impact on the time it takes for an arbitral appeal to proceed through the Court. It would, as well, have a salutary restraining effect on the launching of potentially unnecessary appeals.

4.4 What does section 60(1) require be done within 30 days?

- [52] Section 60(1) of the Arbitration Act requires that "an application for leave to appeal under section 59 (3) must be brought no more than 30 days after [the] date on which the applicant receives the arbitral award " (emphasis added).
- [53] What does this require? Is it sufficient simply to file a notice of appeal (leave required) within the 30 days, or must the appealing party file its application book as well, as Sinclair did in this case? In other words, what is required to bring an application for leave to appeal as that subsection contemplates?
- [54] In *Desert Properties*, Newbury J.A. considered an alternative argument that a notice of cross appeal (leave required) cannot substitute for "an application for leave to appeal" under section 60(1) (at para 29). In that case, both parties had filed notices indicating that leave was required; neither filed an application within the 30 days. Justice Newbury observed, obiter, that the Arbitration Act does not provide a form of application for leave to appeal or cross appeal. It followed, in her view, that the notices filed by the parties--which indicated that they were seeking leave, the part of the order being appealed, and the grounds therefor--were sufficient.
- [55] In this case, the issue arose only peripherally and was not fully argued. Sinclair filed not only a notice of appeal (leave required), but also its application for leave, within the 30-day period. That was wise. TDMC filed nothing within that period, relying on the Rules. In these circumstances, it is unnecessary to decide the issue. In my view, it should be left for resolution in a case where it squarely arises and is fully argued.

5. DISPOSITION

[56] For these reasons, I would allow the application and vary the order of the chambers judge to provide that TDMC's application for leave to cross appeal from the arbitral award be quashed.

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Justice Fleming"

I AGREE:

"The Honourable Justice Mayer"

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