

CANADA / JUDGMENT

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

2025 BCCA 322

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 322 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 322 Date: 20250908 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 Groberman (In Chambers) On appeal from: An order 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). Oral Reasons for Judgment Counsel for the Appellants: M. Nied Counsel for the Respondents: R.W. Grant, K.C. (September 4, 2025 only) T.B. Duncan Place and Date of Hearing: Vancouver, British Columbia September 4, 2025 Place and Date of Judgment: Vancouver, British Columbia September 8, 2025 Summary: The Arbitration Act provides for appeals of arbitral awards (with leave) to the Court of Appeal. It stipulates that applications for leave to appeal must be filed within 30 days of the delivery of the award. It contains no explicit provision dealing with cross appeals. The appellants brought an appeal within 30 days of the arbitral award. The respondents cross appealed. The cross appeal was filed more than 30 days after the award was issued, but within 15 days of service of the application for leave to appeal. The respondents moved to quash the application for leave to cross appeal, arguing that the Court was without jurisdiction to hear it. Held: Application to quash dismissed. Rule 9 of the Court of Appeal Rules governs the time limit for filing an application for leave to cross appeal from an arbitral award, not s. 60 of the Arbitration Act. The chambers judge refers to, but declines to follow, obiter dicta to the contrary in Desert Properties Inc. v. G&T Martini Holdings Ltd., 2024 BCCA 24.

- [1] GROBERMAN J.A.: This is an application to quash the respondents' notice of application to cross appeal. The appellants contend that it is brought out of time, and that the Court is, therefore, without jurisdiction to entertain it.
- [2] The underlying proceedings arise out of an arbitral award made under the Arbitration Act, S.B.C. 2020, c. 2. The award was made and delivered to the parties on May 28, 2025.
- [3] Section 60 of the Arbitration Act provides that an application for leave to appeal must be brought "no more than 30 days after the date on which the applicant receives the arbitral award on which the appeal or application is based".

- [4] The appellants filed a notice of application for leave to appeal on June 27, 2025, within the 30-day appeal period. The respondents did not initially file an appeal, but decided to cross appeal after receiving the appellants' application. They filed their notice of application for leave to cross appeal on July 14, 2025. In doing so, they apparently relied on s. 14 of the Court of Appeal Act, S.B.C. 2021, c. 6, and Rule 9 of the Court of Appeal Rules, B.C. Reg. 120/2022. Rule 9 provides that a cross appeal must be initiated not more than 15 days after service of the notice of appeal. If the 15-day limitation period in Rule 9 is applicable, July 14 would have been the last day for filing.
- [5] The appellants, relying on the provisions of the Arbitration Act, contend that a party wishing to appeal an arbitral award must do so within the 30-day period set out in that statute. They say that the statute does not contemplate cross appeals, and that no extension of the limitation period is available. Their position is supported, to some extent, by certain remarks at para. 28 of *Desert Properties Inc. v. G&T Martini Holdings Ltd.*, 2024 BCCA 24 (Chambers).
- [6] For reasons that follow, it is my view that the provisions of the Court of Appeal Act and Rules apply and are not ousted by the Arbitration Act. To the extent *Desert Properties* suggests otherwise, the remarks are obiter dicta, and I would decline to follow them.
- [7] The notice of application for leave to cross appeal was, in my opinion, properly brought. It is not a nullity, and the respondents may proceed with their leave application. The Legislative Provisions and Analysis
- [8] The British Columbia Court of Appeal is a statutory Court. Its jurisdiction derives from legislation, and any right of appeal must be found in a legislative provision.
- [9] The Arbitration Act contains provisions limiting the degree to which courts may interfere with arbitral proceedings and awards. Section 4 of the statute is a privative clause. It includes the following provision:
4. In matters governed by this Act,
- (a) a court must not intervene unless so provided in this Act, ...
- [10] Section 58 of the Act provides the Supreme Court of British Columbia with specific powers to set aside arbitral awards on narrow grounds of jurisdiction and procedural fairness. That section is not engaged in the current proceeding.
- [11] Section 59 is the section dealing with appeals. It provides this Court with a limited appeal jurisdiction, confined to questions of law alone: 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
- (b) a justice of that court grants leave to appeal .

- (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.
- [12] Section 60 sets out the limitation period for bringing an application for leave to appeal: 60 (1) [A]n 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 .
- [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.
- [15] While the predecessor legislation to the Arbitration Act, which provided for appeals to the Supreme Court of British Columbia, did give that court jurisdiction to extend time limits (*Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, s. 43), there is no such provision in the current Act. The current statute is based on the Uniform Arbitration Act (2016) drafted by the Uniform Law Conference of Canada. While the commentaries included with the Uniform Act do not specifically refer to the absence of an extension provision, they do refer (in the commentary on the appeal provision) to the statute having been drafted with a view to preventing post-award litigation from being protracted.
- [16] The Arbitration Act does not provide any guidance on cross appeals. Indeed, it does not mention them at all. For that reason, the appellants argue that the respondents have no specific right to cross appeal. If they wished to challenge any aspect of the arbitral award, the appellants say, they had to conform with the statute's requirements for an appeal.
- [17] *Desert Properties* concerned the time limit for a cross appeal from an arbitral award. The primary issue in the case was whether the time limit was to be measured from the date of the original award, or from the date of the amended one. The appellant argued that, as the amendment was not relevant to the issue on appeal, the limitation period ran from the date of the original award. The Court rejected that argument, and found that the cross appeal had been brought in time.
- [18] The chambers judge in *Desert Properties* considered alternative arguments, but did not base her decision on them. The appellants here rely particularly on para. 28 of the decision, which deals briefly with one of the alternative arguments:

- [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.
- [19] I agree completely with the statement that "the Court of Appeal Act and Rules are engaged once a notice of appeal (containing an application for leave) has been initiated." I do not, however, understand the judge's reference to abridging the time for an appeal; nothing in the Court of Appeal Act purports to do so, and nothing in the Arbitration Act specifically deals with cross appeal procedures.
- [20] I turn, now, to the provisions of the Court of Appeal Act. The relevant definitions are as follows: 1 (1) In this Act: "court appealed from" means the court, or tribunal, from which an appeal is brought; "order" includes
- (a) a judgment,
 - (b) a decree, and
 - (c) an opinion, advice, direction, determination, decision or declaration that is specifically authorized or required under an enactment to be given or made. ... "tribunal" includes a commission, board or panel.
- [21] It appears to me to be clear that an arbitral tribunal constitutes a "tribunal", and is the "court appealed from". The arbitral award (authorized, as it is, under the Arbitration Act) is an "order". I am not persuaded by the appellants' contention that arbitral proceedings, being consensual, do not give rise to awards "authorized or required under an enactment to be given". Though consent to arbitration is a condition precedent to the process, once the arbitration is in progress, any award is authorized by statute, and constitutes an "order" for the purposes of the Court of Appeal Act.
- [22] I turn, then, to the provisions of the Court of Appeal Act that deal with the jurisdiction of the Court. They are ss. 13 to 16. I quote only those parts of the provisions that are pertinent to this appeal: 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
- (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. 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. 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. 16 If an appeal is from an order of a tribunal,
 - (a) this Act and the rules apply as though the tribunal were the Supreme Court
- [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.
- [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.

Conclusion

- [32] The application for leave to cross appeal was properly brought under s. 14 of the Court of Appeal Act and was filed in time. The Court has jurisdiction to hear the leave application. I dismiss the application to quash. "The Honourable Mr. Justice Groberman"

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