THE COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Desert Properties Inc. v. G&T Martini Holdings Ltd.,* 2024 BCCA 24

Date: 20240123
Docket: CA49527

Between:

Desert Properties Inc.

Appellant/
Respondent on Cross Appeal

And

G&T Martini Holdings Ltd.

Respondent/
Appellant on Cross Appeal

Before: The Honourable Madam Justice Newbury
(In Chambers)

On appeal from: An award of an arbitrator under the *Arbitration Act* S.B.C. 2020, c. 2, dated November 3, 2023 (*G&T Martini Holdings Ltd. v. Desert Properties Inc.*).

Counsel for the Appellant:	A. Cocks C. Bildfell
Counsel for the Respondent:	S.R. Schachter, K.C. K.L.M. Carteri J. Parker
Place and Date of Hearing:	Vancouver, British Columbia January 10, 2024
Place and Date of Judgment:	Vancouver, British Columbia January 23, 2024

Summary:

Parties received a commercial arbitration award on November 4, 2023. Respondent submitted a notice of appeal (seeking leave) on December 4, 2023, within the 30-day statutory limit prescribed by the Arbitration Act. Later the same day, Applicant submitted its own notice of appeal and was asked by the CA registry if it would file instead as a cross appeal for administrative efficiency. Respondent took the position that the Applicant's cross appeal was out of time. On December 8, 2023, the arbitrator issued a corrected award following requests made by the parties. Applicant seeks an order that the 30-day limit for seeking leave to appeal under s. 60(1) of the Act began to run on the date of the corrected decision, even though its appeal was not "based on" any of the corrections. Applicant filed a notice of cross appeal on December 11.

Held: The time to seek leave to appeal the arbitration award began to run on December 8, 2023 when the arbitrator issued the (corrected) award. Applicant's notice of cross appeal was therefore filed on time.

Section 60(1) of the Arbitration Act provides for a 30-day time limit that begins to run from the date the appellant "receives the arbitral award, correction, interpretation or additional award on which the appeal or application is based." The weight of authority suggests this wording is to be interpreted as allowing 30 days from the date a correction or interpretation is received, such that the appeal is "based on" the award "as it is" — i.e., the corrected award. This interpretation is also consistent with the practicalities of appealing an arbitration award. It provides parties an unambiguous timeline and limits needless litigation about whether an appeal is substantively based on the original award, or on a correction or interpretation.

Reasons for Judgment of the Honourable Madam Justice Newbury:

[1] This chambers application involves a question of statutory interpretation relating to the appeal provisions of the *Arbitration Act*, S.B.C. 2020, c. 2 (the "Act"). The Act replaced the *Arbitration Act*, R.S.B.C. 1996, c. 55, which was originally entitled the *Commercial Arbitration Act*. As the Attorney General told the Legislature in March 2020 when the new Act was adopted, it was based largely on the *Uniform Arbitration Act* published by the Uniform Law Conference of Canada in 2016, as well as on the advice of a legislative sub-committee and other advisory groups and individuals. (See British Columbia, *Official Report of the Debates of the Legislative Assembly* (Hansard), 41st Leg., 5th Sess., Issue No. 3722 (March 3, 2020).) The Attorney General stated that the "lengthy four-step review process" provided for in the previous legislation would be streamlined by the new Act to allow applications for

leave to appeal to be made directly to this court and, where leave is granted, to allow appeals to proceed. At the same time, the Supreme Court of British Columbia still retained a role: see, e.g., ss. 53, 55, 58, and 61 of the Act.

Factual Background

[2] The arbitration in question in this case, now completed, involved a "Final Servicing Agreement" between the applicant G&T Martini Holdings Ltd. ("G&T") and the respondent Desert Properties Ltd. ("Desert".) It was one of a series of complex contracts between them relating to the sale and development of certain property in Langley as an industrial park and commercial centre. The Agreement contained an arbitration clause that contemplated the resolution of disputes by a single arbitrator.

[3] The facts relevant to the question of statutory interpretation raised by G&T's application to this court are as follows

- November 3, 2023 — The arbitrator issued his "Award on Liability for Delay and Project Cost Issues", which counsel for the respective parties received on November 4.

- November 29 and 30, 2023 — The parties corresponded with the arbitrator regarding certain alleged errors in the award and the scheduling of submissions on costs. One of the alleged errors related to the arbitrator's ruling on "Issue 17" that G&T was not entitled to an equitable interest in certain property. Counsel for G&T suggested in an email to the arbitrator that this was a "clerical error" given his, the arbitrator's, rulings on project costs and interest payable to G&T, and a provision in the Agreement to the effect that G&T had an equitable interest until costs and interest were paid on certain amounts owing to it. Counsel for Desert disagreed, suggesting this was *not* a clerical error as referred to in s. 56(1) of the Act and that altering a substantive conclusion in the Award was not properly the subject of an *erratum*. Counsel for Desert did agree, however, that corrections should be made to three mistaken references made in the award, and sought leave to

address in writing another disputed matter regarding damages and (financial) interest.

- December 1, 2023 — The arbitrator told counsel he was not prepared to say the award should be corrected with respect to the equitable interest issue. He did agree to make the minor corrections (referred to by the arbitrator as "the changes") and set dates for submissions regarding costs and the damages/ interest matter.

- December 4, 2023 — Counsel for Desert told the arbitrator and counsel for G&T that if the arbitrator did not regard his answer to Issue 17 as a "slip error", no further submissions should be allowed as the arbitrator had no jurisdiction to reconsider the award.

- December 4, 2023 — Desert filed a Notice of Appeal in Form 1 of this court's *Rules*, seeking leave to appeal "only one part" of the arbitral award, namely the ruling that Article 22 of the parties' Restated Subdivision Agreement exempted G&T and its affiliates from the payment of certain development levies imposed by the Township of Langley. The Notice asserted that the arbitrator had made two legal errors, namely erring in his "legal approach to identifying and resolving contractual ambiguity" and in granting relief to non-parties. Desert ticked the "yes" box in Form 1 in answer to the question of whether leave was required.

- December 4, 2023 — Later in the day G&T, presumably unaware of Desert's Notice of Appeal, sought to file a Notice of Appeal, also in Form 1, and also seeking leave. Court registry staff suggested that G&T instead file a *cross appeal* so that a second file would not have to be opened in the registry. Counsel for Desert was copied with the email to this effect from the registry to counsel for G&T.

- December 5, 2023 — In response to the email, counsel for Desert took the position that the Act "does not permit any applications for leave to appeal (or cross-appeal) to be made later than 30 days after the Award."

- December 8, 2023 — The arbitrator forwarded a corrected award to counsel. He declined to make a correction regarding the equitable interest in property that G&T had sought, and confirmed that no further submissions were required regarding Issue 17. He did make the three minor corrections agreed upon by counsel.

- December 8, 2023 — G&T filed a notice of appearance in relation to Desert's appeal.

- December 11, 2023 — G&T successfully filed a Notice of C*ross Appeal* in the Court registry, which Notice was received by Desert on the same day. Again, this Notice indicated leave was being sought.

- December 11, 2023 — Counsel for Desert took the position in an email to counsel for G&T that since it appeared G&T was seeking to appeal the *award* and not any of the *corrections*, it had missed the 30-day limitation period provided in s. 60(1) of the Act.

- December 13, 2020 —G&T filed an application in this court seeking the following:

  (a) An order or declaration that the 30-day period for bringing an application for leave to appeal under s. 60 of the *Arbitration Act* began to run on December 8, 2023 when the arbitrator issued the Corrected Award.

  (b) In the alternative, an order or declaration that Martini [G&T] was entitled to seek leave to appeal by filing a notice of cross appeal in accordance with s. 14 of the Court of Appeal Act and R. 8-9 and 13of the *Court of Appeal Rules ("Rules").*

  (c) In the further alternative, an order *nunc pro tunc* that Martini's notice of cross appeal shall stand as a notice of appeal filed on December 4, 2023 (when Martini originally submitted a notice of appeal to the registry); and

  (i) An order or declaration that the filing of the notice of appeal constitutes seeking leave to appeal within the meaning of s. 59(3) and 60(1) of the *Arbitration Act*, and the timelines for the filing of Martini's notice of application

> and application book are as set out in R. 13 of the *Rules*; or in the alternative, orders pursuant to section 32 of the *Court of Appeal Act* and R. 41 of the *Rules* to extend the time for Martini to file its notice of application and application book.
>
> (d) Direction on timelines for filing materials consequential upon orders made.
>
> (e) Costs

Counsel set down this application for hearing on December 21, but since counsel were unable to attend, the application was not heard until January 10, 2024.

The Act

[4] I have attached as a schedule to these reasons a copy of the relevant provisions of the Act, namely ss. 56, 57(1), 59 and 60. Section 56 contemplates a 30-day period after the parties' receipt of an arbitral award, within which the parties may request the arbitrator (referred to as the "tribunal" in the Act) to correct "any computation, clerical or typographical errors or any other errors of a similar nature" (para. a); and, where the parties agree, request the tribunal to provide an interpretation of a specific point or part of the award (para. b). If the request is "justified" in the tribunal's opinion, the arbitrator must make the correction or provide the interpretation within 30 days of receiving the request. Under s. 56(2), the interpretation "*forms part of the arbitral award*." (Obviously, this would also be true of any correction.) The tribunal may also on its own initiative correct any type of computational, clerical or typographical error within 30 days of the date of the award under s. 56(3), and if necessary, extend that 30-day limitation under s. 56(6).

[5] Section 59 deals with appeals to this court, which of course are limited by s. 59(3) to questions of law arising out of the award. Unless the parties to the arbitration all agree to the bringing of such an appeal, the leave of the Court must be sought, and may be granted only where the conditions in s. 59(4) are met. No appeal may be taken if the arbitration agreement expressly prohibits same: s. 59(3).

[6] Subsection 60(1) is the most important provision for purposes of this application. For convenience, I set it out here:

> Subject to subsection (2), an application to set aside an arbitral award under section 58, 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 [the] 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.]

[7] G&T has formulated the questions on which it seeks orders or declarations from this court, as follows:

a) Does the time for seeking leave to appeal under s. 60(1) of the *Arbitration Act* run from December 8, 2023 when the Corrected Award was delivered to the parties*?*

b) Does the *Arbitration Act* eliminate the right of cross appeal available under the *Court of Appeal Act* and *Rules*?

c) Does a party seek leave to appeal under the *Arbitration Act* by fulfilling the requirements of R. 13 of the *Rules*, which are: (i) filing a notice of appeal or notice of cross appeal seeking leave; (ii) filing and serving a notice of application and application book for leave to appeal not more than 30 days after filing the notice of appeal or notice of cross appeal; and (iii) obtaining a hearing date that is at least 10 days after the application for leave is filed and served?

d) If necessary, is Martini entitled to relief extending the time for filings?

Analysis

The 30-Day Period

[8] G&T submits that the final words of s. 60(1) (underlined in para. 6 above) have the effect of extending the 30-day period for seeking leave to appeal to 30 days from the issuance of the “correction, interpretation or additional award” *even if* (as in this case) the corrections made by the tribunal under s. 56 are not relevant to and do not form the “basis” of G&T’s proposed cross appeal.

[9] This position is supported by case authority. In *Allen v. Renouf* 2019 ABCA 250, the Court considered s. 46(1) of the *Alberta Arbitration Act*, R.S.A. 2000, c. A-43, which provided:

> The following must be commenced within 30 days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based:
>
> (a) an appeal under section 44(1);
>
> (b) an application for permission to appeal under section 44(2). ... [Emphasis added.]

The appellant in *Allen* sought leave on March 16, 2018 to appeal both a "main" arbitration award issued in May 2017 (followed by several other awards) and a costs award released on February 15, 2018. The respondent applied for an order dismissing the appeal on the main awards as having been filed outside the statutory 30-day time limitation in s. 46(1) "running from the last substantive award issued February 7, 2018." On the other hand, the appellant argued that the time limitation had not begun to run until the *costs award* was issued on February 15, 2018.

[10] The Court of Appeal agreed that the issuance of the *costs award* did not suspend the time running for the main appeal or for the seeking of permission to appeal the "merits award" as corrected. This was found to be consistent "not only with the clear wording of the *Arbitration Act*, but also with the general jurisprudence of this Court that the time to appeal runs from the date of pronouncement on the merits, or, in other words, from the date the decision is made." (Citing *Goddard v Shade* 2008 ABCA 32 at para. 4; *Little v Little* 1998 ABCA 400 at para. 9; and *Phoenix Land Ventures Ltd. v. FIC Real Estate Fund Ltd.* 2015 ABCA 245 at paras. 19–28.) The Court also agreed that the chambers judge had correctly decided that nothing in Alberta's *Arbitration Act* or court rules conferred on the chambers judge the jurisdiction to extend the statutory time limit. (At para. 6, citing *Funk v. Funk* 2018 ABCA 210 and *B.W. v. G.R.* 1989 ABCA 205 at para. 11.)

[11] On the other hand, the Court did agree with the appellant that the "plain words" of s. 46(1) should be interpreted as follows:

> . . . There must be an appeal within 30 days after an award; and by modification of that, if there is a correction of that award, within 30 days after the correction; or if there is an explanation of that award, within 30 days of the explanation; or if there is a change in the award, within 30 days after the change; or if there is a statement of reasons given subsequent to the award, within 30 days of the statement of reasons given so that the appeal always runs from the award as it is and any variation of that award itself on the terms of the award by correction, explanation, change or statement of reasons. [At para. 7; emphasis added.]

As I read this decision, the fact that the arbitrator had issued a second award dealing with costs did not extend the time for seeking leave to appeal the main award(s); but with respect to a "correction", "explanation" or other change in the arbitrator's main reasons, those events *changed the award* such that the time to seek leave to appeal ran for 30 days from the date of the correction, explanation or change. This would ensure that a court at any time would be in a position to deal with the "award as it is".

[12] In *Broadbend Communications North Inc. v. I-Netlink Inc.* 2017 MBQB 32, the arbitrator had published his award on November 13, 2015, following which both parties sought clarifications. The parties and arbitrator took time to finalize the clarifications and the last email sent by the arbitrator to the parties was dated December 13, 2015. (The reasons say "2016", but I assume this was a typographical error.) On December 30, 2015, the applicant sought leave to appeal the award under s. 44(2) of *The Arbitration Act*, C.C.S.M. c. A120. That section provided:

> The following appeals and applications must be commenced within 30 days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based:
>
> (a) an appeal under subsection 44(1);
>
> (b) an application for leave to appeal under subsection 44(2);
>
> (c) subject to subsection (2), an application to set aside an award under section 45. [Emphasis added.]

On January 11, 2016, the respondent sought an order striking out the notice of application. Like Desert in the case at bar, it submitted that since none of the grounds relied upon by the applicant related to any correction, explanation, change

or statement of reasons by the arbitrator, the 30-day period in which to seek leave had expired 30 days from the date of delivery of the *initial award*.

[13] The Court did not agree. Mr. Justice Edmond reasoned as follows:

> I am satisfied that the proper interpretation of the *Act* requires that I apply s. 6 of *The Interpretation Act*, C.C.S.M. c. I80, which provides that I interpret the *Act*, as being remedial and to give the fair, large and liberal interpretation that best ensures the attainment of the *Act*'s objects.
>
> Section 46(1) of the *Act* when read together with the other sections noted above, must be interpreted so as to permit the parties to seek corrections, explanations, changes or an additional award following the release of the award.
>
> In my view, the 30-day period prescribed in s. 46(1) of the *Act*, started to run on December 13, 2015, when the arbitrator released the e-mail providing his final clarification of the Award. This interpretation is consistent with the decision of the Alberta Court of Queen's Bench in *Aztec Construction Ltd. v. Frocan Industrial Contractors Ltd.*, 1993 CanLII 7191 (AB KB), [1993] 144 A.R. 276, 14 Alta. L.R. (3d) 26, and is also consistent with the interpretation provided by J. Kenneth McEwan & Ludmila B. Herbst, *Commercial Arbitration in Canada*, looseleaf (Canada Law Book, 2015) at para. 10:50.30.10.
>
> Specifically, para. 10:50.30.10 of *Commercial Arbitration in Canada* states:
>
> > In the domestic legislation of Ontario, Alberta, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, [an] application to set aside an arbitral award must be commenced within 30 days after the applicant received the award, correction, explanation, change or statement of reasons on which the application is based. It has been held that the section is clear that the effective date for the commencement of the 30-day period is the issuance of the arbitrator's addendum to his or her award after parties request an explanation, amendment or correction. Despite the use of the words "on which the application is based", the applicant may bring an application to set aside an award on matters relating to the original award within 30 days after the explanation or correction.
>
> I agree that despite the use of the words "on which the appeal or application is based", it was not the intent of the legislature that a separate application for leave would be required within 30 days of the award and then 30 days after the arbitrator issued a correction, clarification or additional award. In my view, a party is entitled to seek a correction, clarification or an additional award during the 30-day period following the delivery of the award and then seek leave to appeal 30 days after receiving the correction, clarification or additional award. [At paras. 13–17; emphasis added.]

In the result, the applicant was *not* out of time in filing its application for leave. The motion to strike was dismissed.

[14] In *Aztec Construction Ltd. v. Frocan Industrial Contractors Ltd*. [1993] 144 A.R. 276 (Q.B.), cited in *Broadbend*, initial awards on liability and damages had been delivered on May 28 and June 4, 1993 respectively, and various explanations and amendments had been requested by one party on June 22, 1993. The arbitrator issued and delivered an Addendum to Awards on July 15, 1993. Mr. Justice Lefsrud set out the wording of s. 46(1) of the *Arbitration Act* of Alberta (which is set out at para. 9 above in these reasons) and stated:

> The section simply provides that proceedings must be commenced within 30 days after the last of the following events, namely:
>
> (a) the receipt of the Award,
>
> (b) corrections,
>
> (c) explanations, and
>
> (d) change or statements of reasons. [At para. 10; emphasis added.]

Having regard to the "clear and unambiguous wording" of s. 46(1), the Court ruled that the 30-day period commenced on July 15, 1993. Accordingly, the appellant had complied with the time limitation in filing its originating notice on August 13, 1993.

[15] No case was cited to us that runs contrary to the reasoning in these cases, which I note were decided prior to the enactment of the Act in this province.

[16] In the case at bar, G&T argues that since the arbitrator issued his "Corrected Award" on December 8, 2023, the time for seeking leave to appeal under the Act began to run on that date, and that G&T had until January 8, 2024 to seek leave to appeal. (In fact, it filed its Notice of Cross Appeal on December 11.) G&T also submits that the interpretation of s. 60 in accordance with the cases described above promotes efficiency and avoids requiring the parties to commence separate appeals every time a re-computation or other correction is made to an arbitral award.

[17] In response, Desert emphasizes the "modern" principle of statutory interpretation, which requires that the words of a statute 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." (Citing *Rizzo &*

Rizzo Shoes Ltd. (Re) [1998] 1 S.C.R. 27 at para. 21.) With respect to the purpose of s. 60(1), Desert relies on the Attorney General's statement to the Legislature, quoted earlier in these reasons, to the effect that the new Act is intended to "streamline appeals and speed up the process, thereby lowering party costs and conserving court resources." A similar general purpose for the modern arbitration legislation was recognized by the Supreme Court of Canada in *Peace River Hydro Partners v. Petro West Corp.* 2022 SCC 41 at para. 133 and *Hryniak v. Mauldin* 2014 SCC 7 at paras. 1–2. Unfortunately, neither the Attorney General nor the Supreme Court of Canada has considered the closing words of s. 60(1) specifically in connection with this purpose.

[18] In Desert's submission, permitting a party to seek leave by means of a cross appeal filed after the 30-day time limitation from the issuance of the *original* award would constitute a "two-track approach" that would not promote timeliness or efficiency. It notes R. 15 of the *Court of Appeal Rules*, under which multiple parties applying for leave in relation to the same order must have their applications heard together unless otherwise ordered. This Rule, Desert says, harmonizes with the *Arbitration Act* by ensuring that if several parties apply for leave in relation to the same award within the 30-day time limit, those applications will presumptively be heard together. Given that Desert is seeking to strike out G&T's appeal, however, it is difficult to understand how R. 15 supports its position.

[19] More to the point, Desert contends that "typo corrections" made by an arbitrator should not have the effect of "resurrecting" an expired time limitation under s. 60(1). It notes the phrase "on which the application is based" and argues that courts must strive to give meaning or effect to all statutory words: see Ruth Sullivan, *Statutory Interpretation*, (3rd ed., 2016) at 287. Here, it is said the phrase means that the "basis" of an appeal is "of importance" when a court is determining whether an applicant has complied with the 30-day time limitation. Indeed the effect of Desert's argument is that the basis of the proposed appeal is *determinative* in the sense that the Court must be satisfied the appeal is *based specifically on the correction, change or explanation* for the 'new' 30-day period to begin. Only if the application is

found to be "based on" a correction, interpretation or an additional award (which I understand refers to an additional award dealing with a matter omitted from the original award under s. 56(4)), does the new 30-day limitation begin to run from the date the applicant received the correction, interpretation or additional award. *Otherwise*, the 30-day limitation runs from the date on which the applicant received the *original* award, notwithstanding that it may have sought corrections or changes. In this instance, Desert says, G&T's proposed cross appeal is based on aspects of the (initial) award that have "nothing to do" with the "typo corrections" made by the arbitrator.

[20] Further, Desert relies on the statement in s. 56(2) of the Act that where the tribunal considers a request made under s. 56(1) to be justified, it must "make the correction or give the interpretation within 30 days after receipt of the request, and the interpretation forms part of the arbitral award." (My emphasis.) Desert submits that a correction "simply corrects part of an existing award"; it does not create a new arbitral award that would trigger a new 30-day time limitation to challenge "any aspect of the award that a party may wish to challenge." Again, this chain of reasoning is said to support efficiency in terms of time and resources. In Desert's submission, a party who receives an award can immediately begin to consider whether to start the process of an appeal. If the tribunal is persuaded to make a correction to the award or provide an interpretation of it, and the correction or interpretation does not change the substance of the award, the parties then "need no additional time to consider their options or take action."

[21] Finally, Desert distinguishes *Allen*, *supra*, on the basis that the Court of Appeal in that case rejected the appellant's submission that a subsequent costs award suspended, or extended, the time limitation to appeal the initial award. With respect, I cannot agree that *Allen* is so easily distinguished. There were two awards in that case — a "main arbitration award" and a costs award. The latter was similar to an "additional arbitration award", usually dealing with costs or interest, that may be made in British Columbia under s. 56(4) of the *Act*. The Court in *Allen* endorsed the finding of the judge below that the "issuance of the costs award did not suspend

the time running under s. 46(1) to appeal, or to seek permission to appeal the merits decision as corrected, explained, changed …". I am not aware of any such additional award having been made in this case. That aside, the Court endorsed the lower court's statement that "there must be an appeal within 30 days after an award; and by modification of that, if there is a correction of that award, within 30 days after the correction or if there is an explanation of that award, within 30 days of the explanation… so that the appeal always runs from the award as it is…". (At para. 7; my emphasis.)

[22] The Court of Appeal's notion of "the award as it is" encapsulates the fact that when a correction or interpretation of an arbitral award is issued, the correction or interpretation *forms part of the award* going forward — as opposed to the issuance of an additional "award" under s. 56(4). In my view, the "arbitral award" referred to in s. 60(1) is thus the *corrected* award and an appeal from that award that is *"based on" the corrected award* must be brought within 30 days of the correction or interpretation. Similarly, if the appeal is "based" on the correction or interpretation issued under s. 56(1) or on an additional award made under s. 56(4), the 30-day limitation in s. 60(1) also applies. In this way, the phrase "on which the appeal or application is based" is given its full meaning.

[23] As for Desert's argument that this approach would detract from the timeliness and efficiency of the appeal process under the Act, Desert's interpretation would give rise, in my view, to even greater uncertainty and potential delay. Assuming, for example, in an arbitration between A and B that A filed its application for leave before the arbitrator issued its correction or interpretation. Would A's appeal before this court be restricted to the uncorrected version of the award? And, if party B filed its appeal after the award was corrected, would B's appeal proceed on the (corrected) version? Obviously, this result would be nonsensical. The better view, it seems to me, is that any appeal taken under s. 59 is based on the "*award as it is.*" This approach avoids a series of "awards", appeals and notices of appeal based on successive versions of the award.

[24] Further, if the words “on which the appeal or application is based” in s. 60(1) were interpreted to mean that the time ‘extension’ is available only where the appeal is “based” on the correction or interpretation, disputes would surely arise as to whether an applicant’s appeal is based on a correction or interpretation of the award, or on an issue based only on the initial award itself. This would in my view run contrary to the clear intention of s. 60(1) to provide an extra 30-day period in respect of awards that have been corrected or interpreted at the behest of a party or on the tribunal’s own motion under s. 56(3). The result is that court resources and counsel’s time may be devoted to the resolution of disputes on their merits rather than to technical pleadings issues.

[25] Once the 30-day period in s. 60(1) has expired, it is not open to the Court to extend it: see *Cimolai v. British Columbia (Medical Services Commission)* 2022 BCCA 396 at para. 16 and the unreported reasons of Mr. Justice Groberman which were affirmed therein. On this point, Groberman J.A. stated:

> Appeals are statutory in nature. Here, the appeal to the Supreme Court was provided for by statute, but only if certain conditions are satisfied—in particular, that the appeal was brought within a particular timeframe. The Court has no ability to ignore a statutory requirement, and no discretion to extend the time for appeal under the *Medicare Protection Act*. Extending statutory time limits is not part of the inherent jurisdiction of the Court. The authorities relied on by the judge below are clearly correct. I would cite, in addition, the decision of this Court in *Kriegman v. Wilson*, 2016 BCCA 122. [At para. 9, quoted at para. 4 of this court’s reasons. [At para. 9, quoted at para. 4 of this court’s reasons in *Cimolai*; emphasis added.]

(See also *Alberta Human Rights Commission (Director) v. Vegreville Autobody (1993) Ltd.* 2018 ABCA 246 at para. 7, citing *Northern Sunrise (County) v. De Meyer* 2009 ABCA 205 at para. 7.)

[26] In the result, applying the wording of s. 60(1), I would grant G&T an order that the 30-day limitation for bringing an application for leave to cross appeal under s. 60 of the Act began to run on December 8, 2023, when the tribunal issued its corrected award. Tracking the words of s. 60, the application was filed no more than 30 days after the date on which the applicant received the (corrected) arbitral award on which the cross appeal is based. The application was therefore properly filed.

Alternative Arguments

[27] G&T also sought in the alternative an order or declaration that it was entitled to seek leave to appeal by filing a Notice of Cross Appeal in accordance with s. 14 of the *Court of Appeal Act* and Rules 8, 9 and 13 of the *Court of Appeal Rules*; and in the further alternative, an order *nunc pro tunc* that G&T's Notice of Cross Appeal may stand as a notice of appeal filed on December 4, 2023, being the date when G&T submitted a Notice of Appeal to the registry. In light of the conclusion reached above, it is not necessary for me to address these questions. It may be of some use, however, to address Desert's contention in its written argument that a "notice of cross appeal cannot substitute for an application for leave to appeal."

[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.

[29] As for the notion that a notice of cross appeal in Form 3 cannot "substitute for an application for leave to appeal," the fact is that the Act does not provide a form of application for leave to cross appeal (or to appeal.) The Notice of Appeal by which this proceeding was commenced, filed by Desert on December 4, stated that leave was required, the part of the order being appealed, and the grounds for leave to appeal. Similarly, the Notice of Cross Appeal filed by G&T on December 11, 2023 indicated that it was seeking leave to appeal, the part of the order being cross appealed, and the grounds for leave to cross appeal. In my opinion, it was

appropriate for both parties to proceed to seek leave in this manner. Section 13 of the *Court of Appeal Act* provides that an appeal may be brought to this court "in any matter for which jurisdiction is given to the court under an enactment of British Columbia", and under s. 14, a cross appeal is to be treated in the same way as an appeal for purposes of the *Court of Appeal Act*.

Disposition

[30] I would grant an order to the effect that G&T's Notice of Cross Appeal was required to be filed no more than 30 days after the date of the corrected award in this case, being December 8, 2023. Since it was filed on December 11, it was not out of time. As well, since G&T was required under R. 13 to file a Form 4 and an application book within 30 days of filing its Notice of Cross Appeal, I would extend that period in light of the delay necessitated by the present application and order that G&T may file and serve same within 15 days of the date of this court's order.

[31] I am indebted to counsel in this matter for their able submissions.

"The Honourable Madam Justice Newbury"

Excerpts from the Arbitration Act, S.B.C. 2020, c. 2

Corrections, interpretations and additional arbitral awards

56 (1) Within 30 days after receipt of an arbitral award, unless another period of time has been agreed to by the parties,

(a) a party may request the arbitral tribunal to correct in the arbitral award any computation, clerical or typographical errors or any other errors of a similar nature, and

(b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request, and the interpretation forms part of the arbitral award.

(3) The arbitral tribunal may correct, on its own initiative, any type of error described in subsection (1) (a) within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to a claim, including a claim for interest or costs, presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.

(6) The arbitral tribunal may, if necessary, extend the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).

(7) Section 48 [form, content and delivery of arbitral award] applies to a correction or interpretation of an arbitral award or to an additional arbitral award made under this section.

Termination of proceedings

57 (1) Arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

...

Appeals on questions of law

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.

Time limit for applications to set aside and appeals

60 (1) Subject to subsection (2), an application to set aside an arbitral award under section 58 [applications for setting aside arbitral awards], 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.

(2) If the applicant alleges corruption or fraud, an application to set aside the arbitral award under section 58 must be brought within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.