

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *mCloud Technologies Corp. v.*
Wynward Insurance Group,
2026 BCCA 219

Date: 20260428
Docket: CA51229

Between:

**mCloud Technologies Corp., mCloud Technologies (Canada) Holdings Inc.,
mCloud Technologies (Canada) Inc., mCloud Technologies Services Inc.,
Chantal Schutz, Costantino Lanza, Russel McMeekin, Michael Allman,
Dina Alnahdy, Besty MacLean, Ian Russell, and Michael Sicuro**

Appellants
(Respondents)

And

Wynward Insurance Group

Respondent
(Claimant)

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An award of an arbitrator under the *Arbitration Act*,
S.B.C. 2020, c. 2, dated November 18, 2025.

Oral Reasons for Judgment

Counsel for the Appellants,
mCloud Technologies Corp., mCloud
Technologies (Canada) Holdings Inc.,
mCloud Technologies (Canada) Inc.,
mCloud Technologies Services Inc.,
Chantal Schutz, Costantino Lanza,
and Russel McMeekin:

S. Patro

Counsel for the Respondent:

K. Booth
J. Spencer
C. Viney

Place and Date of Hearing: Vancouver, British Columbia
April 24, 2026

Place and Date of Judgment: Vancouver, British Columbia
April 28, 2026

Summary:

The appellants apply for leave to amend their application for leave to appeal an arbitration award. The respondent argues the Court does not have jurisdiction to accept an amendment to a leave application under s. 59 of the Arbitration Act after the 30-day limit in s. 60 has expired.

Held: Application dismissed. While the Court has jurisdiction to grant an amendment after the time limit in s. 60 has expired, the amendments sought here are so significant that they amount to an impermissible application for an extension of time. Granting the amendment would subvert the purpose of efficient recourse the legislature intended in setting the 30-day limit in s. 60.

[1] **IYER J.A.:** The appellants apply for leave to amend their original application for leave to appeal an arbitration award awarding the respondent approximately \$842,000 in damages. They also apply for leave to appeal to this Court under s. 60 of the *Arbitration Act*, S.B.C. 2020, c. 2. The respondent applies for security for costs. As there was limited time available in chambers today, I adjourned the latter two applications on consent. These are my reasons on the application for leave to amend.

Background

[2] The following facts are taken from the arbitration award (the “Award”).

[3] The individual appellants (the “Individual Appellants”) are current or former directors or officers of one or more of the four corporate appellants (collectively, “mCloud”). The appellants took out an insurance policy with the respondent, Wynward Insurance Group (“Wynward”), that provided liability coverage for directors and officers of mCloud, including statutory payroll liabilities of the Individual Appellants (the “Policy”). Coverage commenced in November 2022, and in November 2023, the appellants obtained a three-month extension of the Policy.

[4] Soon after the Policy came into effect, the appellants stopped paying their employees’ wages. That resulted in Alberta’s Employment Standards issuing numerous orders against the appellants. Eventually, Wynward paid Alberta Employment Standards \$842,214.46 under the Policy for wage arrears owed to mCloud’s employees.

[5] Wynward invoked the arbitration clause in the Policy to recover that sum from the appellants. None of the appellants appeared at the arbitration hearing. Two of the Individual Appellants provided written statements before the hearing, but the arbitrator gave no weight to them as these appellants could not be cross-examined. Counsel for the appellants cross-examined Wynward’s witnesses.

[6] In his Award, dated November 18, 2025, the arbitrator awarded Wynward the full amount it had paid out under the Policy, granting judgment against all the appellants, collectively, jointly and severally, plus interest and costs. He found the appellants materially misrepresented the situation to Wynward both initially and at the time they obtained the extension. The arbitrator found the appellants had a duty to disclose their knowledge of their liability for unpaid wages both before they obtained initial coverage and before they obtained the extension, which they deliberately ignored.

[7] mCloud had admitted its liability to Wynward in contract. The arbitrator also found mCloud and the Individual Appellants liable for three torts: interference with contractual relations; conspiracy to cause economic harm; and unjust enrichment.

[8] On December 18, 2025, the appellants filed a petition in Supreme Court to set aside the Award under s. 58 of the *Arbitration Act* and an application for leave to appeal to this Court under s. 59. Both filings were within the 30-day time limit in s. 60. On April 26, 2026, the appellants filed an application to amend their application for leave to appeal and supporting material.

Issues

[9] The two issues before me are:

- a) Does this Court have jurisdiction to grant an application to amend a leave application when the amendment application was filed after expiry of the 30-day time limit?
- b) If this Court has jurisdiction, should it grant the appellants' application to amend?

Does this Court Have Jurisdiction?

[10] Wynward argues this Court does not have jurisdiction to accept an amendment to a leave application under s. 59 after the 30-day limit in s. 60 has expired.

[11] This Court has addressed the jurisdiction conferred by the *Arbitration Act* and s. 60 in relation to time limits in two contexts: whether it may extend the time limit (*Math4Me Learning Inc. v. 1099615 B.C. Ltd.*, 2024 BCCA 369 [*Math4Me*]), and whether the time limit applies to cross appeals (*Sinclair v. T.D.M.C. Holdings Ltd.*, 2025 BCCA 322 [*Sinclair 1*] and *Sinclair v. T.D.M.C. Holdings Ltd.*, 2025 BCCA 402 [*Sinclair 2*]).

[12] The usual principles of statutory interpretation apply in determining the meaning of s. 60. Relying on these principles in *Sinclair 2*, Justice Grauer found the references to “appeal” in ss. 59 and 60 must also include cross appeals. That meant the Court lacked jurisdiction to accept a cross-appeal filed after the 30-day time limit.

[13] The case before me is different, because it does not concern commencement of the proceeding; it is about whether an already commenced leave application can be amended. As Justice Newbury noted in *Desert Properties Inc. v. G&T Martini Holdings Ltd.*, 2024 BCCA 24, at para. 28, the *Arbitration Act* does not establish a procedure for processing appeals once commenced, so the *Court of Appeal Act*, S.B.C. 2021, c. 6, and *Rules* apply. Justice Groberman made the same observation in *Sinclair 1* at para. 23. In my view, the Court in *Sinclair 2* did not disagree. Rather, Justice Grauer interpreted a “cross-appeal” as the commencement of a proceeding and therefore implicitly included in the references to “appeal” in ss. 59 and 60. He explained that any other interpretation would mean the significant constraints on appeals brought to this Court under s. 59 would not apply to cross appeals, leaving them completely unfettered: at para. 49.

[14] I turn to the present application. As Justices Newbury and Groberman observed, the *Arbitration Act* does not provide a process for prosecuting appeals once the requirements of ss. 59 and 60 are met. Nothing in the statutory text, context or purpose suggests the process in this Court’s *Act* and *Rules* is displaced. A finding of no jurisdiction would mean this Court could never entertain any application to amend a proceeding commenced under s. 59, no matter how minor.

[15] I conclude this Court has jurisdiction to consider amendment applications filed after the time limit in s. 60.

Should the Application to Amend be Granted?

[16] As mCloud has already filed its leave to appeal and application book, R. 82(2)(b)(i) requires it to apply for leave to amend.

[17] In deciding whether to grant leave, the Court will consider the nature of the amendment. Where it is substantive and so significant that it changes the nature of the appeal, an application to amend amounts to an application for an extension of time: *Westbank Holdings Ltd. v. Westgate Shopping Centre Ltd.*, 2009 BCCA 370; *Friedlander v. Claman*, 2015 BCCA 355. The Court will consider the factors in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259–60 (C.A.).

[18] However, this Court does not have jurisdiction to grant extensions of time to appeal from an arbitration: *Math4Me* at para. 14. Therefore, if mCloud’s proposed amendment is so significant that it amounts to an application for extension of time, it cannot succeed. If the proposed amendment does not amount to an application for extension of time, the Court should consider whether it is in the interests of justice to grant the amendment: *Shannon v. Gidden*, 1999 BCCA 461.

[19] Wynard argues mCloud’s proposed amendment completely reframes its appeal and should be refused. mCloud characterizes the original application for leave as necessarily general because it had not yet received the complete arbitration record, and its amendment as simply a more precise articulation of the issues.

[20] The original leave application identified 12 grounds of appeal. The appellants propose the following changes:

- 1) Originally challenged order for security for costs against individual appellants; now claims individual appellants had no notice of proceedings and no opportunity to defend themselves.

- 2) Originally alleged failure to apply contractual privity to individual appellants as parties to the Policy; now challenges finding individual appellants liable for tort of interference with contractual relations because they were acting within their authority.
- 3) Unchanged.
- 4) Unchanged.
- 5) Originally alleged errors in not distinguishing between the mCloud entities; now alleges error in imposing personal liability on the Individual Appellants.
- 6) Originally alleged arbitrator failed to appreciate the Individual Appellants were directors of different entities; now alleges arbitrator erred in finding individual appellants liable for the tort of conspiracy to cause economic harm.
- 7) Deleted.
- 8) Unchanged.
- 9) Originally alleged the arbitrator misconceived evidence regarding mCloud appellants, now alleges inadequacy of reasons.
- 10) Unchanged.
- 11) Unchanged.
- 12) Unchanged.

[21] There are over 750 pages of evidence in the amended application for leave. As far as I can tell, they differ substantially from the approximately 400 pages of evidence in the original application.

[22] Perhaps most tellingly, the argument in the appellants' original application for leave identified the central legal issue in the appeal as whether the arbitrator erred in ordering the Individual Appellants to pay security for costs, tainting the

whole arbitration process. The argument in the amended application for leave identifies six issues, none of which concern security for costs.

[23] I consider the appellants have fundamentally changed their appeal, such that it amounts to an impermissible application for an extension of time to appeal. If parties could simply file “placeholder” notices of appeal and leave application materials to satisfy the time limit in s. 60, as these appellants have done, that would subvert the whole purpose of the efficient recourse to the courts the legislature intended in setting the 30-day limit in s. 60.

[24] The application for leave to amend is dismissed.

“The Honourable Justice Iyer”