

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Marwest Industries Ltd. v British Columbia*
(*Minister of Transportation and*
Infrastructure),
2026 BCCA 398

Date: 20261005
Docket: CA51683

Between:

Marwest Industries Ltd.

Appellant

And

His Majesty the King in Right of the Province of British Columbia
as Represented by the Minister of Transportation

Respondent

Before: The Honourable Justice Griffin
(In Chambers)

On appeal from: An award of an arbitrator under the *Arbitration Act*, SBC 2020, c 2,
dated June 11, 2026 (*Marwest Industries Ltd. v MOTI*).

Counsel for the Appellant: M.B. Morgan
R.A. Wollenberg

Counsel for the Respondent: W.C. Vaughan

Place and Date of Hearing: Vancouver, British Columbia
September 25, 2026

Place and Date of Judgment: Vancouver, British Columbia
October 5, 2026

Summary:

Marwest Industries Ltd. applies for leave to appeal an arbitration award. The respondent (“MOTI”) opposes. Two limitations issues arise on the application. The first is whether the application for leave to appeal was brought within the 30-day time limit required by s 60(1) of the Arbitration Act. The second is whether the arbitrator erred in his interpretation of s 12 of the Act in concluding that the arbitration was not commenced in time.

Held: Application for leave to appeal granted.

The application for leave to appeal was commenced when Marwest filed a Form 1 Notice of Appeal, in which it provided the necessary information that leave to appeal was required, the order for which leave to appeal was sought, and the grounds for seeking leave to appeal. This was filed within the 30-day time limit required by s 60(1) of the Act.

Marwest has raised an issue of arguable merit regarding the arbitrator’s interpretation of s 12 of the Act. This issue is of sufficient general and particular importance to justify granting leave to appeal.

Reasons for Judgment of the Honourable Justice Griffin:

Introduction

[1] Marwest Industries Ltd. (“Marwest”) seeks leave to appeal from a June 11, 2026, decision (the “Award”) of an arbitrator, Christopher O’Connor KC, made under the *Arbitration Act*, RSBC 2020, c 2 [Act]. The respondent provincial Crown, represented by the Minister of Transportation and Infrastructure (“MOTI”), opposes leave.

[2] Marwest seeks to challenge the Award dismissing its claim as time-barred, based on the arbitrator’s interpretation of s 12 of the *Act*. Section 12 has to do with suspending a limitation period when a claim was the subject of court proceedings. It provides:

12 If court proceedings are stayed under section 7 [stay of court proceedings] and the claim that was the subject of the court proceedings is made in arbitral proceedings no more than 30 days after the court proceedings are stayed, the limitation period applicable to the claim is suspended from the date the claim was made in the court proceedings to the date the claim is made in the arbitral proceedings.

[3] There are three issues on the present application:

- a) Has this application for leave to appeal been brought within 30 days of the Award as required by s 60(1) of the *Act*?
- b) If the application for leave to appeal has been brought in time, does the appeal concern a question of law, as required by s 59(3) of the *Act*?
- c) If the appeal concerns a question of law, should I exercise my discretion to grant leave to appeal, considering the factors in s 59(4)?

[4] MOTI takes the position that the answer is “no” to the first and third questions, but it accepts that the asserted ground of appeal is framed as a question of law.

Background

[5] Marwest and MOTI are parties to a contract entered into on April 20, 2021. Under the contract, Marwest would supply construction and general contracting services for a project known as the Highway No. 3A & 31 Kootenay Lake Ferry Terminals Improvement Project (the “Contract”).

[6] The Contract, in general condition 82.01 (“GC 82.01”), sets out a contractual limitation period of 18 months following the Actual Completion Date for any claims arising from the Contract.

[7] The work commenced in June 2021, and the Actual Completion Date was February 17, 2023. The parties agree that the contractual limitation period under GC 82.01 expired on August 17, 2024.

[8] The parties had a dispute about whether Marwest was owed additional funds under the contract.

[9] Marwest’s counsel wrote to MOTI’s counsel on August 16, 2024, one day before the expiry of the GC 82.01 contractual limitation period, stating they would be bringing a claim by arbitration.

[10] That same day, August 16, 2024, Marwest filed a notice of civil claim against MOTI in the Supreme Court of British Columbia (“BCSC”) claiming damages for breach of contract. Marwest did not immediately serve this claim, waiting until July 2025 to serve it.

[11] MOTI’s counsel took the position the Marwest letter of August 16, 2024, was not in fact a formal notice to arbitrate, and on September 25, 2024, advised Marwest that it was out of time to commence arbitration.

[12] On October 10, 2024, Marwest took formal steps to commence arbitration through the Vancouver International Arbitration Centre, but this was now after the GC 82.01 contractual limitation date of August 17, 2024.

[13] Marwest also brought a petition in the BCSC on December 2, 2024, for an order to extend the time limit to commence arbitration, pursuant to s 10(1) of the Act. This provision states:

10 (1) If an arbitration agreement provides that a claim to which the agreement applies is barred unless one of the following occurs within a time limit specified in the agreement or otherwise:

- (a) notice to appoint an arbitrator is delivered;
- (b) an arbitrator is appointed;
- (c) any other step to commence the arbitral proceedings is taken,

the Supreme Court may, on application, extend the time limit if it considers that undue hardship would otherwise result.

(2) An application under subsection (1) must be brought without undue delay.

(3) A Supreme Court decision under this section may not be appealed.

[14] This petition was dismissed on June 13, 2025, with the judge concluding that Marwest had not provided convincing evidence of hardship and there had been undue delay in bringing the application.

[15] Marwest subsequently served its notice of civil claim on July 24, 2025.

[16] On September 10, 2025, MOTI filed a jurisdictional response to the Marwest notice of civil claim, taking the position that the claims were subject to an arbitration agreement.

[17] On January 16, 2026, Marwest and MOTI entered into a consent order in the BCSC which stayed the action in favour of arbitration, pursuant to s 7 of the *Act*.

[18] The stay of the action created a question about the applicability of s 12 of the *Act*, which as set out above, suspends a limitation period when claims made in an action are stayed and those same claims are made in an arbitration proceeding within 30 days.

[19] On January 28, 2026, counsel for Marwest wrote MOTI and the Arbitral Tribunal advising that in the arbitration proceeding Marwest was asserting the same claims made in the notice of civil claim and was relying on s 12 of the *Act*, taking the position that the limitation period had been extended.

[20] On April 17, 2026, MOTI brought an application in the arbitration proceeding to, among other things, dismiss the arbitration as time-barred on the basis that s 12 of the *Act* does not extend, suspend, or revive the time limit at GC 82.01 in the Contract.

[21] On May 1, 2026, Marwest provided its application response, wherein Marwest argued, among other things, that s 12 of the *Act* applied to suspend the running of both contractual and statutory limitation periods.

The Award

[22] On June 11, 2026, the Arbitrator issued the Award, deciding the application and limitation period issue in MOTI's favour.

[23] The Arbitrator framed the issue as follows, at para 21 of the Award:

The claims advanced by Marwest are governed by a contractual limitation period set out in GC 82.01 of 18 months from the completion of the work. The Notice of Civil Claim was filed by Marwest within this 18-month period, but the arbitration was commenced outside of this 18-month period. The issue herein

is whether the words “the limitation period applicable to the claim” in s. 12 applies to either a contractual limitation period or the Statutory limitation period, so that the claim advanced in the Notice of Civil Claim effectively preserves the claims advanced in the subsequent Arbitration, even though the subsequent Arbitration was brought out of time.

[24] The Arbitrator acknowledged that the issue was a matter of statutory interpretation: Award at para 22.

[25] The Arbitrator considered the purpose and object of the *Act* and related sections. For ease of reference, I will set out ss 10, 11, and 12, which were all considered by the Arbitrator.

10 (1) If an arbitration agreement provides that a claim to which the agreement applies is barred unless one of the following occurs within a time limit specified in the agreement or otherwise:

- (a) notice to appoint an arbitrator is delivered;
- (b) an arbitrator is appointed;
- (c) any other step to commence the arbitral proceedings is taken,

the Supreme Court may, on application, extend the time limit if it considers that undue hardship would otherwise result.

(2) An application under subsection (1) must be brought without undue delay.

(3) A Supreme Court decision under this section may not be appealed.

...

11 (1) The law with respect to limitation periods for commencing court proceedings applies to commencing arbitral proceedings.

(2) Subject to section 10(1), if a party alleges that a claim to which an arbitration agreement applies is barred for failure to commence arbitral proceedings within the time limit specified in the agreement or otherwise or within the applicable limitation period, the arbitral proceedings continue and the arbitral tribunal must determine whether the claim is barred.

...

12 If court proceedings are stayed under section 7 [*stay of court proceedings*] and the claim that was the subject of the court proceedings is made in arbitral proceedings no more than 30 days after the court proceedings are stayed, the limitation period applicable to the claim is suspended from the date the claim was made in the court proceedings to the date the claim is made in the arbitral proceedings.

[26] Analyzing these sections of the *Act*, the Arbitrator concluded:

[37] Section 11(2) is instructive because it distinguishes between two concepts: a contractual time limit and a Statutory limitation period. It refers to a contractual bar as “the time limit specified in the agreement” and to a Statutory bar as “the applicable limitation period.”

[38] In my view, this distinction shows that, when the legislature used the term “limitation period,” it meant a Statutory limitation period, not a contractual time limit set by agreement. I also rely upon the fact that the legislature used the singular term “limitation period” in s. 12 rather than the plural “limitation periods” which would have been required if the legislature intended to refer to two distinct bars, contractual time limits and Statutory time limits. I therefore interpret the phrase “limitation period applicable to the claim” in s. 12 as referring only to the Statutory limitation period and not to a contractual time limit.

[39] In my view the legislature created a specific, discretionary, and non-appealable mechanism in s. 10 to obtain relief from the failure to comply with contractual time limits with respect to the commencement of arbitration proceedings. When the legislature enacted s. 12 in the new Act it did not intend to ignore s. 10 and create a second, nondiscretionary remedy to achieve the same objective. [Section] 12 is intended to deal with a limitation period that is different from the contractual time limit to commence arbitral proceedings which are addressed in s. 10. To interpret s. 12 as applicable to contractual time limits would allow a party to bypass the statutory requirements of proving undue hardship, and no delay, that are preconditions to relief under s. 10.

[40] In my view s. 12 does not operate to suspend a contractual time limit from the date of the commencement of the civil proceeding but only applies to the Statutory limitation period. It assumes the existence of an enforceable claim, subject only to the question of the application of a statutory limitation period. It does not apply in those circumstances where by their contract the parties have agreed that the right to make a claim may be foreclosed by a contractual time limit. Accordingly, as the Arbitration was not commenced within the time limit specified in GC 82.01, it is now time-barred. I agree with MOTi that s.12 does not extend, suspend or revive the contractual time limit in GC 82.01, and accordingly this arbitration must be dismissed. The claimant had a right to seek relief from the contractual time limit by making an application to the Supreme Court under s. 10, it pursued that right by making an application and was denied relief. In my view [s]. 12 does not give it another opportunity to seek the same remedy.

[Emphasis added.]

[27] In the result, the arbitrator dismissed the arbitration on the basis that it was not commenced within the time specified in GC 82.01 of the Contract.

[28] The arbitrator thus found it unnecessary to address other arguments raised by MOTI.

[29] I turn to the issues raised on this application.

Issue 1: Has this application for leave to appeal been brought within 30 days of the Award as required by s 60(1) of the Act?

[30] I will address the first issue raised by MOTI, which submits that the present application for leave to appeal was not brought within the 30-day time limit required by s 60(1) of the *Act*. MOTI takes this position because, while Marwest filed Form 1 in this Court within that period, it did not file its Form 4 until after the 30 days.

Relevant *Arbitration Act* provisions

[31] The *Act* governs leave to appeal from an arbitration award. It provides:

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.

...

[Emphasis added.]

[32] The parties accept that s 59(3) applies and there was no agreement that precludes an appeal of a question of law.

[33] Also relevant is s 60(1) of the *Act*:

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.

[Emphasis added.]

[34] Section 60(2) of the *Act* deals with alleged corruption and fraud and does not apply here.

Relevant Provisions of *Court of Appeal Act*, *Rules* and Forms

[35] In my view, the following provisions of the *Court of Appeal Act*, SBC 2021, c 6 [*CA Act*], *Court of Appeal Rules*, BC Reg 120/2022 [*Rules*], and forms are of assistance in analyzing the first issue.

[36] Section 15 of the *CA Act* refers to when a person “must commence an appeal or application for leave to appeal”. Section 15 states:

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.]

[37] Rule 6 addresses what a person who “wishes to appeal” must do. It states:

6 (1) A person who wishes to appeal an order must do the following within the time limit set out in subrule (2):

- (a) file a notice of appeal in Form 1 that names as a respondent each person
 - (i) who was a party to the proceedings in the court appealed from, and
 - (ii) whose interests could be affected by the relief sought in the notice;
- (b) serve, in accordance with Rule 4(1) [*permitted methods of service*], on each respondent named in the notice of appeal a copy of the filed notice of appeal.

(2) The time limit for filing and serving a notice of appeal of an order is the following:

- (a) unless paragraph (b) applies, not more than 30 days after the order is pronounced;
- (b) if another enactment specifies a time limit within which the appeal must be commenced, that time limit.

[Emphasis added.]

[38] Rule 6 applies to anyone who wishes to appeal and so includes people who seek leave to appeal. All persons who wish to appeal must file a notice of appeal in Form 1 and serve it within the required time limits.

[39] Form 1 is the Court of Appeal form referred to in Rule 6(1). It is headed “Form 1 Notice of Appeal (Rule 6(1))”. It gives notice to the respondent “[a] court proceeding has been commenced against you...”. In s 2, the filing party has to tick a box “yes” or “no” to the question of whether leave to appeal is required. In s 3, “Relief Sought”, a party is required to either fill out “PART A: LEAVE NOT REQUIRED” or “PART B: SEEKING LEAVE TO APPEAL”. These uppercase titles are in bold and very easy to see.

[40] In Part B of Form 1, entitled “SEEKING LEAVE TO APPEAL”, the form has two parts. In the first part, the form requires the party to set out “[p]art of the order being appealed”. The form instructs the party to enter the part of the order that they are seeking leave to appeal.

[41] The second part of Part B of Form 1 instructs the party to fill in the “[g]rounds for leave to appeal” and to “[b]e as specific as possible”, including to state such things as the judge applied an incorrect legal test.

[42] The Court of Appeal file is opened in the Court Registry, and an appeal proceeding number assigned to it, when a Form 1 is filed. This is the case for appeals and applications for leave to appeal.

[43] Thus, Form 1 is the form required to initiate proceedings in this Court, whether it be a notice of appeal or an application to seek leave to appeal.

[44] A respondent who is named and served with a completed Form 1, and who wishes further notice of the proceeding, must file a Form 2, Notice of Appearance. The filing of this appearance is what makes the respondent a party to the appeal. This is what then generates a requirement for the appellant or applicant for leave to appeal to serve the party with subsequent filed materials, including the materials to advance any leave to appeal application: Rules 3, 7(2).

[45] The position of MOTI on this matter also makes relevant Rule 13, which states:

13 A party who wishes to bring an application for leave to appeal must

- (a) file and serve a notice of application in Form 4 and an application book for leave to appeal prepared in accordance with the completion instructions not more than 30 days after filing the related notice of appeal or notice of cross appeal, as applicable, and
- (b) obtain a hearing date for the application that is at least 10 business days after the application for leave to appeal is filed and served.

[Emphasis added.]

[46] A Form 4 Notice of Application is generic for many types of applications. The form is headed “Form 4: Notice of Application (Rules 13(a), 18(4), 20(3) and (4), 54(a), 58(1), 59(1), 60(2), 61(2), 63(2)”. It is not specific to an application for leave to appeal; but rather, is the form used for applications for: leave to appeal, adding respondents to an appeal, stays of proceedings or execution, payment of security, adducing new or fresh evidence, quashing an appeal, intervener status, and varying or cancelling the order of a registrar.

[47] There is no specific form of notice of application solely for applications for leave to appeal. In contrast, there are specific forms for an urgent application (Form 7) and an application to vary an order of a justice (Form 8).

Procedural chronology

[48] The procedural chronology in this case, as it relates to Court of Appeal proceedings, is as follows:

- a) The Award was made and delivered June 11, 2026.

- b) Marwest filed and served a “Form 1 Notice of Appeal (Rule 6(1))” on July 9, 2026. This was within 30 days of the Award. Marwest ticked the box indicating leave to appeal was required and filled out s 3, “Part B: SEEKING LEAVE TO APPEAL”. Marwest filled out both parts: the part of the Award for which it was seeking leave to appeal; and the grounds of appeal, including that it was seeking leave to appeal pursuant to ss 59 and 60 of the *Act*. Marwest submits this was the bringing of the application for leave to appeal within the meaning of s 60(1) of the *Act*.
- c) MOTI filed a “Form 2 Notice of Appearance” on July 14, 2026. This gave it an entitlement to be served with all subsequent materials filed in the appeal proceeding, including the specific leave application materials.
- d) Marwest subsequently took additional steps to advance the application for leave, more than 30 days after the Award. These include steps under Rule 13 to file an application in Form 4 and an application book, and to obtain a hearing date. MOTI submits the filing of the Form 4 notice of application, application book, and the notice of hearing marks when the application for leave to appeal was brought for purposes of s 60(1) of the *Act*.

Did Sinclair decide the issue?

[49] In *Sinclair v T.D.M.C. Holdings Ltd.*, 2025 BCCA 402 [*Sinclair*], this Court dealt with the question of whether a party could seek leave to bring a cross-appeal of an arbitration award. The notice of cross-appeal (leave required) was filed more than 30 days after the award, and so the issue was whether it was barred by s 60(1) of the *Act*. This Court held it was barred by the 30-day time limit. This was notwithstanding the fact that this Court’s *Rules* permit a notice of cross-appeal to be filed within 15 days of a notice of appeal and this appellate time limit was met.

[50] In *Sinclair*, it was argued that a cross-appeal is responding to an appeal and cannot be subject to the time limits under s 60(1) of the *Act*. This Court rejected that argument. This Court held that a cross-appeal fits within the definition of “appeal”

under the *Act*, and so by virtue of s 60(1), it is also subject to the 30-day time limit from the award.

[51] This Court in *Sinclair* went on to discuss the question: what does s 60(1) require be done within 30 days? The Court held:

[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.

[Emphasis in original.]

[52] It is clear that *Sinclair* raised the question, but did not decide the issue before me, namely, whether the filing of a Form 1 Notice of Appeal, with the relevant information provided on the form indicating leave to appeal was required, constitutes the bringing of a notice of application for leave to appeal for purposes of s 60(1).

Analysis

[53] That leads to the question, what formal step is required to “bring” an application for leave to appeal in the Court of Appeal.

[54] While s 60(1) of the *Act* refers to the time period when a party must bring an application for leave to appeal, what is meant by “bring” is not defined nor does the *Act* elaborate on the process of bringing an application for leave to appeal. That only makes sense because this Court’s procedures are not governed by the *Act*; rather, it governs arbitration procedures.

[55] I am of the view, in the context of limitation periods and legal proceedings, what must have been intended by the language of s 60(1) of the *Act*, referring to “bring an application for leave to appeal”, was to capture the first formal step required under the Court of Appeal’s own procedures to initiate, or commence, leave to appeal proceedings in this Court.

[56] Form 1 is a notice of appeal containing an application for leave to appeal, and it initiates both a notice of appeal, and an application to obtain leave to appeal. I have already described it, but again, it expressly requires the party to tick a box if leave to appeal is required and to fill out Part B, entitled in bold uppercase letters “SEEKING LEAVE TO APPEAL”, if leave to appeal is required.

[57] Form 1 Part B requires a party to set out the specific order for which leave to appeal is sought; and the grounds for leave to appeal. Here, Marwest filled this out properly. In the section requiring it to set out “[p]art of the order being appealed”, Marwest setting out the arbitrator’s dismissal of the arbitration as time barred, and his determinations regarding the limitation period.

[58] In the second part of Part B Form 1, where the party is instructed to fill in the “[g]rounds for leave to appeal” and to “[b]e as specific as possible”, Marwest set out at length: that it was seeking leave pursuant to ss 59 and 60 of the *Act*; the parties contract and history, including procedural history; the result of the arbitration; and the alleged errors of law made by the arbitrator that they were seeking to appeal; as well as a summary of their argument as to why leave should be granted.

[59] The required content of Form 1 means that a served respondent receives notice that the party who filed the Form 1 has commenced proceedings to seek

leave to appeal; the part of the order for which leave is sought; and the grounds for seeking leave to appeal.

[60] In my view, when a party files a Form 1 Notice of Appeal and fills out the required information to give notice that it requires and will be seeking leave to appeal, this marks the initiation of an application for leave to appeal in this Court. This is the date when an application for leave to appeal is brought, for purposes of the 30-day requirement in s 60(1) of the *Act*.

[61] While this issue has not been squarely addressed in this Court, this conclusion is consistent with the case referred to in the above passage of *Sinclair*, which was *Desert Properties Inc. v G&T Martini Holdings Ltd.*, 2024 BCCA 24 (Chambers). In that case, Justice Newbury held at para 28, in the context of the limitation period pursuant to s 60(1) of the *Act*:

... 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*. ...

[Emphasis added.]

[62] Again, Form 1 initiates the Court of Appeal proceedings and the assignment of a Court of Appeal proceeding number by the Registry. The Form 1 must be served on the respondents, and a served respondent who wishes to have service of all subsequent materials, including the specific leave application materials, must file a Form 2 appearance. There is no subsequent opportunity for a respondent to file an appearance, for example, after service of the materials prosecuting the leave to appeal application (the materials under Rule 13: the Form 4, application book, and notice of hearing).

[63] Furthermore, there is no form subsequent to the Form 1 Notice of Appeal that is specific to only an application for leave.

[64] After a Form 1 is filed, the *Rules* go on to describe how to advance an appeal and application for leave to appeal, including in Rule 13. But these are all

subsequent to the filing of the Form 1. Rule 13 deals with a whole host of general applications and is not specific to leave applications.

[65] In my view, it would be an error to focus on the word “bring” in Rule 13 as the factor that dictates when a leave to appeal application is brought within the meaning of s 60(1) of the *Act*. Rule 13 by its own wording acknowledges that it is a subsequent step in the proceeding. It simply sets out the process for prosecuting the leave to appeal application after it was initiated by the “related notice of appeal” (Rule 13(a)).

[66] I do not accept MOTI’s interpretation that compliance with Rule 13 determines when an application for leave to appeal is “brought” for purposes of s 60(1) of the *Act*. This would mean under the *Act*, a leave to appeal application is not brought until a whole succession of steps are taken: a Form 1 is filed; a Form 4 is filed; an application book is prepared; and a hearing date is obtained. This would therefore also mean that even though a typical application for leave to appeal under the *Rules* would be permitted 60 days plus 10 business days to provide time for these steps (30 days to file and serve the Form 1 notice of appeal; another 30 days to file and serve the Form 4 notice of application and application book; another 10 business days for the hearing date), in case of an application for leave to appeal an arbitration award, all of these steps must be accomplished within 30 days of the award.

[67] I reject that interpretation as I cannot conceive of any purpose of the *Act* that would be served by it. The 30-day notice period under s 60(1) of the *Act* is intended to ensure that appeal proceedings are initiated promptly. This allows parties to learn soon after the award is issued whether it can be treated as certain and final or will be subject to challenge in appeal proceedings. The 30-day notice period cannot have been intended to require several steps in the appeal proceeding to be compressed into one.

[68] The time periods provided by Rule 13 to advance an application for leave to appeal provide procedural fairness, to allow parties time to prepare a thoughtful submission and the record that is needed to be able to support their submission. It

serves no goals of the *Act* to deprive the parties and the Court of the benefit of this time.

[69] If the Form 4 notice of application purports to expand materially the grounds of appeal from that set out in the Form 1, the applicant may well be barred from doing so if it was filed outside the 30-day time limit under s 60(1) of the *Act*: see *mCloud Technologies Corp. v Wynward Group*, 2026 BCCA 219 (Chambers).

[70] Here, the Form 1 was filed within the 30-day time limit provided for under s 60(1) of the *Act*. The later filed notice of application, Form 4, simply copied the grounds and relief sought from Form 1. In my view, the application for leave to appeal was brought in time.

Issue 2: Does the appeal concern a question of law?

[71] The next issue is whether the appeal concerns a question of law arising out of the Award.

[72] In *Green Light Solutions Corp. v Kern BSG Management Ltd.*, 2025 BCCA 408 at para 37, this Court summarized the jurisprudence which provides that the following three requirements must be met before leave may be granted by this Court to appeal an arbitral award:

1. The appeal must be based on a question of law arising out of the award. [The question of law must be clearly perceived and identified.]
2. The leave judge must be satisfied that one of the three circumstances identified in s. 59(4) of the *Arbitration Act* exists.
3. The leave judge must be prepared to exercise the residual discretion implicit in the phrase “the Court of Appeal may grant leave”.

[73] The distinction between questions of fact, mixed fact and law, and law, was discussed in *Teal Cedar Products Ltd. v British Columbia*, 2017 SCC 32 [*Teal Cedar*]:

[43] The process for characterizing a question as one of three principal types — legal, factual, or mixed — is also well-established in the jurisprudence (*Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at para. 35). In particular, it is not disputed that

legal questions are questions “about what the correct legal test is” (*Sattva*, at para. 49, quoting *Southam*, at para. 35); factual questions are questions “about what actually took place between the parties” (*Southam*, at para. 35; *Sattva*, at para. 58); and mixed questions are questions about “whether the facts satisfy the legal tests” or, in other words, they involve “applying a legal standard to a set of facts” (*Southam*, at para. 35; *Sattva*, at para. 49, quoting *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[74] MOTI appears to concede that the question raised on appeal is a question of law.

[75] Marwest seeks to appeal the arbitrator’s interpretation of s 12 of the *Act*, in particular, his determination that it does not operate to suspend a contractual limitation period but only operates to suspend statutory limitation periods.

[76] I agree that the question raised is a question of law. The underlying facts are not in dispute. This is also not a dispute about whether the facts satisfy the legal test. Rather, the only issue is what is the legal test under s 12, which is an issue of statutory interpretation of general application, raising a question of law alone: *Teal Cedar* at para 47.

[77] The applicant therefore passes the first threshold of establishing its appeal concerns a question of law.

Issue 3: Should leave to appeal be granted?

[78] In my view, other relevant factors weigh in favour of leave to appeal being granted.

[79] The question of whether s 12 of the *Act* refers to only one type of limitation period, a statutory limitation period, rather than a contractual limitation period, does not seem to have been addressed by this Court. Determining the issue would be of general importance to those subject to arbitration clauses in BC which also contain contractual limitation periods. Should the arbitrator’s interpretation prevail, it would inform parties as to what steps they need to take to preserve their arbitration claims, especially when they are unclear as to whether their claim should be properly brought in court or by way of arbitration. It will inform parties subject to arbitration as

to their rights in relation to limitation periods, in circumstances where they first start a claim in court.

[80] Further, Marwest’s entire claim, which is for an amount valued at over \$2 million, depends on its success on this issue and so it is clearly important to the parties.

[81] As for the merits of Marwest’s proposed appeal, this in part raises a question as to the applicable standard of review to a question of law decided by an arbitrator. At present the law in BC is that the standard is correctness: see analysis in *Vancouver School District No. 39 v Kingsgate Property Ltd.* 2026 BCCA 98 at paras 157, 172, 200 [*Kingsgate*]; *Green Light Solutions Corp. v Kern BSG Management Ltd.*, 2026 BCCA 335 at para 30, albeit decided under the former *Act*; see also *Northland Utilities (NWT) Limited v Hay River (Town of)*, 2021 NWTCA 1; *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7. However, the Supreme Court of Canada has recently granted leave to appeal from *Kingsgate* (2026 CanLII 99274 (SCC)).

[82] In my view, Marwest has an arguable ground of appeal that the arbitrator erred in narrowly interpreting a provision meant to suspend limitation periods, by reading in language that defines limitation periods as “statutory” limitation periods. This ground of appeal has sufficient merit that when combined with all other factors mentioned, I am of the view it justifies review by a division of this Court.

[83] I reach this conclusion notwithstanding MOTI’s argument that the interpretation of the s 12 limitation period urged by Marwest is inconsistent with other provisions of the *Act*, including ss 10 and 11. MOTI’s argument parallels the analysis undertaken by the arbitrator. I can say that MOTI’s argument has some merit too. However, it is not my role to determine the outcome of the appeal.

[84] Weighing all of the factors in s 59(4) together, I consider the appeal to have arguable merit and to be of sufficient importance to justify review by this Court and therefore conclude it is in the interests of justice to grant leave to appeal.

Disposition

[85] In conclusion, I grant Marwest's application for leave to appeal.

"The Honourable Justice Griffin"