Citation: Deco Windshield Repair Inc v Manitoba Public Insurance Corporation,
2026 MBCA 85
Date: 20261015
Docket: AI26-30-10377

2026 MBCA 85 (CanLII)

IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N :

	)	***R. M. Beamish***
DECO WINDSHIELD REPAIR INC.	)	*for the Applicant*
	)	
(Applicant) Applicant	)	***M. D. Grayson*** *and*
	)	***C. Undi***
- and -	)	*for the Respondent*
	)	
MANITOBA PUBLIC INSURANCE CORPORATION	)	*Chambers motion heard:*
	)	***September 24, 2026***
	)	
(Respondent) Respondent	)	*Decision pronounced:*
	)	***October 15, 2026***

EDMOND JA

Introduction

[1] The applicant brought an application in the Court of King's Bench pursuant to section 44(2) of *The Arbitration Act*, CCSM c A120 [the *Act*] for leave to appeal two commercial arbitration awards (the leave application) made by an arbitrator appointed pursuant to an agreement entered into between the applicant and the respondent, dated December 1, 2019. The arbitrator released a preliminary award respecting the admissibility of certain evidence at the arbitration hearing (the preliminary award) and then released a final award regarding the matters in dispute (the final award) (collectively, the awards).

[2] The application judge dismissed the leave application.

[3] The applicant now seeks leave to appeal the application judge's dismissal of the leave application (the decision) pursuant to rule 68 of the MB, *King's Bench Rules*, Man Reg 553/88 and sections 44(1)-(2), 45(2), 46(1) and 48 of the *Act*. The applicant's request for leave to appeal the decision is referred to in these reasons as the motion.

[4] In my view, the motion must be sought pursuant to section 48 of the *Act*. Section 48 provides for an appeal to this Court with leave. It states:

Further appeal to Court of Appeal	**Nouvel appel à la Cour d'appel**
48 An appeal from the court's decision in an appeal of an award, an application to set aside an award or an application for a declaration of invalidity may be made to The Court of Appeal, with leave of that court. The application for leave to appeal must be made not later than 30 days after the date of the court's decision.	**48** Il peut être interjeté appel à la Cour d'appel, sur autorisation de celle-ci, de la décision du tribunal judiciaire rendue à l'égard de l'appel d'une sentence arbitrale, de la requête en annulation d'une sentence ou de la requête en vue de l'obtention d'une déclaration de nullité. La requête en autorisation d'appel doit être présentée au plus tard 30 jours après la date à laquelle le tribunal judiciaire a rendu sa décision.

[5] Unless the application judge mistakenly declined jurisdiction, this Court has previously confirmed that there is no further right of appeal from a grant or denial of a leave application made pursuant to section 44(2) of the *Act* (see the *Act*, ss 44(2), 48; *Christie Building Holding Company, Limited v Shelter Canadian Properties Limited*, 2023 MBCA 76 at para 26 [*Christie*];

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Broadband Communications North Inc v I-Netlink Incorporated, 2018 MBCA 116 [*I-NetLink* 2018]; *I-NetLink Incorporated et al v Broadband Communications North Inc*, 2014 MBCA 38 [*I-NetLink* 2014]).

[6] In the proposed notice of appeal, the applicant identifies the following grounds of appeal:

i) The application judge erred in law by dismissing the leave application on the issue of pre-contractual negotiations being excluded from the evidence in the arbitration, as that evidence was relevant to the issue of unconscionability.

ii) The application judge erred in law by dismissing the leave application on the issue of inequality of bargaining power decided by the arbitrator on irrelevant considerations.

iii) The application judge erred in law by dismissing the leave application on the issue that the arbitrator dismissed the claim based on a breach of the duty of good faith.

[7] The same or similar grounds of appeal alleging the arbitrator erred in law were raised by the applicant and addressed by the application judge in the decision, and the leave application was dismissed.

[8] For the reasons that follow, the motion is denied.

Background

[9] The applicant is a windshield repair company that developed a business model whereby windshield repair services were provided to

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customers at kiosk locations, where tents were set up in various commercial parking lots (the kiosks).

[10] In Manitoba, the respondent is solely responsible for the repair of insured vehicles and compensates motor vehicle repair shops that perform repairs. Repair shops may apply for accreditation with the respondent. Accreditation allows repair shops to direct bill the respondent for repairs at accredited rates. Accreditation is not mandatory and repair shops can operate without it. Accreditation is governed by a standard Light Vehicle Repair Accreditation Agreement (LVAA) with the respondent.

[11] The terms of the LVAA were negotiated and finalized between the respondent and two industry associations, the Automotive Trades Association Manitoba and the Manitoba Motor Dealers Association (collectively, the industry associations).

[12] From time to time, the industry associations and the respondent entered into new industry agreements to which a new form of LVAA would be attached. The applicant executed the LVAA governing each of the kiosks.

[13] On March 13, 2019, the applicant received notice from the respondent that a new LVAA (the 2019 LVAA) had been reached between the respondent and the industry associations, which contained the following section, effective December 31, 2019:

> **7.9 Glass Repair Requirements**
> You accept and acknowledge that, effective as of December 31, 2019, the accredited status for glass repair-only shops will be terminated. Glass shops must have a fixed permanent location, glass repair and glass replacement capability (in addition to all the other usual accreditation requirements) by December 31, 2019, in

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> order to remain accredited beyond this date. For clarity, no temporarily erected facilities (e.g. no tents) will be permitted after December 31, 2019.

[14] The applicant disputed section 7.9 of the 2019 LVAA and sought clarification from the respondent regarding its meaning and application to the applicant's business model. The respondent confirmed to the applicant that the use of the kiosks would be prohibited after December 31, 2019, if the applicant wished to be accredited.

[15] The applicant sought to negotiate with the respondent to continue using the kiosks and the respondent did not accept the applicant's proposals.

[16] On December 1, 2019, the applicant executed the 2019 LVAA for a permanent glass repair and replacement shop located in Winnipeg.

[17] Following the December 31, 2019 deadline, the applicant continued to operate the kiosks to conduct business.

[18] In March 2020, the respondent learned that the applicant continued to perform insured repairs at the kiosks and to direct bill the respondent for those repairs. On April 6, 2020, the respondent notified the applicant that, effective April 20, 2020, its accreditation would be suspended for three months due to a breach of section 7.9 of the 2019 LVAA.

[19] The applicant commenced legal proceedings in the Court of King's Bench issuing a statement of claim challenging the suspension. The legal proceeding was stayed by a motion judge and the matter proceeded to arbitration pursuant to the terms of the 2019 LVAA.

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[20] On January 28, 2025, the arbitrator issued the preliminary award relating to the relevance and admissibility of any negotiations between the respondent and the industry associations that resulted in the 2019 LVAA. The applicant advanced the position that the industry associations did not negotiate section 7.9. Rather, the section was imposed by the respondent. Further, the applicant submitted that the negotiations or lack of negotiations were relevant to the submission that the 2019 LVAA was unconscionable. The arbitrator found such negotiations or lack of negotiations were irrelevant and inadmissible.

[21] The matter proceeded to arbitration and, on June 11, 2025, the arbitrator issued the final award. The primary submission advanced at the arbitration hearing was that section 7.9 of the 2019 LVAA was unconscionable or otherwise unenforceable. The final award rejected the applicant's position, finding that section 7.9 of the 2019 LVAA was valid and binding.

[22] The final award referenced the duty of good faith in contractual performance and found that there is no such duty in the formation of a contract or the inclusion of a provision in a contract with which one party finds disfavour. The arbitrator therefore rejected the applicant's submission, found that the applicant had violated section 7.9 of the 2019 LVAA and that the respondent was justified in suspending its accreditation.

[23] The leave application advanced the same or similar grounds of appeal as are proposed to be advanced in this Court. The application judge reviewed each of the grounds of appeal in the decision and dismissed the leave application.

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[24] Section 44(2) of the *Act* governs when a party may appeal an award to the court and provides:

> **Appeal on question of law with leave**
> **44(2)** If the arbitration agreement (other than a family arbitration agreement) does not provide that the parties may appeal an award to the court on a question of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that
>
> (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and
>
> (b) determination of the question of law at issue will significantly affect the rights of the parties.
>
> **Appel relatif à une question de droit —autorisation**
> **44(2)** Si la convention d'arbitrage—exception faite d'une convention d'arbitrage familial — ne prévoit pas d'appel devant le tribunal judiciaire d'une sentence relative à une question de droit, une partie peut faire appel de cette sentence devant le tribunal judiciaire, sur autorisation du tribunal. Le tribunal n'accorde son autorisation que s'il est convaincu :
>
> a) d'une part, que l'importance pour les parties des questions en cause dans l'arbitrage justifie un appel;
>
> b) d'autre part, que le règlement de la question de droit en litige aura une incidence importante sur les droits des parties.

[25] The application judge cited *Christie Building Holding Company, Limited v Shelter Canadian Properties Limited*, 2022 MBKB 239, regarding the scope of review and stated in the decision:

> Under s. 44(2) of the ***Act***, a question of law must also be of arguable merit to grant leave (see ***Christie***, at para. 28). Arguable merit means that the issue raised by the applicant cannot be dismissed through a preliminary examination of the question of law (***Christie***, at para. 28).

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> When assessing arguable merit, the Court must also keep in mind that the reasonableness standard will ultimately apply to any questions of law on which leave is granted. The ultimate issue to be determined is whether any of the formulated questions of law, judged on a standard of reasonableness, are of arguable merit (***Christie***, at para. 101).

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Analysis and Decision

[26] It is well settled law in Manitoba that this Court has limited jurisdiction to grant leave to appeal an application judge's decision made pursuant to section 44(2) of the *Act*. The general rule is that no appeal lies from a decision denying or granting leave to appeal.

[27] This principle was discussed by Beard JA in *I-NetLink* 2014. In that case, the party sought leave to appeal the decision of an application judge who had denied leave to appeal. In denying the application for leave to appeal, Beard JA observed (*ibid* at paras 7, 11-12):

> Both parties agree that the general rule applicable to appealing a decision to grant or deny leave to appeal under s. 44(2) of the *Act* is that no appeal lies from that decision, with the exception that an appeal will lie if the tribunal mistakenly declined jurisdiction. This is based primarily on decisions from Ontario considering mirror provisions to ss. 44(2) and 48 of the *Act*, which are found in ss. 45 and 49 of the Ontario arbitration legislation, the *Arbitration Act*, 1991, S.O. 1991, c. 17.
>
> The principles regarding the exception for declining jurisdiction were set out by the Supreme Court of Canada in *Canadian Utilities Ltd. et al. v. Deputy Minister of National Revenue*, [1964] S.C.R. 57 (at p. 63):
>
> > It appears to me to have been consistently held in our courts and in the courts of England that where a statute grants a right of appeal conditionally upon leave to appeal being granted by a specified tribunal there is no appeal from the decision of that

> tribunal to refuse leave, provided that the tribunal has not mistakenly declined jurisdiction but has reached a decision on the merits of the application.
>
> In the case at bar it is clear that the learned President considered the applications for leave to appeal on their merits and reached the conclusion that the questions on which leave was sought were not questions of law and that, in any event, this was not the kind of case in which leave should be given. In no sense did he decline jurisdiction. ....
>
> As stated above, this issue has been considered more recently on several occasions by the Ontario Court of Appeal in relation to arbitration legislation in Ontario that mirrors ss. 44(2) and 48 of the *Act*, and that court has consistently held that, where the judge considered the leave application and rendered a decision on the merits of the application, the judge did not decline jurisdiction and, therefore, leave to appeal does not lie from that decision.
>
> [citations omitted]

[28] In *I-NetLink* 2014 at para 14, Beard JA also dealt with the policy rationale underlying the principle, citing Finlayson JA's decision in *Hillmond Investments Ltd v Canadian Imperial Bank of Commerce* (1996), 135 DLR (4th) 471 at 477, 1996 CanLII 413 (ONCA):

> …. Modern systems of alternative dispute resolution, commonly referred to as A.D.R., are designed to help parties solve disputes efficiently without resort to formal litigation and with a minimum of judicial interference. Allowing an appeal from a refusal to grant leave to appeal defeats the object of arbitration by frustrating the legislated impediment to appeals as of right. The purpose of s. 45 of the [Ontario] *Arbitration Act, 1991* is to stop an appeal unless the Ontario Court (General Division) grants leave.

[29] The exception to the general rule arises when the tribunal mistakenly declines jurisdiction. In this case, the application judge did not mistakenly

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decline jurisdiction. Rather, he carefully considered and decided whether each proposed ground of appeal raised by the applicant met the test to grant leave pursuant to section 44(2) of the *Act*.

[30] The applicant submits that the preliminary award "completely missed, misunderstood, or ignored the [applicant's] argument as to the purpose of the intended evidence" and that the imposition by the respondent of the kiosk prohibition imposed by section 7.9 of the 2019 LVAA was capricious, arbitrary and unjustified.

[31] As to the final award, the applicant argues that it was flawed and contrary to the evidence at the hearing. The applicant also challenges the findings regarding whether the 2019 LVAA was unconscionable.

[32] In essence, the applicant seeks leave to appeal to challenge the awards and to re-argue the grounds of appeal that were already advanced before the application judge and dismissed.

[33] In my view, the applicant has failed to meet the criteria to grant the motion in this case. Clearly, the application judge heard the leave application and provided the decision on the merits. The application judge did not mistakenly decline jurisdiction and, therefore, the leave application does not lie from the decision. Granting the motion to review the decision would be contrary to the purpose and intent of the *Act*, which is to end the appeal process unless the application judge grants leave.

[34] The applicant advanced other positions at the motion and asked for leave to file a reply brief, which was granted and the respondent was given an

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opportunity to reply. I propose to briefly deal with the applicant's submissions and explain why they lack arguable merit.

[35] A review of section 48 of the *Act* clearly establishes that a further appeal to this Court is available with leave and is limited to three circumstances: (i) an appeal from the court's decision in an appeal of an award, (ii) an application to set aside an award (governed by section 45 of the *Act*), and (iii) an application for a declaration of invalidity (governed by section 47 of the *Act*).

[36] Where leave is granted pursuant to section 44(2) and the matter proceeds to an appeal, the court's decision may be appealed to this Court with leave applying the criteria set forth in two decisions from this Court (see *Wolfe et al v Taylor et al; Fat Cat Farms Ltd et al v Wolfe et al*, 2017 MBCA 74 at paras 54-55 [*Wolfe*]; *Rolling River School Division v Rolling River Teachers' Association of the Manitoba Teachers' Society et al*, 2009 MBCA 38 at paras 12-13 [*Rolling River*]).

[37] The applicant submits that the principles enunciated in *Wolfe* and *Rolling River* apply to the motion and that, even if the criteria are not all met, exceptional circumstances exist in this case such that the denial of the motion would result in an injustice.

[38] I disagree that the criteria referred to in *Wolfe* and *Rolling River* apply in this case. *Wolfe* dealt with leave to appeal from a decision on an application to set aside an award on one of the grounds in section 45(1) of the *Act*. The application being advanced in *Rolling River* was for leave to appeal from the court's appeal decision of an award. Neither situation applies in the present case.

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[39] The third circumstance which may give rise to an application for leave to appeal to this Court is an application for a declaration of invalidity, which the present case also does not involve.

[40] I am satisfied that section 48 of the *Act* is not ambiguous and it does not provide for a further right to appeal to this Court for a dismissal of the leave application unless the application judge mistakenly declined jurisdiction.

[41] The question of whether there is an exception to the general rule that no appeal lies from a denial of leave to appeal was specifically addressed by this Court in *I-NetLink* 2014 at paras 10-13. A similar argument was advanced, and Pfuetzner JA stated that she was "not persuaded that a demonstrable error on a matter of essential principle is an exception to the general rule that no appeal under the *Act* will lie from the decision of a Queen's Bench judge granting or denying leave to appeal" (*I-NetLink* 2018 at para 13).

[42] Even if there is an exception in the context of the *Act*, I am not persuaded that the application judge erred on a matter of essential principle or that the decision was otherwise so wrong as to amount to an injustice. The application judge applied the correct legal test under section 44(2) of the *Act*. He reviewed each of the proposed grounds of appeal and dismissed the leave application. I see no error in the decision, let alone one that could amount to an error in principle or that it was otherwise so wrong as to amount to an injustice.

[43] This leads me to a brief consideration of the final submission made by the applicant in the reply brief. Relying upon a recent decision of this Court, the applicant submits that the application judge failed to conduct a

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reasonableness review and the failure to do so was an error in law which justifies granting leave to appeal (see *Buffalo Point First Nation v Buffalo Point Cottage Owners' Association Inc*, 2025 MBCA 72 at para 54 [*Buffalo Point*], leave to appeal to SCC granted, 42053 (23 July 2026)).

[44] In my view, this submission does not assist the applicant. The application judge assessed whether any of the proposed grounds of appeal were questions of law of arguable merit, "judged on a standard of reasonableness". While the application judge did not have the benefit of *Buffalo Point*, paragraph 54 is merely a summary of the principles enunciated in the leading authority on the application of the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 6). The application judge is presumed to know the law and he applied the correct standard of review. The submissions being advanced were argued before the application judge. The motion is not a second opportunity to re-argue the leave application.

[45] In the result, I am not persuaded that the applicant has established that this Court has jurisdiction to hear an appeal of the decision. The motion is therefore denied.

Costs

[46] The respondent requests that this Court award elevated costs of $3,000 on the motion. Tariff "D" of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *CA Rules*], provides for costs for up to $1,000 for the determination of a motion. Rule 47(3) of the *CA Rules* provides discretion to the judge in chambers to award costs under Tariff "D", except where the judge otherwise orders.

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[47] The respondent submits that the motion in this case is an affront to the principles underlying the commercial arbitration regime—efficiency and finality. While the applicant referenced the correct legal test, it failed to apply that test and instead re-argued the proposed grounds of appeal advanced before the application judge such that the motion is without merit and an elevated award of costs is appropriate.

[48] The applicant submits that the respondent's imposition of unreasonable terms in the 2019 LVAA and the issues advanced in the awards and now on appeal are significant ones that deserve the attention of a full panel of this Court. The applicant should not be discouraged from advancing novel legal arguments. In any event, it is premature to argue costs before a decision is made. If the motion is granted, costs should be awarded to the applicant.

[49] The general rule is that costs are ordinarily awarded to the successful party. An order of costs in accordance with the tariff against the applicant is justified and reasonable in this case. I am not satisfied that an elevated order of costs departing from Tariff "D" is appropriate in the circumstances. I award the respondent costs of $1,000 plus reasonable disbursements and applicable taxes.

Conclusion

[50] The motion is denied with costs to the respondent.

JA

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