
Court of Appeal for Saskatchewan
Docket: CACV4511, CACV4530, and
CACV4564

Citation: *Kidd v Unity (Town)*, 2026 SKCA 12
Date: 2026-01-26

Between:

Kelly Patrick Kidd

Appellant
(Respondent/Respondent/Applicant)

And

Town of Unity

Respondent
(Applicant/Applicant/Respondent)

Before: Leurer C.J.S., Tholl and Bardai JJ.A.

Disposition: Appeals dismissed, application dismissed

Written reasons by: The Honourable Chief Justice Robert W. Leurer
In concurrence: The Honourable Justice Jerome A. Tholl
The Honourable Justice Naheed Bardai

On appeal from: KBG-SA-01013-2024 and KBG-SA-01328-2024 (SKKB), Saskatoon
Appeals heard: September 5, 2025

Counsel: John Benesh for the Appellant
Jennifer Pereira, K.C., for the Respondent

Leurer C.J.S.

I. INTRODUCTION

[1] Between 2012 and 2023, Kelly Kidd and the Town of Unity were involved in litigation because of the flooding of land owned by Mr. Kidd. The litigation was resolved when Unity agreed to purchase the land from Mr. Kidd for an amount equivalent to its fair market value, as determined by an arbitrator.

[2] Mr. Kidd is dissatisfied with the arbitrator's award [*Award*]. His application for judicial review of it was dismissed by a Court of King's Bench judge in Chambers [Review Judge] (*Kidd v Unity (Town)* (5 June 2025), Saskatoon KBG-SA-01328-2024 (SKKB) [*Review Decision*]). In so doing, the Review Judge held that judicial review is not available as a remedy to challenge a consensual arbitration award and Mr. Kidd did not pursue his rights under *The Arbitration Act, 1992*, SS 1992, c A-24.1 [*Arbitration Act*] in a timely way.

[3] Mr. Kidd appeals from the *Review Decision*, as well as from two other orders made by two different Court of King's Bench judges in Chambers enforcing the *Award*. He also asks the Court to review the refusal by Kalmakoff J.A. to stay these two additional orders while his appeals were heard.

[4] I have concluded that Mr. Kidd's appeal from the *Review Decision* must be dismissed. As the Review Judge correctly held, the only jurisdiction that the Court of King's Bench had to review the *Award* was as provided for under the *Arbitration Act* and Mr. Kidd did not initiate his action to do so within the time requirements established by that Act. This also means that Mr. Kidd's appeals from the two enforcement orders and his request for a stay are moot.

II. BACKGROUND

A. The arbitration and the *Award*

[5] As mentioned, between 2012 and 2023, Mr. Kidd and Unity were involved in litigation because of the flooding of land owned by Mr. Kidd as part of Unity's plan for water management.

That litigation ended on August 16, 2023, when Mr. Kidd and Unity entered into a settlement agreement. Under its terms, Mr. Kidd released Unity from liability for the flooding and, in return, the town paid him \$100,000 as non-pecuniary damages and agreed to buy the land for an amount equivalent to its fair market value, as determined by an arbitrator.

[6] Mr. Kidd and Unity entered into two other agreements. One was an Agreement for the Sale of Land that required that Unity pay the purchase price of the land within 60 days of the arbitrator's decision. The other was an Arbitration Agreement that named Rick Brunsdon as the arbitrator. Under the terms of the Arbitration Agreement, the parties agreed "to be bound by the arbitrator's decision on the Fair Market Value of the Land" (Article 16) and that "the decision of the Arbitrator shall be final and binding on the Town and Mr. Kidd, with no right of appeal" (Article 17).

[7] Mr. Brunsdon held a hearing in December of 2023. He delivered his decision, determining the fair market value of the land to be \$261,660, on January 8, 2024. After he had done so, Unity attempted to close the sale and purchase of the land, but Mr. Kidd refused. Instead, he asked Mr. Brunsdon to vary his decision by exercising the power given to arbitrators under s. 44(1)(b) of the *Arbitration Act* to "correct an injustice caused by an oversight on the part of the arbitral tribunal".

[8] By a decision dated March 27, 2024, Mr. Brunsdon denied Mr. Kidd's request to vary his decision, and Mr. Brunsdon upheld his original determination of fair market value. Except where the context otherwise requires me to distinguish Mr. Brunsdon's first decision from his second, I will refer to them together, as the *Award*.

B. Proceedings up to the making of the three orders

[9] Even after Mr. Brunsdon had rendered his second decision, Mr. Kidd continued to refuse to participate in the closing of the sale of the land to Unity. Instead, Mr. Kidd initiated proceedings to challenge the *Award*.

[10] By originating application issued on April 25, 2024, Mr. Kidd sought leave to appeal the *Award* under s. 45(2) of the *Arbitration Act* [Appeal Application]. In the Appeal Application, Mr. Kidd identified purported legal errors in the *Award* and the existence of a reasonable

apprehension of bias, grounded in the assertion that Mr. Brunsdon “is associated with a matter that the Applicant considers adverse to the Applicant’s interest”.

[11] The Appeal Application came on for a hearing before Elson J. in July of 2024. At that hearing, Mr. Kidd abandoned the request for leave to appeal the *Award* and instead asked, in oral submissions but without making a written application, that Elson J. convert the proceedings to one for judicial review. Justice Elson refused this request and instead ordered that the application for leave to appeal the *Award* be dismissed without prejudice to Mr. Kidd’s right to apply for judicial review (*Kidd v Unity (Town)* (26 July 2024), Saskatoon KBG-SA-00504-2024 (SKKB)).

[12] On August 2, 2024, Unity tendered payment of \$261,660 to Mr. Kidd, but this payment was refused.

[13] On August 13, 2024, Unity served Mr. Kidd an originating application, returnable on September 17, 2024, seeking an order under s. 50 of the *Arbitration Act* to enforce the *Award* [Enforcement Application]. At Mr. Kidd’s request, the Enforcement Application was adjourned to October 29, 2024.

[14] Before the Enforcement Application was heard, Mr. Kidd served Unity with an originating application for judicial review, issued on October 16, 2024, and amended on October 24, 2024, [Review Application], seeking an order setting aside the *Award* and remitting the determination of the fair market value of the land to a different arbitrator. The grounds for requesting this relief included that (a) Mr. Brunsdon had erred in his construction of the Agreement for the Sale of Land, (b) Mr. Brunsdon had failed to account for all relevant considerations, (c) Mr. Brunsdon had failed to provide sufficient reasons, and (d) there was a reasonable apprehension that Mr. Brunsdon was biased.

[15] When the matter came before the Review Judge, Unity took the position that the Review Application should be dismissed, without a consideration of its merits, on two preliminary grounds. The first was that judicial review was not available as a remedy in a dispute involving a consensual arbitration. The second was that the Review Application was filed outside of the limitation period prescribed in s. 47 of the *Arbitration Act* for seeking relief under that Act. Unity

also asked that portions of Mr. Kidd's affidavit be struck or ignored. After argument was made on these issues, the Review Judge reserved her decision.

C. *Enforcement Order and the Vesting Order*

[16] While the Review Application was under reserve, Unity's Enforcement Application was heard by a different judge of the Court of King's Bench. At that hearing, Mr. Kidd argued that the Enforcement Application should be dismissed as being premature, given that his challenge to the *Award* was then under reserve by the Review Judge. The judge hearing the Enforcement Application dismissed Mr. Kidd's concern finding that Mr. Kidd would not be prejudiced by a determination of the enforceability question because, even if he ultimately succeeded in his Review Application, only the purchase price under the Agreement for the Sale of Land would be affected (*Unity (Town) v Kidd* (12 February 2025), Saskatoon KBG-SA-01013-2024 (SKKB) [*Enforcement Order*]).

[17] Mr. Kidd filed a notice of appeal from the *Enforcement Order* on March 5, 2025 (CACV4511). It advances, as a single ground of appeal, that the judge "made an extricable error in principle and made a palpable and overriding error" in granting the *Enforcement Order* while the *Award* was under review.

[18] Next, and while the decision on Mr. Kidd's Review Application remained under reserve, Unity applied for an order under s. 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1, directing that the land be transferred to it on payment into court of the \$261,660 [*Vesting Application*]. This application came before yet another different judge of the Court of King's Bench who granted the requested relief (*Unity (Town) v Kidd* (3 April 2025), Saskatoon KBG-SA-01013-2024 (SKKB) [*Vesting Order*]).

[19] Mr. Kidd appealed the *Vesting Order* on April 7, 2025 (CACV4530). His notice of appeal for it largely mirrors that from the *Enforcement Order*.

[20] Mr. Kidd subsequently applied for an order staying the enforcement of both the *Enforcement Order* and the *Vesting Order*, pending the determination of his appeals from those

two orders. This application was dismissed by Kalmakoff J.A. (*Kidd v Unity (Town)* (23 April 2025), Regina CACV4511/CACV4530 (SKCA) [*Stay Decision*]).

D. Review Decision

[21] The Review Judge rendered the *Review Decision* on June 5, 2025. After setting out the background, she addressed the objections that Unity had raised to Mr. Kidd’s affidavit. She then turned her attention to Unity’s two arguments that the Review Application should be dismissed without a consideration of its merits. She agreed with Unity on both points.

[22] As previously mentioned, Unity’s first argument was that judicial review “is not available following private arbitrations” (at para 20). In offering this submission, Unity relied on *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 [*Highwood*], and cases that had interpreted that decision. The Review Judge agreed with this argument, holding that “[g]iven the clear guidance in *Highwood*, the private nature of this dispute and the limitation on the availability of judicial review to state decision-making, judicial review is not available” (at para 26).

[23] The Review Judge also concluded that she “would alternatively dismiss the application [for judicial review] for being outside the limitation period set under the [*Arbitration Act*] at s. 47(1)” (at para 28). That provision directs that certain identified types of 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”. The Review Judge reiterated the history of proceedings undertaken by Mr. Kidd to challenge the *Award* and then concluded that “[e]ven after Elson J. dismissed the application seeking leave to appeal the [*Award*] without prejudice to his ability to bring an application for judicial review, Mr. Kidd waited nearly a further three months to file the within application for judicial review”. She observed that this was “well beyond the limitation period contemplated in s. 47” of the *Arbitration Act* (at para 30).

[24] In the result, the Review Judge dismissed the Review Application. Mr. Kidd appealed the *Review Decision* on June 11, 2025 (CACV4564).

III. ISSUES

[25] As has been noted, Mr. Kidd has appealed the *Enforcement Order*, the *Vesting Order* and the *Review Decision*. The three appeals were consolidated and were heard in conjunction with an application made by Mr. Kidd under s. 20(3) of *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, for an order varying or discharging the *Stay Decision*.

[26] The outcome of the three appeals and Mr. Kidd's application under s. 20(3) is dictated by the answers to the following two questions:

- (a) Did the Review Judge err in finding that the *Award* was not subject to judicial review?
- (b) Did the Review Judge err in finding that Mr. Kidd's application to set aside the *Award* had not been commenced in a timely manner?

IV. ANALYSIS

A. The *Award* is not subject to judicial review

[27] Mr. Kidd argues that the Review Judge erred in law when she held that the *Award* is not subject to judicial review. I do not agree. The Review Judge correctly distinguished between the court's power to conduct a judicial review of state administrative actions, from the rights that parties sometimes have to appeal a consensual arbitral decision and the right that parties always have to seek to set aside an arbitral decision in accordance with the *Arbitration Act*.

1. Judicial supervision of consensual arbitrations occurs through the procedures prescribed in the *Arbitration Act*

[28] Judicial review, as that phrase was used by the Review Judge in her reasons, is a feature of public law whereby the superior courts appointed under s. 96 of the *Constitution Act, 1867* "engage in surveillance of lower tribunals to ensure that the fundamentals of legality and jurisdiction are respected by those tribunals" (*Knox v Conservative Party of Canada*, 2007 ABCA 295 at para 14 [Knox]). The "purpose of judicial review is to ensure the legality of *state decision making*" (*Highwood* at para 13, emphasis added, referring to *Canada (Attorney General) v TeleZone Inc.*,

2010 SCC 62 at paras 24 and 26, *Crevier v Attorney General of Quebec*, 1981 CanLII 30, [1981] 2 SCR 220 at pp 237-238 (SCC), and *Knox* at paras 14-15). Thus, judicial review primarily concerns the relationship between the administrative state and the courts. For this reason, private parties “cannot seek judicial review to solve disputes that may arise between them; rather, their claims must be founded on a valid cause of action, for example, contract, tort or restitution” (*Highwood* at para 13).

[29] Even in the sphere of state administration, judicial review is limited to circumstances where the decision has a public character. This was explained in *Highwood* as follows:

[14] Not all decisions are amenable to judicial review under a superior court’s supervisory jurisdiction. Judicial review is only available where there is an exercise of state authority and where that exercise is of a sufficiently public character. Even public bodies make some decisions that are private in nature — such as renting premises and hiring staff — and such decisions are not subject to judicial review: *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605, at para. 52. In making these contractual decisions, the public body is not exercising “a power central to the administrative mandate given to it by Parliament”, but is rather exercising a private power (*ibid.*). Such decisions do not involve concerns about the rule of law insofar as this refers to the exercise of delegated authority.

(Emphasis added)

[30] The arbitration in this case does not involve state decision-making. It lacks any public character. Instead, it was the autonomous and self-contained process that was agreed to by Mr. Kidd and Unity to resolve their commercial dispute over the price at which land was to be sold by Mr. Kidd to Unity. For this reason, judicial review, as distinct from rights that exist under the *Arbitration Act*, is not available as a remedy to Mr. Kidd.

[31] In his factum, Mr. Kidd cites *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 [*Sattva*], for the proposition that courts are not barred from hearing applications concerning consensual arbitration agreements. However, rather than confirming that judicial review is available in a case like this one, *Sattva* makes clear that judicial oversight of consensual arbitral decisions, if any, occurs within the framework for judicial appeal or supervision as contemplated in the *Arbitration Act* and as allowed for by the parties in their agreements.

[32] Justice Rothstein explained this important distinction in *Sattva* in the context of discussing the *Arbitration Act*, RSBC 1996, c 55, when he stated that “[a]ppellate review of commercial

arbitration awards takes place under a tightly defined regime specifically tailored to the objectives of commercial arbitrations and is different from judicial review of a decision of a statutory tribunal” (at para 104). *Sattva* holds that, even where there is jurisdiction for judicial intervention in a commercial arbitration, “a deferential standard of review — reasonableness — ‘almost always’ applies” (*Teal Cedar Products Ltd. v British Columbia*, 2017 SCC 32 at para 1, referring to *Sattva* at paras 75, 104 and 106 [*Teal Cedar Products*]).

[33] To be clear, *Sattva* confirms that, when permitted, judicial supervision of an arbitration award – whether that be the exercise of a right of appeal or an application to set aside an award on one of the grounds specified in the *Arbitration Act* – “are analogous in some respects” to judicial review of a state administrative tribunal. Thus, by way of example, both “involve a court reviewing the decision of a non-judicial decision-maker” (*Sattva* at para 105). However, as I will explain, the power of the court to intervene must be found in the appeal rights (if any) and the right to apply to set aside an arbitral award that exist under the *Arbitration Act*.

[34] Mr. Kidd also invokes *Roncarelli v Duplessis*, 1959 CanLII 50, [1959] SCR 121 (SCC); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; and *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8, for the proposition that the rule of law does not permit absolute and untrammelled discretion, such as he says will be permitted here were he to be given no right to seek judicial review of the *Award*. Mr. Kidd’s argument on this score is answered by the fact that the *Arbitration Act* provides mechanisms for judicial supervision of arbitral proceedings, subject to the overarching principle that “limited jurisdiction and deferential review advance the central aims of commercial arbitration: efficiency and finality” (*Teal Cedar Products* at para 1).

[35] I would make one last point about all of this. Although consensual arbitration awards are not susceptible to judicial review, some other types of arbitration awards are subject to this form of judicial supervision. For example, this is true for arbitration awards made in the area of statutorily regulated labour relations. The distinction between those types of arbitration awards that are subject to judicial review, and those that are not, was drawn in *Roberval Express v Transport Drivers Union*, 1982 CanLII 34, [1982] 2 SCR 888 at p 900 (SCC), wherein Chouinard J. stated as follows:

... A distinction must be recognized between, on the one hand, a tribunal invested with wide powers by statute, the award of which is binding on the parties and defines their rights, and on the other, a clearly consensual tribunal which owes its existence solely to the will of the parties, the only jurisdiction and powers of which are those conferred on it by the parties, and the award of which will be binding or not depending on whether the parties have so provided or not.

[36] In this case, Mr. Brunsdon drew his authority from the agreement of the parties. Therefore, the Review Judge correctly held that the jurisdiction of the Court of King's Bench in this matter was as provided for under the *Arbitration Act* and not through the procedures for the judicial review of state administrative actions.

2. Judicial supervision of consensual arbitrations

[37] The *Arbitration Act* limits the circumstances under which the courts may intervene in a consensual arbitration, as reflected in s. 7 of that Act, which provides as follows:

7 Subject to subsection 6.1(3), no court shall intervene in matters governed by this Act, except for the following purposes, as provided by this Act:

- (a) to assist the conducting of arbitrations;
- (b) to ensure that arbitrations are conducted in accordance with arbitration agreements;
- (c) to prevent unequal or unfair treatment of parties to arbitration agreements;
- (d) to enforce awards.

[38] Section 6.1(3), which is referred to in this provision, allows for the court to become involved in arbitrations arising from a family dispute in limited, specified situations. Other sections of the *Arbitration Act* provide rights of appeal or the opportunity to apply to set aside an arbitral award in defined circumstances to further the purposes identified in s. 7.

a. *Rights of appeal under s. 45 of the Arbitration Act*

[39] Section 45(1) of the *Arbitration Act* permits the parties to an arbitration agreement to agree to allow an appeal from an award to the Court of King's Bench on questions of law, questions of fact, or questions of mixed law and fact:

45(1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact by notice of motion that briefly states the grounds of the appeal.

(Emphasis added)

[40] In this case, the Arbitration Agreement does not contain an agreement that the parties may appeal on any of the bases mentioned in s. 45(1). Therefore, that provision has no application in these circumstances.

[41] The *Arbitration Act* further provides that, where the parties have *not* agreed that there shall be a right of appeal on a question of law, the parties may appeal to the Court of King’s Bench on such a question with leave of that court. Section 45(2) provides in this regard as follows:

(2) If the 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.

[42] However, s. 4 of the *Arbitration Act* provides that, subject to certain exceptions, the parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of that Act. Section 4 reflects the *Arbitration Act*’s grant to parties of broad agency to agree to the rules and procedures that govern the consensual resolution of their dispute. The *Arbitration Act* embeds “the principle that parties should generally be allowed to craft their own dispute resolution mechanism through consensual agreement” (*TELUS Communications Inc. v Wellman*, 2019 SCC 19 at para 52 [*TELUS*]).

[43] Section 4 operates in a way that the general rule is that the parties to an arbitration agreement can agree to vary or exclude any provision of the *Arbitration Act*, except those provisions that are expressly mentioned. Section 4 states in this regard as follows:

4 The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following provisions:

- (a) subsection 3(4);
- (b) subsection 6(4);
- (c) section 6.1;
- (d) section 20;
- (e) subsection 32(2);
- (f) section 40;
- (g) section 46;

(h) section 48;

(i) section 50.

[44] Section 45 is not included among the provisions that parties are unable to vary. Accordingly, it is up to the parties to decide if they want to allow for an appeal to the Court of King’s Bench from an arbitral decision. This is consistent with the object of the *Arbitration Act* to entrench “the primacy of arbitration proceedings over judicial proceedings, once the parties have entered into an arbitration agreement, by directing the court, generally, not to intervene, and by establishing a ‘presumptive’ stay of court proceedings in favour of arbitration” (*TELUS* at para 49, quoting from *Ontario Hydro v Denison Mines Ltd.*, 1992 CarswellOnt 3497 (Westlaw) (CJ (GD)) at para 9).

[45] In this case, not only did the parties *not* agree to allow for the broad rights of appeal as permitted by s. 45(1), but they expressly exempted their arbitration from the reach of s. 45(2), in s. 17 of the Arbitration Agreement, when they agreed as follows:

17. Notwithstanding section 45 of *The Act* the decision of the Arbitrator shall be final and binding on the Town and Mr. Kidd, with no right of appeal. Concurrent with the execution of this Agreement, the Parties have executed a Sales and Purchase Agreement based on the Fair Market Value as determined by the Arbitrator.

(Emphasis added)

[46] In overall result, the parties agreed that there shall be no right of appeal from the *Award* under s. 45 of the *Arbitration Act*. Notwithstanding this fact, as I have previously noted, in the Appeal Application which came before Elson J., Mr. Kidd had requested “relief pursuant to s. 45 of the *Arbitration Act*”.

[47] It is unclear from the record whether Mr. Kidd’s later attempt to convert that proceeding into one for judicial review was because he realized that, by agreement, he had contracted out of the right to seek leave to appeal from the *Award* even on a question of law, or because he had some other reason not to pursue an appeal under that provision. In any event, Mr. Kidd did not refer to s. 45 in the Review Application, which formed the procedural basis for the hearing before the Review Judge. No mention is made of s. 45 in Mr. Kidd’s factum. He also did not suggest in oral argument in this Court that s. 45 provided a jurisdictional route for him to appeal from the *Award*.

[48] For all these reasons, Mr. Kidd did not have a right to appeal the *Award* under s. 45 of the *Arbitration Act* and, even if he had such right, he did not exercise it.

b. Right to apply to set aside an award under s. 46 of the Arbitration Act

[49] In addition to allowing the parties to decide if an *appeal* from an arbitral decision can be taken to the Court of King’s Bench, the *Arbitration Act* permits for a party to apply to *set aside* an award on nine specific grounds. These are enumerated in s. 46(1):

46(1) On a party’s application, the court may set aside an award on any of the following grounds:

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is invalid or has ceased to exist;
- (c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;
- (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with the matter, was not in accordance with this Act;
- (e) the subject-matter of the arbitration is not capable of being the subject of arbitration under Saskatchewan law;
- (f) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party’s case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement;
- (h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;
- (i) the award was obtained by fraud.

[50] As can be seen, among the grounds on which a party may apply to set aside an award is if “an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias” (at s 46(1)(h)) or “the award was obtained by fraud” (at s 46(1)(i)). I mention these two grounds because Mr. Kidd’s submissions in this appeal were heavily focused on what he claims to be the evidence to ground a reasonable apprehension that Mr. Brunsdon was biased, and that this will go unchecked were he to be deprived of the ability to pursue judicial review.

[51] In contrast to s. 45, s. 46 is mentioned in s. 4 as being among the mandatory provisions which the parties cannot contract out of. Yet, s. 46 itself contemplates that the parties can waive some of the rights of review it contains. Thus, for example only, the court shall not set aside an award on grounds mentioned in s. 46(1)(c) “if the applicant has agreed to the inclusion of the matter in dispute, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what matters in dispute have been referred to it” (at s 46(3)). However, the right of a party to an arbitration to apply to set aside an award because the arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias, or because it was obtained by fraud, are not similarly qualified.

[52] If a court finds grounds to set aside an award “it may remove an arbitrator or the arbitral tribunal and may give directions about the conduct of the arbitration” (at s 46(7)). Alternatively, instead of setting aside the award, “the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration” (at s 46(8)).

[53] Overall, an application to set aside an award under s. 46 of the *Arbitration Act* has features that make such a proceeding analogous to an application for judicial review of the exercise of state authority. However, the right given to a party to apply to set aside an arbitral award is a creation of the *Arbitration Act*, and the characteristics and features of such an application are defined by that Act.

3. The Court’s jurisdiction to supervise this arbitration must be found in the *Arbitration Act*

[54] The Review Judge correctly distinguished the Court’s power to conduct a judicial review of state administrative actions, from the rights, if any, of parties to a consensual arbitration to appeal an arbitral award under s. 45 of the *Arbitration Act*, and their right to apply to set aside an award under s. 46 of that Act.

B. Mr. Kidd did not exercise his right to apply to set aside the *Award* in a timely fashion

1. Time requirements governing a s. 46 application

[55] As I have explained, Mr. Kidd had the right to apply to set aside the *Award* on any of the grounds that are mentioned in s. 46 of the *Arbitration Act*, including that there was a reasonable apprehension that Mr. Brunsdon was biased. However, that right is qualified by s. 47, which states as follows:

47(1) 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 pursuant to subsection 45(1);
- (b) an application for leave to appeal pursuant to subsection 45(2);
- (c) subject to subsection (2), an application to set aside an award pursuant to section 46.

(2) An application to set aside an award on the ground that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced within the later of:

- (a) the period mentioned in subsection (1); and
- (b) 30 days after the applicant discovers the corrupt act or the fraud.

2. This Court should treat Mr. Kidd as having invoked s. 46

[56] Section 46 was not mentioned in the Review Application. In this Court, the parties disagree as to the extent to which that section had even been invoked by Mr. Kidd before the Review Judge.

[57] The Review Judge observed that Mr. Kidd was seeking to have the *Award* set aside and the determination of the value of the land remitted to a different arbitrator. She added that, to do so, he “attempts to rely on s. 46 of the [*Arbitration Act*], which allows a court to set aside an award on specific grounds including a reasonable apprehension of bias” (at para 17). This served as the preamble to her discussion about whether judicial review was available to Mr. Kidd. Later, after finding that it was not, the Review Judge also concluded that she “would alternatively dismiss the application [for judicial review] for being outside the limitation period set under the [*Arbitration Act*] at s. 47(1)” (at para 28).

[58] In the Review Judge’s explanation for this conclusion, she first reproduced s. 47(1). She then provided a detailed review of the history of the various proceedings before Mr. Brunson and the Court of King’s Bench. After doing all of this, the judge offered her previously quoted reasons for finding that Mr. Kidd’s application to set aside the *Award* was commenced outside of the time provided for in s. 47(1).

[59] Thus, it seems the Review Judge thought that it was appropriate, if not necessary, for her to decide whether Mr. Kidd had a possible remedy under s. 46. In this context, it is also useful to remember that Mr. Kidd’s Review Application was not dismissed on its merits but rather based on Unity’s two preliminary objections.

[60] Considering all of this, I am satisfied that it is appropriate for this Court to review the Review Judge’s finding that Mr. Kidd did not commence his application to set aside the *Award* within the time requirements of s. 47. Having done so, I see no error in her conclusion in this regard.

3. The Review Application was commenced outside of the time requirement of s. 47(1)

[61] Mr. Kidd’s attack against the Review Judge’s conclusion is grounded in the observation that the Appeal Application that came before Elson J. was issued within 30 days of his discovery of the facts that ground his allegation of a reasonable apprehension of bias, which he said occurred shortly after Mr. Brunson delivered his second decision. Mr. Kidd maintains therefore that, within the 30-day time requirement of s. 47(1), Unity was aware of the allegation that there was a reasonable apprehension that Mr. Brunson was biased and no party was prejudiced by the further delay in the proceedings. He argues that it would be “unjust and an error” to conclude that his judicial review application is barred by s. 47 of the *Arbitration Act*.

[62] Mr. Kidd’s arguments fail to come to grips with the fact that the Appeal Application requested an order under s. 45 of the *Arbitration Act*, but not s. 46. Even more centrally, his submissions ignore that the Review Application was a separate proceeding from the Appeal Application that had been dismissed by Elson J. If Mr. Kidd had intended to invoke s. 46 as a remedy in the context of that earlier proceeding, the appropriate course of action for him was to

appeal Elson J.’s refusal to allow him to amend his application and the associated dismissal of that application, rather than to commence a new action.

[63] As it is, Mr. Kidd is left to argue that the *Award* should be set aside in the context of the Review Application that was commenced on October 16, 2024. This was 282 days after the delivery of Mr. Brunsdon’s first decision and 203 days after Mr. Brunsdon’s second decision affirming the first. Even the shorter timeframe is well outside of what is allowed for in s. 47(1).

4. Section 47(2) does not assist Mr. Kidd

[64] Section 47(2) applies a principle of discoverability where an application to set aside an award is brought “on the ground that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud”. In such a circumstance, the application must be brought within the later of 30 days of the decision or “30 days after the applicant discovers the corrupt act or the fraud” (at s 47(2)(b)).

[65] Mr. Kidd’s arguments in this appeal receive no assistance from these provisions. I say this for two reasons.

[66] First, Mr. Kidd alleges that there is a reasonable apprehension that Mr. Brunsdon was biased, but he does not assert actual bias or, on my reading of his pleadings and evidence, anything else that approaches a corrupt act or fraud. Given this, it would appear that s. 47(2) does not apply at all on the facts of this case.

[67] I say this because while s. 46(1)(h) allows a party to apply to set aside an award where “an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias” and s. 46(1)(i) allows for such an application if “the award was obtained by fraud”, s. 47(2) only allows for an extension of the time limit prescribed in s. 47(1) on the grounds that the arbitrator has committed a corrupt or fraudulent act or the award was obtained by fraud, without mention of a reasonable apprehension of bias identified in s. 46(1)(h) as a basis to set aside the award. Said perhaps more clearly, the Legislature has distinguished between the commission of a corrupt or fraudulent act—which may encompass actual bias and attracts the benefit of discoverability—and a mere reasonable apprehension of bias, which does not. This interpretation of the overall effect of s. 47 is consistent with that given to the analogous provision in the *Arbitration Act, 1991*, SO

1991, c 17, in *Campbell v Toronto Standard Condominium Corporation No. 2600*, 2024 ONCA 218 at paras 53-61 [*Campbell*], wherein the Ontario Court of Appeal rejected the proposition that fraud encompassed constructive fraud.

[68] Second, even if s. 47(2) did apply, as it does when the allegation is that an arbitrator has committed a corrupt or fraudulent act or the award was obtained by fraud, the Legislature has seen fit to impose a very strict time limit of 30 days after the discovery of the corrupt act or fraud. No further extension or relaxation of the time limitation is contemplated by the legislation.

[69] In this case, Mr. Kidd himself claims to have been aware of the factual basis to assert the existence of a reasonable apprehension of bias shortly after Mr. Brunsdon delivered his second decision, and certainly before he issued the Appeal Application on April 25, 2024. Thus, it is plain and obvious that the Review Application, which was issued on October 16, 2024, was commenced more than 30 days after Mr. Kidd had discovered the corrupt act or fraud (giving him the benefit of the doubt that such conduct is alleged).

[70] It has been held by other courts that, except as provided by statute, the time limits for appealing or applying to set aside an arbitral award cannot be extended (*R & G Draper Farms (Keswick) Ltd. v 1758691 Ontario Inc.*, 2014 ONCA 278 at paras 16-21; *Campbell* at para 48; *Allen v Renouf*, 2019 ABCA 250 at para 6; and *Pearson v Pearson*, 2020 ABCA 260 at para 44). Mr. Kidd argues that this conclusion is unfair to him. However, it is one that is grounded in the clear wording of the *Arbitration Act* and is also one that is consistent with the objective of fostering efficiency and finality in commercial arbitration.

5. The Review Application was out of time

[71] Given all of this, even if the Review Application is interpreted as seeking to set aside the *Award* under s. 46 of the *Arbitration Act*, or, for that matter, as invoking a non-existent right of appeal under s. 45, the Review Application was out of time. The Review Judge therefore did not err in dismissing it on that basis.

C. Dismissal of the *Review Decision* appeal renders all other issues moot

[72] Mr. Kidd's appeals from the *Enforcement Order* and the *Vesting Order* are predicated on the proposition that those orders were prematurely made. His overarching submission is that those orders, which depended on the enforceability of the *Award*, should not have been made while its status was uncertain.

[73] In rejecting Mr. Kidd's argument on this point, the judge who made the *Enforcement Order* pointed out that the *Arbitration Act* does not create an absolute bar against enforcing an arbitration award while its validity is being challenged. In this regard, s. 50(3)(b) provides that the court *shall* give a judgment enforcing an award made in Saskatchewan *unless* certain conditions exist, one of which is that "an application to set the award aside or an application for a declaration of invalidity is pending". However, s. 50(5) provides the court with discretion to nonetheless enforce an award while such a challenge is proceeding:

(5) If the period for commencing an appeal, an application to set the award aside or an application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may:

(a) enforce the award; or

(b) order, on any conditions that the court considers just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced or until the pending proceeding is finally disposed of.

[74] The judge who made the *Enforcement Order* determined that it was appropriate to exercise the discretion given to her under s. 50(5) and to order the enforcement of the *Award* even while the Review Application was pending. She reached this conclusion for two reasons. First, she found that the fact that Mr. Kidd's Review Application "was only made in the face of the Town's enforcement application" made it appropriate to "decide upon the Town's enforcement application" (*Enforcement Order* at para 22). Second, she reasoned that, even if the *Award* was set aside and the fair market value of the land was determined to be a higher amount by a new arbitrator "the Town will simply have to pay more for the Land if that hypothetical comes to pass" (at para 23).

[75] The judge who granted the *Vesting Order* reasoned that the judge who granted the *Enforcement Order* had decided the issue. That judge further observed that Mr. Kidd had not (at that point) applied for a stay of the *Enforcement Order*. Finally, she concluded that, since Mr. Kidd

did not dispute that the land would be transferred to Unity at some point, and the only issue is the amount of the price, “[t]here is no sound reason to delay the inevitable” (*Vesting Order* at para 16).

[76] It is not necessary for this Court to address whether this constitutes a reviewable error on the part of the judges who made these two orders because, as conceded by Mr. Kidd during the argument of the appeals, the dismissal of the appeal from the *Review Decision* renders the issues in the appeals from the *Enforcement Order* and the *Vesting Order* moot. In this regard, as mentioned, Mr. Kidd’s appeals from the *Enforcement Order* and the *Vesting Order* were predicated on those orders being premature until the outcome of the Review Application was known. The dismissal of Mr. Kidd’s appeal from the *Review Decision* means that the *Award* is now sustained. In these circumstances, I decline to answer if the *Enforcement Order* or the *Vesting Order* were issued in error.

[77] These facts also render it unnecessary for this Court to address whether Kalmakoff J.A. erred in refusing to stay the execution of the *Enforcement Order* or the *Vesting Order*. Indeed, at the hearing of the appeal, counsel confirmed the fact that the *Vesting Order* has been registered, so there is nothing to stay.

D. Costs

[78] As the successful litigant in the appeals and in the s. 20(3) application, Unity is entitled to costs against Mr. Kidd. The June 12, 2025, order consolidating these three appeals reserved the costs of the application seeking that order to the panel. The order was made on consent and for the benefit of all parties. For this reason, I would not include any amount for costs for that motion.

[79] Unity has asked for costs on a solicitor and client basis, or at least on an enhanced scale. Solicitor and client costs are awarded in rare and exceptional cases and are generally ordered to censure a party in relation to the manner in which they have conducted the litigation (see, generally, *Siemens v Bawolin*, 2002 SKCA 84 at para 118; *Hope v Gourlay*, 2015 SKCA 27 at para 47; *Phillips Legal Professional Corporation v Vo*, 2017 SKCA 58 at para 151; and *Ghremida v Elgahwas*, 2023 SKCA 23 at para 64). Unity has pointed to nothing that convinces me that costs should be fixed on any basis other than with reference to what would amount to the regular tariff scale.

[80] To avoid further controversy between the parties, I would fix these costs at \$6,500. In settling on this amount, I was mindful that the appeals were consolidated and there was a single set of appeal books and one factum delivered by each party.

V. CONCLUSION

[81] For the reasons I have given, I would dismiss Mr. Kidd's three appeals, and his application under s. 20(3) of *The Court of Appeal Act, 2000*. I would order costs against Mr. Kidd, in favour of Unity, in the fixed amount of \$6,500.

“Leurer C.J.S.”

Leurer C.J.S.

I concur.

“Tholl J.A.”

Tholl J.A.

I concur.

“Bardai J.A.”

Bardai J.A.