

CITATION: BLUEWAVES MOBILITY INNOVATION INC. v. SI CHUAN HENG WAN
KE JI YOU XIAN GONG SI d.b.a ZILLNK, 2026 ONSC 4131
COURT FILE NO.: CL-26-00000103-0000
DATE: 20260716

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: **BLUEWAVES MOBILITY INNOVATION INC.**
AND
SI CHUAN HENG WAN KE JI YOU XIAN GONG SI d.b.a ZILLNK

BEFORE: W.D. Black J.

COUNSEL: *Young Park and Alexander Evangelista*, for the Applicant
Ahmed Shafey and Fabian Suarez-Amaya, for the Respondent

HEARD: July 3, 2026

ENDORSEMENT

Overview

- [1] There were two matters before me that are effectively two sides of the same coin.
- [2] That is, the applicant BMI (in this endorsement I will use this and other terms as defined in the parties' materials) applies under Article 34 of the UNCITRAL Model Law on International Commercial Arbitration to set aside the Award of the Arbitrator dated February 11, 2026 following an international arbitration (commenced by Zillnk).
- [3] Conversely, Zillnk asks the court to recognize and enforce the Award.
- [4] The Arbitration at issue was administered by the ICDR and took place in Toronto.
- [5] The hearing of the Arbitration spanned five days, and the parties exchanged extensive documentation, numerous witness statements and experts' reports, conducted examinations, and delivered lengthy closing submissions.
- [6] The Award requires BMI to pay Zillnk USD \$9,667,163 and CAD \$6,113,706, and to account for and reimburse Zillnk for the proceeds of future sales from intellectual property that

the Arbitrator found BMI to have misappropriated. Zillnk was also awarded its costs, fees and interest.

[7] In seeking to set aside the Award, BMI bluntly asserts that the Arbitrator failed in his basic obligations under the ICAA to “hear the parties’ case, to decide only what was put before him, to honour the contracts the parties made, and to explain why he ruled as he did.” BMI alleges that the Arbitrator breached each of these duties.

[8] For its part, Zillnk contends that BMI’s Set-Aside Application “bears all the hallmarks of an improper appeal disguised as an application under Article 34 of the Model Law,” and that the Arbitrator’s Award was in fact well-grounded in his findings of fact and based on a proper application of relevant law.

[9] The parties agree that the ICAA and the Model Law apply to the Arbitration, and that under Article 35(1) of the Model Law the court “shall recognize arbitral awards as binding and enforce them.”

[10] BMI, in its factum, acknowledges that setting aside an arbitral award is an exceptional remedy. Likewise, Zillnk underscores that under the Model Law, the bar for setting aside an arbitral award is very high, and that the Court of Appeal for Ontario, for example, has confirmed that reviewing courts should afford a “high degree of deference,” should intervene “only rarely” in international arbitrations. The Court of Appeal has also repeatedly warned against using the provisions of the Model Law to pursue appeals under the guise of a set-aside application.

[11] Zillnk asserts that, “At its core, the Award simply enforces the basic bargain that the parties struck when BMI first convinced Zillnk to let it sell Zillnk’s products in North America. Namely: pay Zillnk a portion of its profits when BMI sells and is paid for products that Zillnk designed and developed.”

Conclusion

[12] I find that the Award is just and fair in the circumstances at hand, and that the Arbitrator, who has considerable experience in conducting international arbitrations, presided over a reasonable and fair hearing, gave the parties a chance to present their evidence and arguments and to be heard, did not exceed his jurisdiction, did not violate public policy, and provided adequate reasons for the Award. In the circumstances I dismiss BMI’s Set-Aside Application, and grant Zillnk’s application to recognize and enforce the Award.

Relevant Underlying Facts

[13] For the most part, the parties agree on the relevant underlying facts, as set out in the following paragraphs (and taken, verbatim in some instances, from the parties’ respective summaries of those underlying facts).

A. Initial Interaction Between the Parties

[14] In late 2020 or early 2021, Robby Liu, the CEO of Zillnk, and Tim Mao, the CEO of BMI, became acquainted, and decided to work together to expand Zillnk's operations in North America. Starting in April 2021, and to that end, Mr. Mao began working as an employee of Zillnk, with the title of "North American Sales Executive."

[15] In the summer of 2021, Mr. Mao was approached by Michael Wu, a Senior Director of Telus, with an opportunity to design and supply Open Radio Access Network – ORAN – radios for the Telus Networks in Canada.

[16] In those circumstances, Mr. Mao proposed to Mr. Liu that Mr. Mao would set up a separate corporate entity in Canada to act as Zillnk's representative and sales channel in North America. Mr. Mao explained to Mr. Liu that customers in Canada would prefer to deal with a Canadian entity rather than a Chinese one. It is common ground that Mr. Liu relied on Mr. Mao's advice on this score, and agreed that Mr. Mao would establish "Zillnk Canada" (the name of which was later changed to BMI).

[17] Mr. Liu's evidence was that he had no control over this entity, but that he took no issue with Mr. Mao setting up this company, nor with the entity using the Zillnk name, inasmuch as he understood that there was "a mutual intention to cooperate and collaborate."

B. The Cooperation Agreement

[18] On September 6, 2021, the parties finalized and executed the Cooperation Agreement, formalizing the notion that the parties' relationship rested on "strategic, long-term and good faith cooperation." Consistent with this overriding ideal, Mr. Mao agreed in cross-examination that he conceived of the parties' relationship as akin to a joint venture and a partnership.

[19] Under the Cooperation Agreement, Zillnk was to design, develop and manufacture "Principal Products" which BMI would market and sell. To facilitate this arrangement, the Cooperation Agreement provided that the parties would have joint IPR (intellectual property rights).

[20] Although the Cooperation Agreement allowed discretion for BMI to set prices for the Principal Products, it also confirmed that Zillnk was entitled to a fixed proportion of BMI's gross margins, and that a price reduction could not diminish Zillnk's gross margin entitlement below certain specified amounts unless Zillnk agreed.

[21] Importantly, the Cooperation Agreement did not distinguish between and among products sold for the respective purposes of trial, testing or commercial deployment.

[22] Under the Cooperation Agreement, BMI was obliged to pay Zillnk for sales of Principal Products within five business days of receiving payment from a customer.

[23] The Cooperation Agreement allowed either party to terminate for material breaches that were not cured within 30 days, and provided that "[u]pon termination, all other provisions that expressly or by their nature survive shall survive termination of this License Agreement will

survive, including, without limitation, all payments due and owing to each party. All other rights and obligations of the parties shall cease upon termination of this License Agreement.”

C. Telus Orders and BMI's Non-Disclosure of Telus Payments and Non-Payment to Zillnk

[24] In July of 2022, Telus began ordering certain radios – the FDD Radios - for the purpose of assessing their suitability for the Telus network. Between July 2022 and December 2023, Telus ordered and Zillnk supplied 550 FDD Radios to Telus. BMI agrees that these FDD Radios were delivered.

[25] Each time Telus placed an order for FDD Radios, BMI issued a purchase order to Zillnk and Zillnk issued an invoice to BMI (as was agreed would be the process). BMI did not dispute or otherwise take issue with these invoices, or dispute Zillnk's entitlement to payment. By December 23, 2023, the amount accumulated under the invoices was USD \$2,328,134 and CAD \$1,333,233. Before the Arbitration, Zillnk did not know whether, or how much, Telus had paid BMI for the FDD Radios, in large part because, whenever Mr. Liu asked about the status of payments, Mr. Mao reported that Telus had not paid BMI.

[26] However, as a result of the production of documents in the Arbitration, Zillnk learned that Telus had actually paid over CAD \$11,000,000 to BMI, including more than CAD \$7,400,000 for products that Zillnk had supplied to Telus.

[27] Nonetheless, it is agreed between the parties and the Arbitrator confirmed that, to date, Zillnk has not been paid any amount for any of the products it supplied and for which BMI was paid by Telus. In its closing submissions in the Arbitration, as confirmed in the Award, BMI admitted for the first time that it owed Zillnk in respect of FDD Radios, but that it had not paid anything.

D. BMI's MPSA with Telus and BMI's Portrayal of Telus' Position

[28] BMI was also not forthcoming about the fact that, in July 2023, it negotiated and executed the MPSA (Master Product Services Agreement) with Telus. Zillnk was not a party to the MPSA, and BMI did not tell Zillnk that it was executing the MPSA, did not provide a copy, nor advise of the terms. Mr. Liu's evidence was that he repeatedly asked Mr. Mao if BMI had a long-term contract with Telus but that he never received a clear answer.

[29] The MPSA expressly contemplated the possibility that the IPR for the subject Products could be owned or licensed by a non-Canadian legal entity, or that the Products could be designed and manufactured outside Canada, and provided a specific mechanism to obtain approval from Telus in that regard.

[30] However, BMI did not tell Zillnk about this term in the MPSA, or even about the existence of the MPSA, and instead told Zillnk that Telus was demanding that Zillnk transfer its IPR to BMI.

[31] In that regard, in August of 2023, BMI began pressuring Zillnk to transfer the entirety of Zillnk's IPR to BMI. Mr. Mao told Mr. Liu that "for any radios that Zillnk supplies to Telus through BMI under the Cooperation Agreement...Telus requires the IPR over those radios to be held by a Canadian entity." There was no independent evidence before the Arbitrator to suggest that this statement was true.

[32] Mr. Mao doubled down on this proposition on August 9, 2023, writing to Mr. Liu on that date stating that "Telus legal" required the IPR to be transferred, and that this transfer was "non-negotiable."

[33] However, it appears that Mr. Mao never spoke directly to Telus legal, and BMI produced no documents, and called no witnesses from Telus legal or anyone else at Telus to substantiate this assertion.

[34] In the context of its request for Zillnk to transfer the entirety of the IPR to BMI, BMI also raised the spectre of national security concerns, alluding to concerns on the part of the Canadian government regarding Chinese telecommunications suppliers. While it is fair to say that such general concerns existed as at the relevant timeframe, no documents were produced referencing Zillnk as a party of concern in that context.

E. The Supplement Agreement

[35] Nonetheless, without knowing (because Zillnk's "partner" BMI did not disclose) that Telus had already paid BMI, Mr. Liu felt constrained to agree to the terms that Mr. Mao was telling him were demanded by Telus, in order to receive payment from Telus for the FDD Radios that Zillnk had already supplied. Moreover, as Mr Liu testified, he was still trusting that Mr. Mao/BMI was acting in good faith and pursuing their mutual interests under the Cooperation Agreement. In the circumstances, Zillnk agreed to execute the Supplement Agreement (dated August 11, 2023).

[36] It is clear that the Supplement Agreement, engendered in this context and based on BMI's representations about Telus's purported demands, transferred to BMI Zillnk's "entire right, title and interest in and to the Target Assets" and that the Target Assets comprised all IPR in the Products owned by Zillnk as of the Effective Date.

[37] Having regard to the various disputes that followed, BMI argued vociferously before me that, in the absence of clear provisions to the contrary, upon the termination of the Cooperation Agreement, the existence and terms of the Supplement Agreement meant that the IPR transferred to BMI under the Supplement Agreement remained wholly and entirely owned and controlled by BMI.

[38] In my view, apart from constituting an improper attempt to re-argue an issue decided by the Arbitrator, having regard to the commercial context in which the Supplement Agreement was negotiated, this suggested interpretation makes no sense.

[39] That is, it is plain and obvious that Zillnk agreed to the transfer of its IPR rights under the Supplement Agreement in the context of the Cooperation Agreement, and in the spirit of the

“partnership” thereunder, and on the basis of BMI’s representations about what Telus demanded in the circumstances.

[40] It makes no sense to suggest – as BMI does in argument – that Zillnk intended that, regardless of whether the parties continued their joint venture to develop and sell the Products, and even if the Cooperation Agreement was terminated in the near term, the transfer of IPR under the Supplement Agreement would be final and binding and ongoing for all purposes.

[41] To uphold that suggested interpretation would be to reward BMI for its misrepresentations and would be to allow BMI to exploit opportunistically the trust that its “partner” had shown by agreeing to the suggested steps that BMI had falsely claimed were required before payment could be obtained from Telus (notwithstanding that, unbeknownst to Zillnk, Telus had already paid and was continuing to pay).

[42] It is commercially nonsensical to suggest that in those circumstances Zillnk intended to irrevocably transfer its IPR, regardless of whether or not the Cooperation Agreement, and the parties’ relationship, continued.

F. Falling Out Between the Parties and Suspension of Contractual Services

[43] In parallel with the advent of the Supplement Agreement, Zillnk had been making requests of BMI to be paid for the Products it had supplied (confirmed by the invoices Zillnk had delivered. Zillnk made those requests on at least February 6, 2023 and October 17, 2023).

[44] Again and repeatedly in this context Mr. Mao (falsely) advised that BMI had not yet received any payment from Telus. Zillnk’s follow-up inquiries – as in the case of the October 17, 2023 inquiry, following the execution of the Supplement Agreement – on November 13, 2023 and December 3, 2023, went unanswered.

[45] After entering into the Supplement Agreement, having purportedly secured control of the IPR, BMI began seeking alternative manufacturers to produce FDD Radios for Telus. These efforts appear to have commenced as early as September 2023, a month after the execution of the Supplement Agreement. Initially BMI worked with an American manufacturer, Jabil Inc., in what it labelled the “Jasper Project”, with a view to cutting out Zillnk. The evidence shows that to that end, BMI paid approximately \$1 million to Jabil to advance the Jasper Project, at a point at which BMI had still paid nothing to Zillnk.

[46] Zillnk learned about BMI’s collaboration with Jasper on December 20, 2023, at which point Mr. Liu confronted Mr. Mao. In answer to Mr. Liu’s questions about whether BMI was trying to replace Zillnk as its partner, Mr. Liu described Mr. Mao as “evasive.” Mr. Liu asked Mr. Mao again in this context if Telus had paid BMI and Mr. Mao again said (again falsely) that BMI had not been paid.

[47] In these circumstances, Mr. Liu decided to temporarily suspend Zillnk’s aftersales support services to BMI, advising that if Zillnk was paid, it was amenable to resuming those services.

[48] Zillnk sent several follow up messages to BMI, on January 9 and 12 and February 8 and 9, suggesting that the parties engage in discussions, but received no response to these emails.

G. BMI's Purported Termination of Deal

[49] On February 10, 2024, Mr. Mao sent an email to Mr. Liu purporting to terminate the deal between the parties, and stating that, in view of Zillnk being deemed a "high risk" entity by Canadian authorities, "BMI is left with no other choices [sic] but partnering with Jabil and Intel to build new radio products in hope that will be acceptable." Mr. Mao went on to thank Zillnk for its "great support." Mr. Mao made no suggestion that Zillnk had breached the Cooperation Agreement or any other agreement.

[50] Zillnk did not accept BMI's termination, pointing out that BMI had not provided valid grounds for termination and noting that BMI had paid no consideration for the IPR (under either the Cooperation Agreement or the Supplement Agreement). BMI ignored this message. Zillnk eventually accepted the termination and commenced the Arbitration to recover the amounts it claimed owing to it.

H. BMI's Purported Sale of IPR

[51] Of note, on March 26, 2025, during the Arbitration, BMI purported to sell the IPR to its majority shareholder, Titan Crest LLC pursuant to an IP Transfer Agreement. BMI did not disclose this to Zillnk, seek Zillnk's consent, or pay anything to Zillnk, despite being aware that Zillnk took issue with BMI's purported ownership of the IPR (and despite being in the midst of the Arbitration in which that issue was being contested).

[52] On the same day, March 26, 2025, Titan Crest sold the IPR to an American company, AmpliTech, under an APA. For the purposes of the APA, neither Titan Crest nor BMI advised AmpliTech of the existence of the Arbitration, and in fact both Titan Crest and BMI represented under Section 2.04(c) of the APA that, "There are no claims pending or threatened in writing by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the Purchased IP."

[53] In respect of this representation in the APA, which clearly was untrue, Mr. Mao testified that he had made the representation because he did not have legal advice at the time of the APA. He acknowledged in cross-examination that Titan Crest had its own counsel, and that BMI was in the midst of the Arbitration at the time and could have asked for advice from its own counsel. The Arbitrator rejected Mr. Mao's purported explanation for making the untrue representations to AmpliTech, saying that "Mr. Mao is a very intelligent and experienced business person who would have no difficulty understanding what the correct reply should have been regarding any outstanding claims."

[54] In the APA, AmpliTech agreed to pay USD \$8 million in cash and shares for the IPR and for Telus purchase orders totaling approximately \$20 million. In respect of those purchase orders, BMI is entitled to receive payments under an agreement between it and AmpliTech.

I. BMI's Production of Fabricated Agreement

[55] When Zillnk's counsel inquired about these details of the transaction, BMI initially produced a version of an IP transfer agreement showing that all proceeds received by Titan Crest would be remitted to BMI.

[56] In fact, the actual IP Transfer Agreement contained no such language. What BMI had provided was a fabricated version of the IP Transfer Agreement; as soon as BMI's counsel learned what had been delivered to Zillnk's counsel it withdrew the falsified version.

[57] BMI also alleged that the IP it had sold to AmpliTech (through Titan Crest) was IP that it had created itself, rather than the IPR transferred from Zillnk. On this issue, the Arbitrator found, and Zillnk emphasizes, that BMI was relying on AmpliTech's refusal to permit disclosure of the IPR in order to avoid production within the Arbitration, and found that BMI took no steps either to obtain AmpliTech's agreement to disclose the IPR, or to compel that disclosure. The Arbitrator was "left with the belief that had the documentation been produced it would not have been helpful to BMI's case."

The Test to Set Aside an International Arbitral Award

[58] As noted above, Zillnk cites, and BMI does not particularly dispute, that the threshold for the court to set aside an international arbitration award is high, and in particular it cannot set aside such award simply because the court believes that the arbitral tribunal wrongly found a particular fact or wrongly decided a point of law.

[59] To that effect, the Court of Appeal for Ontario has repeatedly emphasized that a reviewing court must accord a high degree of deference to the awards of international arbitral tribunals under the Model Law. Zillnk echoes that statement in BMI's factum acknowledging that "setting aside an arbitral award is an exceptional remedy."

BMI's Arguments

[60] BMI makes three arguments pursuant to Article 34(2)(a)(ii):

- (a) That the Arbitrator demonstrated a lack of procedural fairness by:
 - (i) Ignoring the contract and evidentiary record in holding BMI liable for unpaid amounts in relation to both R1 and R2 radios;
 - (ii) Ignoring the express terms of the commercial agreements and evidence on the enforceability of the Supplement Agreement and BMI's right to use the IPR; and
 - (iii) Failing to consider expert evidence.

[61] BMI also argues that the Arbitrator acted outside his jurisdiction in rendering the Award, that the Award was contrary to public policy, and that the Arbitrator provided insufficient reasons to explain and justify the Award.

Discussion of Procedural Fairness Issues

[62] In support of its argument that BMI was denied procedural fairness, BMI relies in particular on the decision of Penny J., in this court, in *Nelson v. The Government of the United Mexican States*, 2022 ONSC 1193. In *Nelson*, His Honour identified as one of the circumstances in which a court might find procedural unfairness, a scenario in which the tribunal ignored or failed to take into account the parties' evidence or submissions, and confirmed that a failure to give a party an opportunity to present its case may constitute a breach of procedural fairness.

[63] On that note, BMI alleges that the Arbitrator's ruling on Zillnk's unpaid R1 and R2 invoice claim is "divorced from the express terms of the Cooperation Agreement." It argues that the Cooperation Agreement is clear that the cost of sample R1 and R2 radios is to be borne by the party who designed and manufactured the Products, and that payment was due to the manufacturer "only when the customer pays for the samples."

[64] Zillnk responds by reminding the court that the onus on a party seeking to set aside an award on the basis of a failure of due process is very high. Pointing to leading cases on this topic, Zillnk underlines that "The violation must be so serious that it offends our most basic notions of morality and justice and cannot be condoned under the law of the enforcing state" (*All Communications Network of Canada v. Planet Energy Corp.*, 2023 ONCA 319, *Consolidated Contractors Groups S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939). Zillnk also emphasizes that it is not the proper role of this court to "consider the evidentiary record anew and substitute new findings for those made by the Arbitrator" (*All Communications*, paras. 59-60).

[65] It asserts, and in my view the record confirms, that the Arbitrator's decision that BMI had an obligation to pay for the R1 and R2 invoices resulted from his appropriate consideration and weighing of competing evidence.

[66] In paragraphs 34 through 87 of the Award, the Arbitrator sets out his detailed factual findings, encompassing the agreements between the parties, the context of those agreements, and the actions of the parties in relation to their contractual commitments.

[67] He then recounts the parties' competing positions in reasonable detail.

[68] The Arbitrator then sets out his analysis of the issues raised. On the issue as to the payment of invoices, the Arbitrator notes that "for the first time in its closing submissions" BMI admitted that certain invoices issued to Telus were in fact for the Products, and that BMI was paid CAD \$1,213,258.46 for 300 R2 radios and parts that Zillnk had shipped on October 31, 2023.

[69] The Arbitrator observed that, "While the invoices issued by BMI to TELUS for Development Fees specifically refer to a Product as being part of that overall Development Fee, by not breaking out the actual cost of the radio product as invoiced by Zillnk, BMI alleges TELUS

did not actually pay for the sample Product.” However, the Arbitrator found in that regard that “The structuring of the invoices to TELUS by BMI in this way and now alleging all payments to BMI from TELUS were Development charges due only BMI, is clearly a bad faith attempt to get around the wording of the Cooperation Agreement. The BMI invoices clearly include and are referable to Products for both R1s and R2s delivered by Zillnk.”

[70] It is clear, in my view, based on the evidentiary record before him, that this was a finding reasonably available to the Arbitrator. It is also a conclusion emerging from a careful analysis of that record, and responsive to the parties’ respective arguments on that point.

[71] On the related issue, on which BMI submitted that the changes made from the R1 radios to the R2 radios were substantial and that the R2s had cannibalized the R1s and rendered the intellectual property and test data relating to the R1s “completely useless,” and BMI’s argument that there was “no basis under the Cooperation Agreement of otherwise at law for Zillnk to claim payment for these ‘defective products’, the Arbitrator held:

“The problem with this argument is that the R1 samples were paid for by TELUS as part of the prototype development invoices. TELUS has never demanded repayment of these amounts. The R1s were simply prototypes that in the course of the TELUS Project were replaced by the R2 prototype which was a superior product.”

[72] This finding is consistent with Zillnk’s evidence that the R2s were an improvement on the R1s and would be more profitable for both Zillnk and BMI, and that Telus approved of the shift from the R1 to the R2, paid for both types, and never returned either.

[73] Moreover, as Zillnk argued and the Arbitrator accepted, section 2.8.2 of the Cooperation Agreement says that: “If the customer pays for the samples, the payment shall be due to the party who designed and manufactured the products [Zillnk] without any profit sharing with the other party [BMI]. As Zillnk emphasized before the Arbitrator and again before me, Telus paid for the samples, and Zillnk was thus entitled to payment.

[74] In terms of the Arbitrator’s consideration of the Supplement Agreement, Zillnk argues that the Arbitrator’s approach was consistent with the approach to contractual interpretation countenanced by the Supreme Court of Canada and other appellate courts, namely that the interpretation should be contextual, and that giving effect to the plain meaning of the words on the page can take into account the factual matrix within which the contract was formed.

Discussion of Supplemental Agreement

[75] In doing so, consistent with my observations on this issue set out above, the Arbitrator found that the Cooperation was in fact “supplemented” by the Supplement Agreement and that the breach and termination of the Cooperation Agreement also resulted in the termination of BMI rights under the Supplement Agreement.

[76] As set out above, this interpretation is consonant with my view of the reality of the circumstances, but whether the Arbitrator’s interpretation was “right” or not, it is clear that the

Arbitrator appropriately considered the interrelationship and interplay between the Cooperation Agreement and the Supplement Agreement, that his decision is entitled to deference, and that the Arbitrator's approach and decision on this issue cannot reasonably be construed as a breach of procedural fairness.

Issue re Expert Evidence

[77] Relatedly, BMI argues that the Arbitrator failed to consider the expert evidence put before him.

[78] Zillnk responds by referencing Penny J.'s decision in *Nelson*, in which His Honour was confronted with a 117-page award in which the applicant's expert was not mentioned at all. In those circumstances, Penny J. found that the expert's evidence nonetheless formed a part of the record and was cited extensively in the applicant's claim and reply, and dismissed the set-aside application.

[79] In the case at hand, the Arbitrator clearly considered and discussed the technical expert evidence in several paragraphs of the Award, found both experts to be qualified, but noted that because of BMI's failure to produce material relative to the IPR, the evidence on this topic was necessarily somewhat limited and general.

[80] Nonetheless, the Arbitrator found that both technical experts agreed that BMI would not need to redesign "its" product from scratch, and that the FDD radios supplied to Telus after December 23, 2023, were provided under the original pre-existing regulatory approval. In the Award, the Arbitrator referenced certain specific concessions made by BMI's expert in cross-examination.

[81] While the portion of the Award dealing with this damages issue was somewhat limited, this is understandable given the Arbitrator's finding that contractual damages was the appropriate measure of the losses. He wrote:

"BMI continues to benefit from its breach of the Cooperation Agreement by continuing to sell products based on the Zillnk IPR to TELUS. Their right to do so comes from the license given by AmpliTech. As such, Zillnk continues to be entitled to be compensated. As stated above, the 25% gross margin amount has the benefit of providing Zillnk compensation for damages for breach of contract similar to what would have been recovered under the contract, without resorting to the concept and complications of a resulting trust."

[82] As can be seen, the Arbitrator's Award on damages reflects the money that Zillnk would have received had BMI not breached the contract, including the value of the AmpliTech transaction. I find that this is a rational approach to quantifying the damages in this case, that in any event deference is again owed to the Arbitrator, and that his approach, as Zillnk submits "does not seriously offend our most basic notions of morality and justice."

Arguments re Arbitrator's Jurisdiction

[83] In terms of jurisdiction, the Court of Appeal for Ontario has cautioned that, with respect to international arbitrations, courts must “limit themselves in the strictest terms to intervene only rarely” with arbitral awards, “including on issues of jurisdiction” (*United Mexican States v. Cargill, Inc.*, 2011 ONCA 622).

[84] BMI argues that the Arbitrator exceeded his jurisdiction in two ways: by making an order for financial disclosure and audit rights flowing from the ongoing misuse of IPR that the Arbitrator found BMI to be engaged in; and, by “effectively rewriting” the parties’ contracts.

[85] It is clear and not contested that Zillnk learned in June 2025, during the course of the Arbitration, that BMI had sold the IPR to a third party. Upon becoming aware of this sale, Zillnk amended its pleadings to claim for an accounting relative to this sale and BMI’s revenues and profits realized thereby, and for additional damages on that score. BMI responded to these claims in its pleadings, and the parties both addressed this issue in their written and oral submissions at the Arbitration.

[86] In my view the Arbitrator’s decision on this issue fairly considers and weighs the evidence that emerged during the course of the Arbitration, and crafts a reasonable and appropriate remedy to address the consequences of BMI’s unauthorized sale of the IPR. Contrary to BMI’s submissions, the operation and effect of the remedy provided by the Arbitrator is not indefinite. Rather, Zillnk’s entitlement to an accounting and damages subsists only for as long as BMI’s finite entitlement to payments from the party to whom it sold the IPR.

[87] Nor do I accept that the Arbitrator, in the Award, “rewrote” the agreements between the parties. In my view, as set out above, the Arbitrator engaged in a legitimate and appropriate exercise of contractual interpretation, just as he was tasked and obliged to do in the Arbitration that the parties agreed to submit. I understand that BMI is unhappy with the result, and disagrees with it; this cannot and does not give rise to an issue of jurisdiction.

Public Policy Arguments

[88] In terms of BMI’s arguments that the Award reflects violations of public policy, I note that, again, establishing a violation of public policy in the context of an international arbitration is a “very high burden” (*Clayton v. Canada (Attorney General)*, 2024 ONCA 581).

[89] In *All Communications*, the Court of Appeal for Ontario directed that the public policy defence under Article 34(2)(b)(ii) should be invoked “only if the judgment involves an act that is illegal in the forum or if the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum” or “offends our local principles of justice and fairness in a fundamental way.”

[90] Zillnk points to the Court of Appeal for Ontario’s decision in *United Mexican States v. Feldman Karpa* (2005) 74 O.R.(3d) 180 (ONCA), to illustrate the high bar required for a public policy argument to succeed. In that case, the evidence showed that Feldman Karpa had made fictitious rebate claims, and that the arbitral tribunal had adjusted the damages award downward to account for those fictitious claims. The Court of Appeal noted and did not condone the conduct,

but nonetheless upheld the award, finding that deference was owed to the tribunal in deciding how such conduct should be addressed in its decision. The Court of Appeal expressly refused to set aside the award on the basis of public policy.

[91] Similarly, in *Clayton*, the Court of Appeal for Ontario emphasized the high standard required to meet the public policy hurdle, saying that “final and binding arbitration decisions are not to be reviewed for reasonableness to determine whether they can be said to be so unreasonable as to be unenforceable on public policy grounds.”

[92] In effect, BMI’s public policy arguments essentially reiterate the contractual interpretation and jurisdictional arguments canvassed above. Having rejected those arguments in and of themselves, I find that they rise nowhere near the level required to meet the high bar for a public policy argument to succeed. Again and for greater certainty, I find the Arbitrator’s review of the evidence, consideration of the arguments, and conclusions to be reasonable in the circumstances. Taking into account the deference required for international arbitration awards, I find that BMI’s set-aside application falls well short of the mark in virtually every respect.

Overall Conclusions

[93] As such, I dismiss BMI’s motion.

[94] It follows, and I confirm, that I am granting Zillnk’s application for recognition and enforcement of the Award. I direct that BMI must:

- (a) Pay to Zillnk CAD \$6,113,706, and an amount in Canadian currency sufficient to purchase USD \$9,667,163, at a bank in Canada listed in Schedule I to the *Bank Act* (Canada);
- (b) Pay to Zillnk CAD \$88,850 as reimbursement of the ICDR administrative fees and expenses of the Arbitrator;
- (c) Pay to Zillnk interest on the amounts set out above in paragraphs (a) and (b) at a rate of 5.3% per annum, accruing as of February 11, 2026;
- (d) Provide quarterly reports to Zillnk setting out its revenue from all sales of products using the IPR relating to the radio frequency technology used in 4T4R, 4T8R and Small Cell Radios;
- (e) Allow for Zillnk to audit the books of BMI once per year, at its own expense, to determine the extent of the Disclosable Revenue;
- (f) Pay to Zillnk 25% of the Disclosable Revenue within 30 days of the receipt of the quarterly reports and interest at the pre-judgment interest rate established under the *Courts of Justice Act*, RSO 1990, c.C.43 on such amounts, starting after such 30-day period if payment is not made; and

- (g) Pay to Zillnk CAD \$346,345.84, and an amount in Canadian currency sufficient to purchase USD \$2,041,672.86, at a bank listed in Schedule I to the *Bank Act* (Canada) as reimbursement for Zillnk's legal costs of the Arbitration.

Costs

[95] Zillnk is also entitled to its costs of the applications before me. It does not appear that either party has uploaded Costs Outlines as required. It may be that there are offers to settle that will or may factor into any costs award.

[96] I direct the parties to confer and attempt to agree on the appropriate costs award for this hearing. If they cannot agree within two weeks of the date of release of this decision, then I am prepared to receive Zillnk's Costs Outline, accompanied by written submissions of no more than three pages in length, within one week thereafter. BMI is to deliver its responding submissions on costs, also not to exceed three page in length, and, at its option may also deliver a Costs Outline, within one further week after the receipt of Zillnk's costs submissions.

W.D. BLACK J.

DATE: JULY 16, 2026