SUPERIOR COURT

2026 QCCS 4040 (CanLII)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-066616-257

DATE: October 15, 2026

BY THE HONOURABLE PATRICK OUELLET, S.C.J.

JUBILANT GENERICS LIMITED
and
JUBILANT PHARMOVA LIMITED
Plaintiffs
v.
JAMP PHARMA CORPORATION
Defendant
and
JACQUES R. FOURNIER
Mis en cause

JUDGMENT ON AN APPLICATION SEEKING THE ANNULMENT OF A PARTIAL ARBITRAL AWARD

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1. OVERVIEW

[1] The Plaintiffs (collectively "**Jubilant**") seek the annulment of a partial arbitral award dated September 16, 2025[1] (the "**Award**") rendered by the mis en cause Mtre. Jacques R. Fournier, acting as sole arbitrator (the "**Arbitrator**"). The Award only addressed liability and related issues, as the parties agreed that issues relating to quantum would be dealt with in a second phase of the arbitration. The arbitration was conducted under the *Arbitration Rules of the International Court of Arbitration* ("**ICC Rules**")[2].

[2] Jubilant contends that the Award should be annulled because the arbitration was allegedly "riddled with a sustained denial of Plaintiffs' right to be heard, repeated failures to apply the parties' agreed procedural framework, refusals to adjudicate live and properly articulated claims, and a consistent pattern of unequal treatment that privileged Defendant's position while sidelining Plaintiffs', culminating in a reasonable and objective apprehension of bias on the part of the"[3] Arbitrator.

[3] Jubilant also contends that the Arbitrator's conduct during the arbitral proceedings, viewed holistically, gives rise to a reasonable apprehension of bias on his part.

[4] For the reasons that follow, the Court disagrees with Jubilant's assertions and dismisses the Application to annul the Award, as Jubilant failed to discharge its burden to show any valid reason that could justify the annulment sought.

2. BRIEF SUMMARY OF THE FACTS

[5] The Defendant ("**Jamp**"), who was the Claimant in the arbitration, is a distributor of generic prescription drugs, whereas the Plaintiffs (the Respondents in the arbitration) are manufacturers and suppliers of such drugs.

[6] Jubilant and Jamp were parties to eight (8) license, supply and distribution agreements, all of which contained identical arbitration clauses, providing *inter alia*, that any dispute arising from those agreements would be resolved through arbitration under the ICC Rules. The agreements are all governed by the laws of the province of Quebec and the laws of Canada applicable therein.

[7] The parties' relationship began to deteriorate in 2019, following certain regulatory measures that led Jubilant to seek contractual price adjustments, which were refused by Jamp. This refusal led to the suspension of deliveries of certain products and triggered broader disputes over various issues.

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1 Exhibit P-1.
2 Exhibit P-9.
3 *Originating Application seeking the annulment of a partial arbitral award*, para. 3.

[8] It is in this context that, in October 2019, Jamp filed a *Request for Arbitration* with the International Court of Arbitration[4] ("**ICC Court**").

[9] In December 2019, Jubilant filed its *Answer to the Request for Arbitration and Counterclaims*[5], in which they advanced two (2) distinct counterclaims: (1) for license fees claimed from Jamp's affiliate, Angita Pharma Inc. ("**Angita**"), and (2) for interest due to late payments.

[10] In January 2020, Jamp filed its *Reply to the Respondents' Counterclaims*[6].

[11] The parties initially agreed to appoint Mtre. Joel A. Silcoff to act as sole arbitrator.

[12] In May 2020, the parties agreed on the Terms of Reference[7] ("**TOR**") for the conduct of the arbitration, pursuant to Article 23 of the ICC Rules. The TOR are signed by the parties' lawyers and by Mtre. Silcoff.

[13] Jamp's *Statement of Claim*[8] was filed in February 2021.

[14] In April 2021, Jubilant filed its *Statement of Defence and Counterclaims*[9]. At paragraphs 161 to 170 thereof, Jubilant attempted to introduce new counterclaims that were not mentioned in the TOR, concerning, *inter alia*, the supply and distribution of a product called Cinacalcet (the "**Cinacalcet Claim**").

[15] In May 2021, Jamp filed its *Reply to Statement of Defence and Counterclaim*[10]. It objected to the inclusion of the Cinacalcet Claim in the arbitral proceedings because it fell outside the limits of the TOR and Jubilant had not sought authorization to add it[11].

[16] In November 2021, Jubilant filed *Respondents' Motion for Safeguard Orders, Partial Dismissal and De Bene Esse Authorization to Amend Terms of Reference*[12] (the "**Safeguard Order Motion**"). This Motion sought, *inter alia*, orders requiring Jamp to take delivery of certain products and to pay outstanding amounts.

[17] A case management conference presided over by Mtre. Silcoff was held on March 24, 2022, during which the Safeguard Order Motion was "continued *sine die*"[13].

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4 Exhibit P-3.
5 Exhibit P-4.
6 Exhibit P-5.
7 Exhibit P-2.
8 Exhibit P-6.
9 Exhibit P-7.
10 Exhibit P-8.
11 Exhibit P-8, para. 80-82.
12 Exhibit P-12.
13 Exhibit P-10.

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[18] In March 2023, Mtre. Silcoff passed away suddenly. In May 2023, the parties agreed to appoint the Arbitrator to act as sole arbitrator in replacement of Mtre. Silcoff.

[19] In February 2024, the parties' lawyers signed a *Sixth Amended Procedural Timetable (First Stage of the Arbitration)*[14], which provides the following:

> "1. This Procedural Timetable is subject to the Parties' and the Tribunal's agreement to bifurcate the arbitration proceedings in accordance with the following terms:
>
> 2. The parties and the Tribunal hereby agree to bifurcate the arbitration proceedings such that the arbitration will be dealt with in two (2) stages. **At the first stage** of the arbitration, the parties will address and **the Tribunal will**, prior to the second stage of the arbitration (if such stage is necessary), **render an award with respect to all claims asserted in the Claimant's "Request for Arbitration" and the Respondents' "Answer to the Request for Arbitration and Counterclaims"** (as may be further detailed, respectively, by the parties) with the exception of the proof of the damages claimed and any expert report that the parties intend to rely on in support thereof. The issue of the proof of damages claimed and any expert report filed in support thereof would, if necessary depending on the Tribunal's award with respect to the first stage of the arbitration, be dealt with at the second stage of the arbitration.
>
> 3. Without limiting the generality of the foregoing, the Parties and the Tribunal hereby agree that the issue of whether the Claimant is entitled to damages and the issue of the application of the various contractual clauses or legal principles, including limitation of liability and liquidated damages, as well as any potential issue that could arise with respect to mitigation or causality, if any, will be dealt at the first stage. However, the proof of the actual damages suffered and the quantification methodology shall, if necessary, be dealt with at the second stage of the arbitration.
>
> 4. **The questions that would thus have to be answered at the first stage of the arbitration would be**:
>
> i. Are the Respondents in default of any obligations pursuant to the Agreements?
>
> ii. Are the notices relating to Angiotensin II Receptor Blockers (ARBs), known as "sartans", issued by Health Canada, events of "Force majeure" as defined in the Agreements?
>
> iii. Is the Claimant limited in terms of claimable damages by any contractual limitations of liability clauses or other applicable legal principles, including related to whether Claimant mitigated its alleged damages, and whether there is a causal relationship between Claimant's alleged damages and the Respondents' alleged faults?

[14] Exhibit D-19.

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> iv. Are Respondents entitled to any fees in connection with the cross-licenses granted to Angita Pharma Inc. ("Angita")? Is Claimant's representation that Angita is an "Affiliate" (as such term is defined in the Agreements) correct?
>
> v. Is Claimant liable for the late payment of invoices?
>
> vi. Pending the answers to the above questions, are the Respondents entitled to terminate the Agreements?
>
> 5. The questions that would have to be answered at the second stage of the arbitration, pending the Tribunal's decision at the first stage, would be:
>
> i. What damages is the Claimant entitled to?
>
> ii. What is the quantum of such damages?"
>
> [Emphasis added]

[20] The Court notes that the questions at issue listed in this timetable do not include any reference to the Cinacalcet Claim, the Claim for Refused Products, or the New Counterclaim, as those terms are defined below.

[21] In April 2024, as provided for in the above-mentioned timetable, the parties filed additional detailed witness statements[15].

[22] During a case management conference held on May 6, 2024, Jubilant raised its intention to advance an additional counterclaim. This counterclaim related to the products that Jamp refused to accept in February 2022, which had triggered Jubilant's Safeguard Order Motion. Jubilant intended to claim, as damages, the value of the products that Jamp had refused (the "**Claim for Refused Products**").

[23] Jamp objected to this late inclusion of a new claim in the arbitration. This issue was left for the Arbitrator to decide in the Award.

[24] A four (4) day hearing, presided over by the Arbitrator, took place later in May 2024, at which time the witnesses who had signed additional detailed witness statements were cross-examined.

[25] The parties' closing arguments were made in writing in Post-Hearing Briefs filed during the first half of June 2024[16].

[26] In its Post-Hearing Brief, Jubilant advanced a new claim in relation to Jamp's alleged unauthorized sharing or transfer of proprietary formulas and Product Dossiers to third parties (the "**New Counterclaim**").

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15 Exhibits P-20, P-22, D-20, D-22 and D-23.
16 Exhibits P-13, P-14 and P-15.

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[27] In its response to Jubilant's Post-Hearing Brief, Jamp contested Jubilant's right to bring this New Counterclaim, based on the TOR and Article 23(4) of the ICC Rules.

[28] On June 19, 2024, the Arbitrator presided over a one-day hearing to allow the parties' lawyers to present their closing arguments orally.

[29] The Award was rendered fifteen (15) months later, on September 16, 2025.

[30] The Arbitrator concluded that Jubilant had breached numerous contractual obligations and that certain limitation of liability provisions contained in the various agreements were inapplicable. He also concluded that Jubilant had wrongfully terminated various contracts and had failed to provide Jamp with complete Product Dossiers for certain products. The Arbitrator also dismissed some of Jamp's claims for late delivery of products and did not agree with Jamp that Jubilant's conduct regarding certain products constituted gross negligence. Finally, he dismissed Jubilant's counterclaim concerning license fees it was claiming in relation to Angita.

[31] In the Award, the Arbitrator declined to entertain certain counterclaims advanced by Jubilant, namely the Claim for Refused Products, the Cinacalcet Claim, and the New Counterclaim. His reasons for so doing are as follows[17]:

> "**b) <u>JUBILANT'S DEMAND FOR AMENDMENT TO CLAIM FOR MERCHANDISE THAT WAS OFFERED FOR DELIVERY AND REFUSED BY JAMP</u>**
>
> [64] Jubilant filed a demand for a Safeguard Order signed on 29 10 2021, where it asked that Jamp be forced to take delivery of a certain number of products, and to pay the price of the same.
>
> [65] This Safeguard Order demand was never presented to the Tribunal.
>
> [66] At a conference, on 06 2024, Jubilant did mention that it wanted this demand to be added to its counterclaims. The Tribunal mentioned that a proper demand for amendment would have to be made and that it would then deal with it. Jamp objected to this claim being added since Jubilant never sought leave of the Tribunal.
>
> [67] No formal demand was made, and thus, the Tribunal will not entertain this claim and this for the following reasons:
>
> [68] This matter has to be resolved by virtue of Art 23(4) of the Rules that states:
>
> *After the Terms of References have been approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitration*

[17] Exhibit P-1.

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Tribunal which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

[69] The process to get this arbitration to the Hearing stage has been, to say the least, difficult. Whether the demand for the amendment was made on 06 2024, or at the end of the testimonies does not change the fact that a demand made verbally on the eve of the hearings is untimely and if it were granted it would have jeopardized the process.

[70] The amendment is basically asking for the price of merchandise that was refused. This would necessarily open a debate on mitigation, and it would have led to a postponement.

[71] Therefore, the inclusion of this new claim cannot be allowed and there can be no ruling on the proposed amendment.

c) <u>DEMAND TO ADJUDICATE ON CINACALCET CONTAINED AT PAR. 161 TO 167 OF JUBILANT'S STATEMENT OF DEFENCE.</u>

[72] For the first time in its Statement of Defence, Jubilant demands adjudication of its claim for damages owed based on Jamps not having ordered minimum quantity. This demand was not considered when the arbitration started, as it was never referred to in the Terms of Reference and first appeared in the defence and the counterclaim after the Terms of Reference had been agreed to. Respondents failed to seek leave to introduce it in conformity with Rule 24(3) (sic).

[73] In its reply to the statement of defence that is dated 25 05 2021 Jamp formally objected on the basis of the Rules, namely 24(3) (sic) to this claim and to a reserve of rights with respect to Escitalopram since no permission was ever sought according to Art 24(3) (sic) of the Rules (Paras 81 to 83 of the Reply to the Statement of Defence and counterclaims).

[74] Having known of the objection for three years prior to the hearing, Jubilant did not seek permission according to Art 24(3) (sic) of the Rules. Therefore, the Tribunal refuses the inclusion of this claim as it is contrary to the Rules and to the Terms of Reference since it has not been authorized.

<u>d) AMENDMENT TO CLAIM FOR ILLEGAL USE OF LICENSE</u>

[75] In its post-hearing brief, at Para 68 to 85, Jubilant claims that it learned during the testimony of Jamp representatives that contracts were given to third Parties in breach of its proprietary rights on the formulas and asked to be entitled to claim damages because of this.

[76] At the oral hearing, at the stage of the argument, three weeks after the evidence had been concluded, Jubilant withdrew this demand but asked that its rights be preserved.

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> [77] The Tribunal will simply answer that no ruling can be made on a demand that is not in the record and that accordingly, it cannot be considered that that demand has been dismissed. This is meant to clarify that no ruling is made on the merits as was asked by counsel for Respondents."

[32] Jubilant forcefully disagrees, to say the least, with the Arbitrator's decision not to entertain the Cinacalcet Claim, the Claim for Refused Products and the New Counterclaim during the initial phase of the arbitration.

[33] On October 15, 2025, Jubilant filed an application with the ICC Court to challenge the Arbitrator's impartiality and independence[18], in accordance with Article 14(1) of the ICC Rules. The Court notes that the arguments advanced therein are the same as those pleaded before this Court, save for two arguments that were presented to the ICC Court but abandoned in the instant case.

[34] On December 2, 2025, the ICC Court dismissed Jubilant's challenge against the Arbitrator's impartiality and independence, with reasons to follow[19]. Such reasons were not yet available when Jubilant commenced the present proceedings to seek the annulment of the Award on December 12, 2025.

[35] The ICC Court released its reasons three days later, on December 15, 2025[20]. After ruling that Jubilant's application was admissible in part under the ICC Rules, the ICC Court provided detailed reasons for dismissing every argument[21] advanced by Jubilant to contest the Arbitrator's impartiality and independence.

[36] Following the completion of the first phase of the arbitration, the parties must now proceed on the second phase, i.e. the quantification of damages.

[37] However, Jubilant now seeks the annulment of the Award. Should the Court decide not to annul the Award, Jubilant subsidiarily asks the Court to appoint a new arbitrator with directions to hear and determine the Cinacalcet Claim, the Claim for Refused Products, and the New Counterclaim, and to determine if leave should be granted under Article 23(4) of the ICC Rules for those claims. Jubilant also subsidiarily ask that for Phase 2 of the arbitration, a new arbitrator be appointed to decide all quantification issues arising from the Award.

[38] Jubilant invokes the Arbitrator's refusal to entertain the Cinacalcet Claim, the Claim for Refused Products, and the New Counterclaim as the principal bases for Jubilant's assertion of a reasonable and objective apprehension of bias.

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18 Exhibit P-16.
19 Exhibit P-17.
20 Exhibit D-36.
21 At paragraph 36 of its ruling, the ICC Court provided reasons for dismissing on the merits the two (2) arguments that had been deemed inadmissible under the ICC Rules.

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[39] Jubilant also argues that "when viewed cumulatively, the Sole Arbitrator's conduct reveals a consistent pattern of unequal treatment, selective application of procedural rules, mischaracterization of Jubilant's claims and procedural indulgence towards Jamp"[22].

[40] Finally, Jubilant asserts that the 15-month delay to render the Award, combined with the Arbitrator's "own acknowledgment of difficulty and inexperience in handling an international arbitration of this complexity, and the fact that multiple draft awards were reportedly rejected by the ICC before the present version was issued, reinforce the impression that the Sole Arbitrator sought to simplify his task by rejecting Jubilant's claims on questionable procedural bases, rather than grappling with their admissibility and merits"[23].

[41] The Court will now address each of these arguments separately to determine whether Jubilant has met its heavy burden of showing a legitimate cause for annulment. Before doing so, the Court will discuss the law applicable to the annulment of an arbitral award.

3. APPLICABLE LAW

[42] Article 646 of the *Code of Civil Procedure* ("**C.C.P**.") establishes an exhaustive list of criteria that may prevent the court from homologating an arbitration award:

> **"646.** The court cannot refuse to homologate an arbitration award or a provisional or safeguard measure unless it is proved that
>
> (1) one of the parties did not have the capacity to enter into the arbitration agreement;
>
> (2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under Québec law;
>
> (3) the procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed;
>
> (4) the party against which the award or measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case; or
>
> (5) the award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not homologated if it can be dissociated from the rest.

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22 *Originating Application seeking the annulment of a partial arbitral award*, para. 158.
23 *Originating Application seeking the annulment of a partial arbitral award*, para. 188.

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> The court cannot refuse to homologate the arbitration award on its own initiative unless it notes that the subject matter of the dispute is not one that may be settled by arbitration in Québec or that the award or measure is contrary to public order."

[43] Article 648 para. 1 C.C.P. further provides that an "arbitration award may only be challenged by way of an application for its annulment", and that "such an application is subject to the same rules as those governing an application for the homologation of an arbitration award, with the necessary modifications".

[44] It is settled law that, in considering whether to homologate or to annul an arbitration award, the Court is prohibited "from inquiring into the merits of the dispute"[24]. Courts and authors have reiterated numerous times that an application to annul an arbitral award is not an appeal of such award and is not an opportunity to reargue the case on the merits[25].

[45] When an arbitration involves international commercial matters, such as the instant case, Article 649 C.C.P. explicitly permits consideration of the *Model Law on International Commercial Arbitration* adopted by the United Nations Commission on International Trade Law on 21 June 1985, and its amendments ("**Model Law**"), when interpreting the arbitration provisions of the C.C.P.

[46] The grounds for annulment set out in Article 646 C.C.P. are very similar to those provided for in Article 34 of the Model Law[26]:

> "Article 34. Application for setting aside as exclusive recourse against arbitral award
>
> (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
>
> (2) An arbitral award may be set aside by the court specified in article 6 only if:
>
> (a) the party making the application furnishes proof that:
>
> (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

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24 *Desputeaux* v. *Éditions Chouette (1987) inc*., 2003 SCC 17, para. 54.

25 Pierre J. Dalphond, *Le Grand collectif - Code de procédure civile : Commentaires et annotations, Volume 2 (Articles 351 à 836),* Article 648, Éditions Yvon Blais, 2025, paras. 648B/2-648B/3; *Coderre* c. *Coderre*, 2008 QCCA 888, paras. 41-42; *Nearctic Nickel Mines Inc*. v. *Canadian Royalties Inc*., 2012 QCCA 385, para. 50.

26 Pierre J. Dalphond, *Le Grand collectif - Code de procédure civile : Commentaires et annotations, Volume 2 (Articles 351 à 836),* Article 648, Éditions Yvon Blais, 2025.

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> (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
>
> (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
>
> (b) the court finds that:
>
> (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
>
> (ii) the award is in conflict with the public policy of this State.
>
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making the application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
>
> (4) The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside."

[47] The possibilities for courts to annul an arbitral award are very limited[27]. The Court must limit itself to determining whether the applicant demonstrated that one of the grounds for annulment set out in Article 646 C.C.P. is present.

[48] This is explained by the fact that "courts must show due respect for arbitration agreements and arbitration more broadly, particularly in the commercial setting"[28]. The "principle of limited court intervention in arbitration matters […] finds expression throughout modern Canadian arbitration legislation […] and has been described as a fundamental principle underlying modern arbitration law"[29].

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27 *Nearctic Nickel Mines Inc*. v. *Canadian Royalties Inc*., 2012 QCCA 385, para. 85.
28 *TELUS Communications Inc.* v. *Wellman*, 2019 SCC 19, para. 54.
29 *Id*, para. 55.

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[49] The party seeking the annulment of an arbitration award bears the heavy burden of demonstrating the existence of at least one of the criteria which may prevent the court from homologating an arbitration award, set out in Article 646 C.C.P. or in Article 34 of the Model Law. It is not sufficient to demonstrate that the award is unreasonable, as would be the case in a judicial review. The burden the applicant must discharge is heavier in the context of the annulment of an arbitration award than it is in a judicial review setting[30].

[50] A breach of the *audi alteram partem* rule may serve as a basis for annulment, as Articles 646(4) C.C.P. and 34(2)(a)(ii) of the Model Law both provide that a party that was unable (the word impossible is used in the C.C.P.) to present its case may seek the annulment of the arbitration award on that ground.

[51] A breach of the *audi alteram partem* rule has also been viewed as being contrary to public order, which is another ground that allows a party to seek the annulment of an arbitration award[31].

[52] Where the ground for annulment is that the applicable arbitration procedure was not complied with, a court "must balance the nature of the breach in the context of the arbitral process that was engaged, determine whether the breach is of such a nature as to undermine the integrity of the process, and assess the extent to which the breach had any bearing on the award itself"[32]. It would indeed be "wholly inconsistent with the intention of the legislature and the current jurisprudential trend to treat every breach of the applicable procedure, however minor and however inconsequential, as requiring a court to refuse to homologate an award or to annul it if so requested"[33].

[53] Another basis that allows a party to seek the annulment of an arbitration award is when the arbitrator exceeded his authority, i.e. when "the award pertains to a dispute not referred to in or covered by the arbitration agreement"[34]. When determining whether the arbitrator exceeded his authority, the latter's "mandate must not be interpreted restrictively […]. The mandate also includes everything that is closely connected with that agreement, or, in other words, questions that have […] a connection with the question to be disposed of by the arbitrators with the dispute submitted to them. […] Since the 1986 arbitration reforms, the scope of arbitration agreements has been interpreted liberally"[35].

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30 *Gagnon* c. *Truchon*, 2023 QCCA 1053, paras. 6-7.
31 *Louis Dreyfus, s.a.s. (SA Louis Dreyfus & Cie)* v. *Holding Tusculum, b.v.*, 2008 QCCS 5903, para. 105.
32 *Rhéaume* c. *Société d'investissements l'Excellence inc*., 2010 QCCA 2269, para. 61.
33 *Ibid*.
34 Art. 646(5) C.C.P.; see also art. 34(2)(a)iii) of the Model Law.
35 *Desputeaux* v. *Éditions Chouette (1987) inc*., 2003 SCC 17, para. 35.; see also *Coderre* c. *Coderre*, 2008 QCCA 888, para. 97.

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[54] Jubilant argues that, if a broad interpretation of the arbitrator's mandate is warranted when assessing whether he exceeded his authority, the same principle should apply in the opposite context, i.e. when the arbitrator declares himself deprived of competence to decide a matter. According to Jubilant, arbitrators are obligated to fully execute the mandate entrusted to them and to provide a comprehensive resolution of the dispute, ensuring that no issues that were properly within the arbitrator's jurisdiction are left unresolved. If the arbitrator fails to do so, he will be considered to have ruled *infra petita*. Jubilant asserts that an *infra petita* ruling by an arbitrator is a ground for annulment of the award, because an arbitrator's failure to consider issues presented to him in fact amounts to an excess of authority, even if it appears to be the reverse.

[55] This argument is supported by various authors in the field of international commercial arbitration[36]. Some authors are of the view that an *infra petita* ruling may also be annulled as a violation of the right to be heard[37]. This argument was recently discussed by Justice Collier of the Superior Court of Quebec, but was ultimately rejected, not because it was legally incorrect, but because the judge found that the arbitrator had fully exercised his jurisdiction[38].

[56] A reasonable apprehension of bias on the part of the arbitrator may also constitute a ground for annulment of an arbitration award. Case law indicates that arbitrator bias may fall within the scope of Article 646(3) C.C.P., as it constitutes a breach of the arbitration procedure. Additionally, such bias may be connected to the ground set out in Article 646(4) C.C.P., insofar as the rules of natural justice may be violated on this ground[39].

[57] As mentioned by the Supreme Court of Canada, "because there is a strong presumption of judicial impartiality that is not easily displaced […], the test for a reasonable apprehension of bias requires a 'real likelihood or probability of bias'"[40]. This test also applies to an alleged apprehension of bias on the part of an arbitrator[41].

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36 Jean-Baptiste Racine, *La sentence d'incompétence*, Revue de l'Arbitrage (2010), Vol. 2010, No. 4, pp 760-761; Emmanuel Gaillard and John Savage, "Part 6: Chapter I – French law" in *Fouchard Gaillard Goldman on International Commercial Arbitration*, Kluwer Law International, 1999, para. 1628-1631; Gary B. Born, *Chapter 25: Annulment of International Arbitration Awards*, in *International Commercial Arbitration*, Kluwer Law International, 2023, §25.04, pp. 46-47.

37 Paul Tan and Jawad Ahmad, *The UNCITRAL Model Law and Awards infra petita*, Journal of International Arbitration, Vol. 31, Issue 3 (2014), pp 419-420, 422-423.

38 *EDT GCV Civil* c. *Société de transport de Montréal*, 2025 QCCS 256, paras. 22-27.

39 *Leduc* c. *Ayoub*, 2019 QCCS 457, para. 47.

40 *Yukon francophone school board* v. *Yukon (A.G.)*, 2015 SCC 25, para. 25.

41 *Syndicat de la copropriété Lot 818* c. *Royal & Sun Alliance du Canada, société d'assurances*, 2024 QCCA 829, para. 4.

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4. ANALYSIS OF THE VARIOUS GROUNDS FOR ANNULMENT

4.1. The claim for refused products

[58] In November 2021, Jubilant filed the Safeguard Order Motion[42]. This Motion sought, *inter alia*, orders requiring Jamp to take delivery of certain products and to pay outstanding amounts. It also contained a request for authorization to amend the TOR under Article 28 of the ICC Rules, in the event that the Tribunal considered that the relief sought fell outside the TOR[43].

[59] Article 28 of the ICC Rules allows a party to seek an interim or conservatory measure pending the outcome of the arbitration. Since no such measure had been provided for in the TOR, Jubilant sought, *de bene esse*, authorization to amend the TOR to request such an interim order.

[60] The Safeguard Order Motion also contained a *de bene esse* request for leave to amend the TOR based on Article 23(4) of the ICC Rules[44], which provides the following:

> "Article 23
>
> Terms of Reference
>
> 4. After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances."

[61] In the Safeguard Order Motion, the Plaintiffs were not seeking damages for the value of the products for which the Jamp refused to take delivery[45], which would have raised an issue concerning the mitigation of such damages. They were simply seeking an order requiring Jamp to take delivery of certain products and to pay for them.

[62] A case management conference presided over by Mtre. Silcoff was held on March 24, 2022. Counsel for Jubilant informed him that, "given the expiration dates on the various products at issue" in the Safeguard Order Motion, "there is no immediate urgency for a Safeguard Order". The Safeguard Order Motion was therefore "continued *sine die*"[46]. Jubilant did not proceed on its request to amend the TOR at that time.

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42 Exhibit P-12.
43 Exhibit P-12, para. 9.
44 Exhibit P-12, para. 8.
45 The claim for $83,496.63 found in the Safeguard Order Motion is not related to the value of those products. It is simply a claim for unpaid invoices relating to a variety of products.
46 Exhibit P-10.

[63] It was only more than two (2) years later, during a pre-hearing conference held on May 6, 2024, i.e. a few days before the arbitration hearing, that Jubilant attempted to revive the Safeguard Order Motion, in a revised form, now seeking damages.

[64] The *raison d'être* of Article 23(4) of the ICC Rules is precisely to avoid delays and disruptions in arbitral proceedings. In the *Handbook of ICC Arbitration*, authors Thomas H. Webster and Michael W. Bühler mention the following in relation to such article:

> "The purpose of art. 23(4) is to avoid having the agreed framework of the arbitration unilaterally changed by one of the parties, and in particular any delay or disruption in the proceedings by that party. There must be a point in time when the parties can no longer present new claims, so that the arbitration can be brought to its end. [...]
>
> The determination of what falls within or outside the limits of the Terms of Reference will depend on the manner in which the claims are framed in the Terms of Reference. The difficulty arises in part due to the absence of definition of what constitutes "new claims" in the Rules. However, the scope of the Terms of Reference can and should be examined with reference to the requests for relief. […]
>
> The scope of the application of art. 23(4) is, in practice, limited and based on the following rationale: the Terms of Reference describe the mission of the Tribunal. If new claims are being made by a party that are not covered by the Terms of Reference, then the mission of the Tribunal is being altered. Such alteration shall only be possible if the Tribunal has authorised it. The Tribunal has broad discretion in whether or not to authorise the new claim. […]
>
> In deciding whether to permit the addition of new claims that fall outside the limits of the Terms of Reference, the Tribunal "shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances". As the words "other relevant circumstances" suggest, the Tribunal has broad discretion in deciding whether or not to authorise the new claim to be pursued in the pending arbitration. The closer the claim is to an existing claim, the more likely the claim is to be accepted. […] If the new claim is raised shortly after the signing of the Terms of Reference, it is much more likely to be accepted than if it is made during or after the oral hearings. The Tribunal will also want to consider a party's ability to have introduced these claims at an earlier time. If new claims were withheld for purely tactical reasons, and are suddenly introduced into the proceedings, the Tribunal may take a restrictive attitude, provided there are other factors that might mitigate against the belated introduction of the new claims. Those factors would include the ability of the parties to submit evidence and arguments on the new claims. However, these examples reflect the basic principle that the addition of new claims outside the limits of the Terms of Reference should not be permitted if it would

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> raise due process issues under the Rule, the law of the place of arbitration or the law of the place of probable enforcement"[47].
>
> [Emphasis added]

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[65] In the instant case, the TOR were signed in May 2020. The Safeguard Order Motion was brought in November 2021 and postponed indefinitely in March 2022. A modification of the TOR to include a claim for damages in relation thereto could easily have been sought shortly after the postponement. Instead, Jubilant remained silent for more than two (2) years and only advised the Arbitrator of its intention to claim damages in relation to the Refused Products a few days before the commencement of the hearing in May 2024. This claim was also raised in Jubilant's *Post-Hearing Brief*[48].

[66] In its *Post-Hearing Brief*[49], Jamp formally objected to this attempt to introduce a new counterclaim. The Arbitrator refused to allow this late introduction of a new claim. In so doing, he exercised his discretion in accordance with the applicable ICC Rules, to which he specifically referred. He did not render an *infra petita* ruling, as he was never formally seized with the Claim for Refused Product.

[67] There is no indication of a violation of the right to be heard or procedural unfairness. Of course, the Arbitrator could have agreed with Jubilant and allowed the amendment of the TOR to include this claim. However, he decided to exercise his discretion in the opposite way. The fact that Jubilant disagrees with the way the Arbitrator exercised his discretion is not a valid ground for annulment of the Award.

[68] Jubilant's request for the annulment of the Award based on the Arbitrator's refusal to entertain the Claim for Refused Products is therefore dismissed.

4.2. <u>The Cinacalcet Claim</u>

[69] Jubilant argues that the Arbitrator displayed bias in refusing to entertain the Cinacalcet Claim, i.e. a claim for damages based on Jamp's failure to order minimum quantities of Cinacalcet. Jubilant argues that, contrary to what the Arbitrator decided, the Cinacalcet Claim fell "within the subject-matter scope of the TOR"[50]. Jubilant further argues that, by refusing to entertain this claim, the Arbitrator rendered an *infra petita* ruling, failed to observe the mandatory arbitration procedure, and deprived Jubilant of its right to be heard.

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47 Thomas H. Webster and Michael W. Bühler, *Handbook of ICC Arbitration – Commentary, Precedents, Materials*, 3rd edition., Thomson Reuters, London, 2014, paras. 23-83 to 23-92; see also Jason Fry, Simon Greenberg and Francesca Mazza, *The Secretariat's Guide to ICC Arbitration*, ICC Publication, Paris, 2012, para. 3-906.

48 Exhibit P-14, paras. 29-32 and 86-94.

49 Exhibit P-15, para. 61.

50 Plaintiffs' Brief in support of Application seeking the annulment of a partial arbitral award, para. 173.

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[70] For the reasons set out below, the Court does not agree.

[71] The Arbitrator refused to rule on the Cinacalcet Claim because it fell outside the terms of the TOR and no demand to amend the TOR to include this claim was presented in a timely manner.

[72] As previously mentioned, this claim was raised for the first time in Jubilant's *Statement of Defence and Counterclaims* filed in April 2021, i.e. nearly one year after the signature of the TOR. In its *Reply to Statement of Defence and Counterclaim* filed in May 2021, Jamp objected to the inclusion of such claim in the arbitral proceedings, because Jubilant had not sought the Arbitrator's authorization to amend the TOR to include such claim.

[73] The Court does not agree with Jubilant that the Cinacalcet Claim already formed part of the TOR. A plain reading of the section of the TOR[51] titled "Respondents' Position and Relief sought" suffices to dispel any doubt in that regard. The fact that the Cinacalcet Claim is based on one of the agreements that formed the basis of the arbitration does not, in and of itself, allow Jubilant to bring any new claim that falls outside the terms of the TOR without first seeking authorization to do so.

[74] Jubilant chose to ignore Jamp's objection and failed to seek the Arbitrator's authorization to include this claim in the TOR, in accordance with Article 23(4) of the ICC Rules. Had Jubilant brought such a request in a timely manner, their demand could very well have been authorized by the Arbitrator.

[75] To justify his refusal to include this claim in the arbitration, the Arbitrator simply applied Article 23(4) of the ICC Rules. The fact that he erroneously referred to Article 24(3), rather than Article 23(4), has no determinative effect on his ruling.

[76] As mentioned by the ICC Court in its decision dismissing Jubilant's challenge of the Arbitrator's impartiality and independence, this "is a procedural decision that may have been unwelcome for Respondents but does not indicate procedural unfairness or bias"[52]. The Court strongly agrees with this determination.

[77] Jubilant's request for annulment of the Award based on the Arbitrator's refusal to entertain the Cinacalcet Claim is therefore dismissed.

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51 Exhibit P-2, pp. 7-8.
52 Exhibit D-36, para. 54.

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4.3. The New Counterclaim

[78] Jubilant argues that it is only on April 2, 2024, when it received the Second Supplemental Witness Statement of Sukhad Juneja[53] (a representative of Jamp), that it learned of the facts supporting the New Counterclaim. This explains why Jubilant could not bring this claim prior to the signing of the TOR.

[79] Jubilant faced redactions in Jamp's document production[54]. Those redactions apparently prevented Jubilant from learning of critical details such as counterparties, dates, and transactional context, which form the factual basis for the New Counterclaim. Jubilant objected to the redactions in the documents, but those objections were dismissed[55].

[80] The principal facts supporting the New Counterclaim ultimately surfaced during the cross-examination of the witness at the hearing, when elements of Jamp's alleged illegal use and transfer of Jubilant's proprietary information were clarified on the record. Jubilant asserts that admissions made by Jamp during witness cross-examinations at the arbitration hearing regarding unauthorized transfers were pivotal in enabling them to substantiate their New Counterclaim with concrete factual evidence.

[81] In the New Counterclaim, Jubilant alleged that Jamp fundamentally breached its contractual obligations by (1) its unauthorized use and transfer of Jubilant's Product Dossiers and proprietary know-how, (2) the transfer of Jubilant's confidential information to competing Indian manufacturers in violation of exclusivity and confidentiality obligations and (3) a breach of exclusivity, which Jubilant asserts was a core condition of its supply obligations. The conclusions sought in this regard are the following:

> "609. With respect to the illegal use by JAMP of its Product Dossiers and intellectual property rights, JGL respectfully requests the Tribunal to:
>
> **SEIZE** itself with this determinative issue and **CONVENE** the Parties to a management conference without delays to fix the modalities under which it will be addressed; or
>
> **RESERVE** the rights of JGL to exclude any misunderstanding which could otherwise lead a subsequent tribunal to believe that this issue was addressed during the first stage of the arbitration.
>
> **RESERVE** the rights of JGL to claim damages in relation thereto.[56]"

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53 Exhibit P-22.
54 Exhibit P-23.
55 Exhibit P-24.
56 Exhibit P-14, p. 106.

[82] Jubilant pleaded this New Counterclaim in their Post-Hearing Brief and asked the Arbitrator to either decide it on the merits based on the existing record or to reserve Jubilant's rights.

[83] Jubilant argues that the Arbitrator did neither, which is the basis upon which it relies to advance that its right to be heard was breached by the Arbitrator's conduct.

[84] In addition, Jubilant strongly disagrees with the Arbitrator when he writes in the Award that at "the oral hearing […] Jubilant withdrew this demand but asked that its rights be preserved"[57].

[85] For the reasons that follow, the Court disagrees with Jubilant that the way the Arbitrator handled this matter infringed on their *audi alteram partem* rights.

[86] First, a reading of the Award clearly indicates that the Arbitrator reserved Jubilant's right to bring the New Counterclaim at a later stage. He simply refused to entertain this claim during the arbitration over which he was presiding. The Arbitrator writes: "The Tribunal will simply answer that no ruling can be made on a demand that is not in the record and that accordingly, it cannot be considered that that demand has been dismissed. This is meant to clarify that no ruling is made on the merits as was asked by counsel for Respondents"[58].

[87] Since Jubilant can still bring the New Counterclaim in an appropriate forum, it cannot be said that Jubilant's *audi alteram partem* rights were infringed upon.

[88] Second, in their Post-Hearing Brief, Jubilant seemed to recognize that the New Counterclaim was being brought very late in the arbitration process. They therefore sought Jamp's consent to have this issue decided in the first stage of the arbitration[59]. Failing Jamp's consent thereto, Jubilant alternatively asked the Arbitrator to either seize himself of the matter or make an explicit reservation in the Award to exclude any misunderstanding that could lead a subsequent tribunal to believe that this issue had been decided[60].

[89] Jamp did not consent to the inclusion of the New Counterclaim in the arbitration. The Arbitrator therefore accepted one of the alternatives sought by Jubilant themselves, i.e. to reserve their right to present this claim at a later stage.

[90] The Arbitrator awarded precisely what Jubilant requested in one of their two (2) alternative conclusions. It is simply preposterous to assert that by so doing, the Arbitrator violated Jubilant's right to be heard or displayed bias. This argument is entirely without merit.

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57 Exhibit P-1, para. 76.
58 Exhibit P-1, para. 77.
59 Exhibit P-14, para. 82.
60 Exhibit P-14, para. 85.

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[91] A final word on this argument to address the Arbitrator's statement that "Jubilant withdrew this demand but asked that its rights be preserved"[61]. A review of the transcripts of the hearing held on June 19, 2024, does not clearly show that this claim was withdrawn. Such a conclusion can however be drawn from the review of the discussion between the Arbitrator and Jubilant's lawyer[62]. Since the Arbitrator granted one of Jubilant's alternative conclusions, the statement to the effect that this claim was withdrawn, even if it was erroneous[63], would not have had any bearing on the result of the arbitration.

4.4. Does the Arbitrator's conduct give rise to a reasonable apprehension of bias and lack of impartiality?

[92] Jubilant contends that "when viewed cumulatively, the Sole Arbitrator's conduct reveals a consistent pattern of unequal treatment, selective application of procedural rules, mischaracterization of Jubilant's claims, and procedural indulgence toward Jamp"[64]. According to Jubilant, these factors, when viewed together, "would lead a reasonable and informed observer to conclude that the Sole Arbitrator was not acting with the even-handedness required of an arbitrator"[65].

[93] The fact that the Court dismissed Jubilant's arguments on the first three (3) grounds[66] makes it very difficult for the Court to agree with Jubilant on this fourth ground, which is essentially a reiteration of the first three grounds, taking into account the Arbitrator's conduct in general.

[94] Contrary to what Jubilant asserts, the Arbitrator did not mischaracterize the Safeguard Order Motion and he reserved Jubilant's rights regarding the New Counterclaim, as already discussed.

[95] In addition, the Arbitrator did not demonstrate unequal treatment of the parties. The main argument raised by Jubilant to support this assertion is that the Arbitrator condoned Jamp's concealment of evidence and discounted its so-called misconduct in relation to Angita, but showed strictness when dealing with the claims presented by Jubilant.

[96] For the following reasons, the Court disagrees.

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61 Exhibit P-1, para. 76.
62 Exhibit P-18, pp. 3-5.
63 This Court does not have to decide this issue.
64 *Originating Application seeking the annulment of a partial arbitral award*, para. 158.
65 *Id*, para. 159.
66 The Arbitrator's refusal to entertain the Claim for Refused Products, the Cinacalcet Claim, and the New Counterclaim.

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[97] Contrary to Jubilant's contention, Jamp's initial claim for breach of the agreements included a claim for the product Citalopram, which Jubilant failed to deliver to Angita. Jamp's initial claim does not specifically refer to Angita, as its claim was presented product by product.

[98] In response, Jubilant explained their failure to deliver products to Angita due to the latter's non-payment of license fees and submitted a counterclaim for the payment of such fees. This counterclaim was recorded in the TOR[67].

[99] Thus, Jubilant's assertion that the Arbitrator allowed Jamp to claim for the non-delivery of products to Angita after the signing of the TOR is incorrect.

[100] The Arbitrator found that Jubilant had breached their contractual obligations by failing to deliver products pursuant to the agreements in force. This is the basis for the Arbitrator's dismissal of both Jubilant's defence and their counterclaim concerning Angita, which are two (2) sides of the same coin.

[101] However, the Arbitrator did not allow Jamp's claim regarding Angita. Since Jubilant asserts that Jamp is not allowed to bring a claim on behalf of its affiliate who is not a party to the arbitration (i.e., Angita), the Arbitrator decided that this question would be addressed at the second stage of the arbitration. In so doing, the parties will be allowed to make additional submissions on this topic. The Court fails to see how this could be viewed as bias on the part of the Arbitrator.

4.5. The delay in rendering the Award

[102] Jubilant contends that the 15-month delay for the Arbitrator to render the Award, combined with his "own acknowledgment of difficulty and inexperience in handling an international arbitration of this complexity, and the fact that multiple draft awards were reportedly rejected by the ICC before the present version was issued, reinforce the impression that the Sole Arbitrator sought to simplify his task by rejecting Jubilant's claims on questionable procedural bases, rather than grappling with their admissibility and merits".

[103] This is a serious allegation that ought to be supported by evidence. The Court finds that it is not. Here is why.

[104] The final arguments took place on June 19, 2024.

[105] On January 30, 2025, the Arbitrator advised the parties that he was "spending all [his] available energy in order to get a Ruling that complies with ICC Rules", and that this "operation needs a complete reengineering of the work [he has] done before, and [he] will

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[67] Exhibit P-2, p. 7, section e).

need an extra two weeks in order to get the Ruling to ICC"[68]. He concluded his email with an apology and took full responsibility for this untimely delay.

[106] On February 19, 2025, the Arbitrator wrote to the parties[69]. He mentioned that he is "in the process of finishing the decision" and that he has "had some difficulties in adjusting the different chapters in order to make sure that all questions have been addressed". He adds that, "this being [his] first experience with ICC, [he] also needed to adjust to their requirements". He informs the parties of his intention to release the Award "somewhere in the middle of March".

[107] On March 6, 2025, the Arbitrator wrote to the parties' lawyers requesting copies of certain hearing transcripts, which were in fact nonexistent. He was informed thereof shortly thereafter[70].

[108] On June 11, 2025, the Arbitrator wrote to the parties to assure them that he is "making every effort to comply with comments from ICC and to make sure that the decision is ready to be signed as soon as possible"[71].

[109] None of these communications indicates partiality or difficulty in understanding the claims at issue.

[110] In the reasons supporting its decision to dismiss Jubilant's challenge of the Arbitrator's impartiality and independence, the ICC Court provides further details concerning the explanations for the delay in rendering the Award:

> "59. In the present case, the last substantive submissions on liability occurred on 19 June 2024, when the parties delivered post-hearing oral arguments. The Arbitrator was therefore expected to send the draft award for scrutiny on or before 19 August 2024, two months later. However, the Arbitrator submitted his draft partial award only on 20 November 2024, with a three-month delay. At its session of 20 December 2024, the Court decided not to approve the draft partial award, whereupon the Arbitrator took a further three months to deliver a revised partial award for scrutiny on 25 March 2025. On 22 April 2025, the Court decided not to approve the revised draft partial award, and the Arbitrator then took another three months, until 22 July 2025, to deliver a second revised draft partial award. On 21 August 2025, the Court approved the draft award subject to consideration of comments made by the Court. The Partial Award was finalized and notified to the parties on 16 September 2025, a total time-period of approximately 15 months and a delay of approximately 13 months"[72].

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68 Exhibit P-26.
69 Exhibit P-27.
70 Exhibit P-28.
71 Exhibit P-29.
72 Exhibit D-36.

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[111] The Court understands from the above that the Arbitrator had nearly completed the drafting of the Award in November 2024, but that the ICC Court requirements and its comments explain most of the delay. This is likely due to the Arbitrator's inexperience with ICC arbitration, of which the parties were fully aware when they agreed to his nomination. As mentioned by the ICC Court, the Arbitrator "appears to have genuinely struggled with the ICC approach to award drafting […] and this appears to have been the main reason for the delay"[73]. The Court fails to see anything in the delay to render the Award that is indicative of partiality or bias.

[112] Finally, the fact that, during the oral arguments on June 19, 2024, the Arbitrator qualified Jamp's principal claim as "the big problem" and some of Jubilant's counterclaims as the "secondary problem" is not indicative of any bias or partiality. The Arbitrator was expressing himself orally in his second language, which likely explains this misconception.

4.6. Closing remarks

[113] Jubilant failed to discharge their heavy burden of demonstrating the existence of a ground to justify the extraordinary measure that is the annulment of an arbitration award. Jubilant failed to show an appearance of bias or partiality on the part of the Arbitrator, or that their ability to present their case was impaired in any way. The Court must therefore dismiss Jubilant's Motion to annul the Award.

[114] In light of the reasons for judgment provided herein, the Court also refuses the subsidiary relief sought by Jubilant, i.e. to appoint a new arbitrator for the second phase of the arbitration.

[115] The Court wishes to thank the parties' lawyers for their professionalism and rigor in presenting their clients' case, both orally and in writing.

FOR THESE REASONS, THE COURT:

[116] **DISMISSES** the Originating Application Seeking the Annulment of a Partial Arbitral Award brought by the Plaintiffs Jubilant Generics Limited and Jubilant Pharmova Limited;

[117] **THE WHOLE** with costs against the Plaintiffs Jubilant Generics Limited and Jubilant Pharmova Limited and in favour of the Defendant Jamp Pharma Corporation.

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PATRICK OUELLET, S.C.J.

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[73] Exhibit D-36, para. 61.

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