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FROM THE EDITOR'S PEN:

'Changing Tides and Ever Changing Times'



Welcome to *Arbitrarily Speaking!*

In a flash, Spring has changed to Summer and so much else has happened since the publication of the previous edition (issue 11) of *Arbitrarily Speaking!*

The great American singer, songwriter, and pianist, Ms Aretha Louise Franklin (March 25, 1942 – August 16, 2018) – also known as the 'Queen of Soul' - aptly reminds us of how rapidly things change in her song 'Ever Changing Times', of which some of the lyrics are the following:

These are ever changing times

I see that clock upon the wall

But it don't bother me at all

These are ever changing times

And the, ever changing time

Everything is going so much faster

I see that clock upon the wall

But it don't bother me at all

...

In this issue of *Arbitrarily Speaking!* we announce the winner of Steenberg's highly acclaimed *Steenberg 1682 Chardonnay Cap Classique NV* for a contribution made to the October 2021 e-periodical issue 11.

[READ MORE](#)

ARBITRATION EDUCATION STATION

Since its inception, the Association has promoted the greater use of arbitration as a means of resolving disputes. It is able to appoint competent and experienced arbitrators, as well as other specialists in alternative dispute resolution (ADR). To support these core activities, the Association has a proud history of providing excellent training and tutelage by a team of dedicated specialists.

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UNCLE OSWALD'S Q&A FORUM

UNCLE OSWALD DECLARES 2021 OFFICIALLY CLOSED

Although lamenting an already arduous year, which he in any event has declared closed with immediate effect, our beloved Uncle Oswald has summoned just enough energy to provide us with his long list of letters, written for and addressed to readers who sought his advice on a wide variety of topics over the past two years.

For more astute advice from Uncle Oswald on your arbitration queries, send your questions to our General Manager, Rochelle Appleton, at rochelle@arbitrators.co.za.

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A CASE IN POINT: RECENT CASE REPORTS

The Supreme Court of Appeal's judgment in the case *Framatome v Eskom Holdings SOC Ltd* (357/2021) [2021] ZASCA 132 (1 October 2021), is analysed and discussed by Association Fellow and director, Mr Alastair Hay, under the caption '*Sequel to Enforceability of Adjudicators' Decisions*'.

This regular column features interesting and informative case reports and judgments, and we invite you to add to our growing collection of analyses of important cases.

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TOOLS OF THE TRADE

THE STATUS OF INTERIM PAYMENT CERTIFICATES ON CANCELLATION OF A CONSTRUCTION CONTRACT AND IMPLICATIONS FOR CONSTRUCTION GUARANTEES AND GUARANTEE INSURERS

ENS Africa's Rob Scott and Zara Sher provide astute insights into a topic that is ever-increasingly engaging the attention of our courts and which is of vital importance to guarantors and insurers.

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CODE OF ETHICS PRACTICAL APPLICATION: JUSTICE (PART 4 OF 4)

In her last article in the four-part series devoted to the discipline of ethics, Ms Maritza Breitenbach tackles the elusive and complex concept of justice. She offers practical and sage advice to arbitrators on this engaging topic.

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DOES AN ADJUDICATOR HAVE THE JURISDICTIONAL POWER TO AWARD COSTS IN A DETERMINATION?

Association Fellow and director, Adv Kiki Bailey SC, considers this vital question in the light of the judgment in *Tempani Construction (Pty) Ltd v The City of Cape Town* Case No. 21288/2018 and Case No. 12918/2019, 2 November 2020.

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ALL ABOUT THE AOA

In the February edition of *Arbitrarily Speaking!* we shared the Association's fee discount policy that was formulated and adopted to offer financial respite to our valued members in these exigent economic times. Your support remains a source of inspiration for our endeavours and reinforces our resolve to preserve this policy.

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AOA BREAKING NEWS

The Association's offices will be closed from Wednesday, 15 December 2021, until Monday, 10 January 2022.

A new set of Rules for the Conduct of Arbitrations (2021 edition) (**the 2021 Rules**) was approved and adopted by the Association in October 2021. Professor David Butler's introduction to 2021 Rules appears here, as does a link from which the 2021 Rules can directly be accessed.

Also read more about the enjoyable lunch the chair of the Rules Committee, Mr Chris Binnington, had with Professor Butler at the Rust en Vrede wine estate near Stellenbosch.

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IN MEMORIUM

Mr Chris Binnington pays tribute to Mr Barry Michael Jammy, an Honorary Life Fellow of the Association, who suddenly passed away on 11 November 2021.

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