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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.

FROM THE EDITOR'S PEN:

'Things are never just good or never just bad'



Welcome to *Arbitrarily Speaking!*

While it feels as if we are well and truly in the '*winter of our discontent*' (apologies to the American author John Steinbeck, whose last novel has this title) – what with the Delta variant, the devastating looting and the dropping temperatures wreaking havoc on our lives and livelihoods – we should not succumb to despair. In the words of JP Landman, '*Things are never just good or never just bad*', which inspired the title of this contribution. We South Africans are remarkably resilient, and will no doubt emerge from these dark days with renewed resolve.

We will need to rebuild our nation on a foundation of good judgment, sound conscience, and inclusive ethics – a lesson informed by one of our featured articles: Ms Breitenbach's powerful piece on prudence. Our country now cries out for an abundance of prudence and it reminds us of the need for good judgment in our lives – and in our land

In this issue *Arbitrarily Speaking!* we also announce the winner of *Steenberg's* highly acclaimed *Steenberg 1682 Chardonnay Cap Classique NV* for a contribution made to the June 2021 e-periodical issue 9.

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A CASE IN POINT: RECENT CASE REPORTS

The Supreme Court of Appeal's judgment in the case *Joint Venture between Aveng (Africa) (Pty) Ltd and Strabag International GmbH v South African National Roads Agency SOC Ltd and another* 2021 (2) SA 137 (SCA) is analysed and discussed. This is the sequel to the case discussed in the previous issue.

Erratum: The Editor apologises for his references to Judge Makhuvele, who presided in the court *a quo*, as being a person of the male gender.

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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UNCLE OSWALD'S Q&A FORUM

DECLARATORY HIGH COURT RELIEF DURING AN ONGOING ARBITRATION

In this edition, Uncle Oswald, our much admired retired arbitrator, advises *Perplexed Paddy* on the jurisdiction of the High Court to interfere in pending arbitral proceedings by, for example, granting declaratory relief.

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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AOA BREAKING NEWS

Chris Binnington Pr Eng refers to the Association's long-standing informal co-operation arrangement with the South African Institution of Civil Engineering (**SAICE**) and the recent conclusion of a Memorandum of Understanding - signed by the Association's chairperson, Adv Pierre Rossouw SC, and the SAICE's CEO, Mr Vishaal Lutchman Pr Eng - in which the aims and objectives and the necessary practical framework for their future cooperation is recorded.

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TOOLS OF THE TRADE

CODE OF ETHICS PRACTICAL APPLICATION: PRUDENCE (PART 2 OF 4)

In this, the second of Ms Maritza Breitenbach's four-part series of articles devoted to the discipline of ethics, the author examines the virtue of prudence and discusses the role it fulfils to enable an arbitrator, through deliberation and careful judgment, to seek concrete outcomes that are legitimate and durable.

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CONSTITUTIONAL CHALLENGE TO THE ADJUDICATION PROCEDURE

Association Fellow and director, Adv Kiki Bailey SC, considers the constitutional attack launched against Edition 6.1 of the JBCC Principal Building Contract in the case of *Zingwazi Contractors CC v Eastern Cape Development of Human Settlements and Others* [2021] ZAECGHC 50 (11 May 2021). She provides our readers with beneficial insights derived from her analysis thereof.

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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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