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FROM THE EDITOR'S PEN:

'... the creation of powerful artificial intelligence will be "*either the best, or the worst thing, ever to happen to humanity*"'¹

- Stephen Hawking

Welcome to *Arbitrarily Speaking!*

The potential of artificial of intelligence must be embraced in alternative dispute resolution (ADR) arena.

In this issue of *Arbitrarily Speaking!* our members and readers are provided with some of the latest developments in the ADR environment.

Disclaimer: The articles published in *Arbitrarily Speaking!* solely represent the views of their authors. The Association of Arbitrators (Southern Africa) NPC and its editor do not necessarily endorse or approve of the authors' views or any advice, or purported advice given by them. Readers are reminded that it is their own responsibility to obtain appropriate advice on any particular issue concerning them from their own appointed legal representatives.

¹ Stephen Hawking: Speech delivered by him at the launch of the Leverhulme Centre for the Future of Intelligence on 19 October 2016, per <https://www.theguardian.com/science/2016/oct/19/stephen-hawking-ai-best-or-worst-thing-for-humanity-cambridge> (accessed 15 October 2025).

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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 ADR. To support these core activities, the Association has a proud history of providing excellent training and tutelage by a team of dedicated specialists.

In continuing with this tradition of excellent training and education, the following number of arbitration students/members passed their respective courses in 2024:

- (a) Thirty-four (34) became Associates by passing the Certificate in Arbitration (Modules 1 and 2);
- (b) Twenty-seven (27) became Fellows in 2025:
 - Seventeen (17) passed the Fellowship Admission Course (Modules 3 and 4); and
 - Ten (10) passed the Accelerated Fellowship Course for Advocates and Attorneys (Modules 2 and 4); and
- (c) Fifteen (15) passed the Specialisation in Construction Law Course (Module 5).

We are proud of this achievement by the students as well as by the new Fellows of the Association.

UNCLE OSWALD'S Q&A FORUM

Uncle Oswald has reminded me that an overview of the topics he discussed in previous editions of the e-periodical would be of great value to the readers of his Q&A forum. He has happily obliged us with a quick reference guide to the pearls of wisdom he doled out in 2020. In this, the final e-periodical of the year, Uncle Oswald also reminds the readers of the sound advice he gave to Ms Penny Pincher on the steps she ought to take to enforce a foreign arbitral award granted in her favour.

For more astute advice from Uncle Oswald on your ADR queries, send your questions to our General Manager, Rochelle Appleton.

UNCLE OSWALD'S QUICK REFERENCE GUIDE

A click on any of the topics below will take you directly to the relevant edition and page of ***Arbitrarily Speaking!***:

- Why not to apply the High Court rules to arbitral proceedings.
- Waiving the provisions of section 20 of the Arbitration Act, No. 42 of 1965 for purposes of questions of law arising in arbitral proceedings.
- An arbitrator's discretion not to apply the ordinary rules of evidence and the judgment in *Dexgroup (Pty) Ltd v Trustco Group International and Others* [2014] 1 All SA 375 (SCA).
- An arbitrator's right to exercise a lien over publication of his award, pending payment of his fees.
- Is an award granting absolution of the instance in compliance with section 28 of the Arbitration Act, No. 42 of 1965?
- A proposed agenda for purposes of a preliminary arbitration meeting.
- The relevance of High Court rule 53(1)(b) to an arbitral award review under section 33 of the Arbitration Act, No. 42 of 1965 and, more particularly, an arbitrator's notes.
- The controversial *Hollington Rule*.
- The recognition and enforcement of foreign arbitral awards in South Africa.

RECENT NEWS

ABOUT COURT-ANNEXED MEDIATION

Association Chairperson, Adv Tjaart van der Walt SC, explains the importance of mediation in dispute avoidance and dispute resolution, both in ADR processes and in litigation, and deals with the essential requirements mediators must comply with.

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DISPUTE RESOLUTION BOARD FOUNDATION'S ANNUAL INTERNATIONAL CONFERENCE HELD IN CAPE TOWN FROM 14 TO 16 MAY 2025.

The Association was one of the sponsors of the event. Association Chairperson, Adv Tjaart van der Walt SC, outlines the DRBF's critical role in setting global standards and he then proceeds to evaluate the importance of the current edition of DRBF's Dispute Board Manual in the realm of ADR.

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CONSTRUCTION ARBITRATOR'S CONFERENCE, CLIFTON BRISTOL, 2-5 MAY 2025.

Association Fellow, Zandile Ndlovu Pr. Eng., recounts her experience of this conference.

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TOOLS OF THE TRADE

THE SECRET TENDER: A TECHNIQUE IN ARBITRATION

Adv Mark Harcourt SC, a Fellow of the Association and also a distinguished member of the KwaZulu-Natal Bar, embarks on an insightful discussion on the use of secret tenders in arbitral disputes. The author emphasises the implications of such tenders and forewarns arbitrators that they should not be taken by surprise when - after a prolonged hearing - they encounter that a party to the dispute has employed the technique of a secret tender.

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FOR CONSTRUCTION ARBITRATORS AND ADJUDICATORS: WILL AI TOOLS HELP OR HINDER THE DECISION-MAKING PROCESS?

Association Fellow and director, Chris Binnington Pr. Eng., deals with the especially significant topic of how AI ought to be approached by arbitrators and adjudicators, and how they should avoid pitfalls when using it.

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CONTRACTORS AND EMPLOYERS BEWARE – A SYNOPTICAL GUIDE OF THE DO'S AND DONT'S IN ADJUDICATIONS

Association Fellow and director, Chris Binnington Pr. Eng., explains vital aspects of the adjudication process to those - contractors and employers alike - who seek to engage in adjudication. The author highlights what should be done and what must be avoided in this process by recounting his own experiences in an adjudication he was recently appointed in.

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A CASE IN POINT: RECENT CASE REPORTS

Industrial Development Corporation of South Africa Limited and Another v Kalagadi Manganese (Pty) Ltd [2025] ZASCA 70 (30 May 2025); 2025 JDR 2397 (SCA).

The Supreme Court of Appeal’s judgment in this case is analysed and discussed by Association Fellow and director, Alastair Hay, under the caption ‘*Primacy of Arbitration Affirmed*’, illustrating how the modern approach to arbitration clauses results in minimised judicial interference.

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Mbambisa and Others v Nelson Mandela Bay Metropolitan Municipality [2024] ZASCA 151 (8 November 2024); 2025 (3) SA 112 (SCA).

Alastair Hay also discusses a refreshing development in the Supreme Court of Appeal’s

judgment in this case. He does so under the caption ‘*Accountability at Last*’ and shows how this judgment has sounded a warning to municipal officials and other political office bearers in municipalities in instances where they have been involved in unlawful tender awards and concomitant irregular expenditure on the part of government entities.

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Level Seven Restaurant (Pty) Ltd t/a Level Seven v Signature Restaurant Group (Pty) Ltd (2023/051229) [2024] ZAGPJHC 944 (25 September 2024); 2024 JDR 4120 (GJ).

The South Gauteng High Court’s judgment in this case is analysed and discussed by Association Fellow, Adv Kiki Bailey SC, under the caption ‘*In the context of the spirit, purport and objects of the Bill of Rights, is an appeal against an arbitral award to the High Court of South Africa permissible?*’. The author’s review of the judgment shows that on a proper interpretation of section 28 of the Arbitration Act 42 of 1965 its provisions do not permit an appeal against an arbitral award to the High Court, and that this further in accordance with the Constitution.

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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ALL ABOUT THE AOA

As part of the Association's ongoing mission to provide upskilling opportunities for everyone interested in Alternative Dispute Resolution (ADR), we hold regular events.

If you have missed an event, you can catch up!

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