

April  
2010

---

## CONTACT DETAILS

---

3<sup>rd</sup> Floor  
Sandown House  
Norwich Close  
Sandown  
2196  
South Africa

P.O. Box 653141  
Benmore  
2010  
South Africa

**Secretariat:**  
arbitrators@icon.co.za

Tel: +27 (11) 884-9164  
Fax: +27 (11) 884-9167

---

[www.arbitrators.co.za](http://www.arbitrators.co.za)

---

**Chairman**  
**Chris Binnington**  
cdb@bca.co.za

**Vice Chairman**  
**Judge Fergus Blackie**  
fblackie@telkomsa.net

**Treasurer**  
**Prof Ronnie Schloss**  
schlossy@mweb.co.za

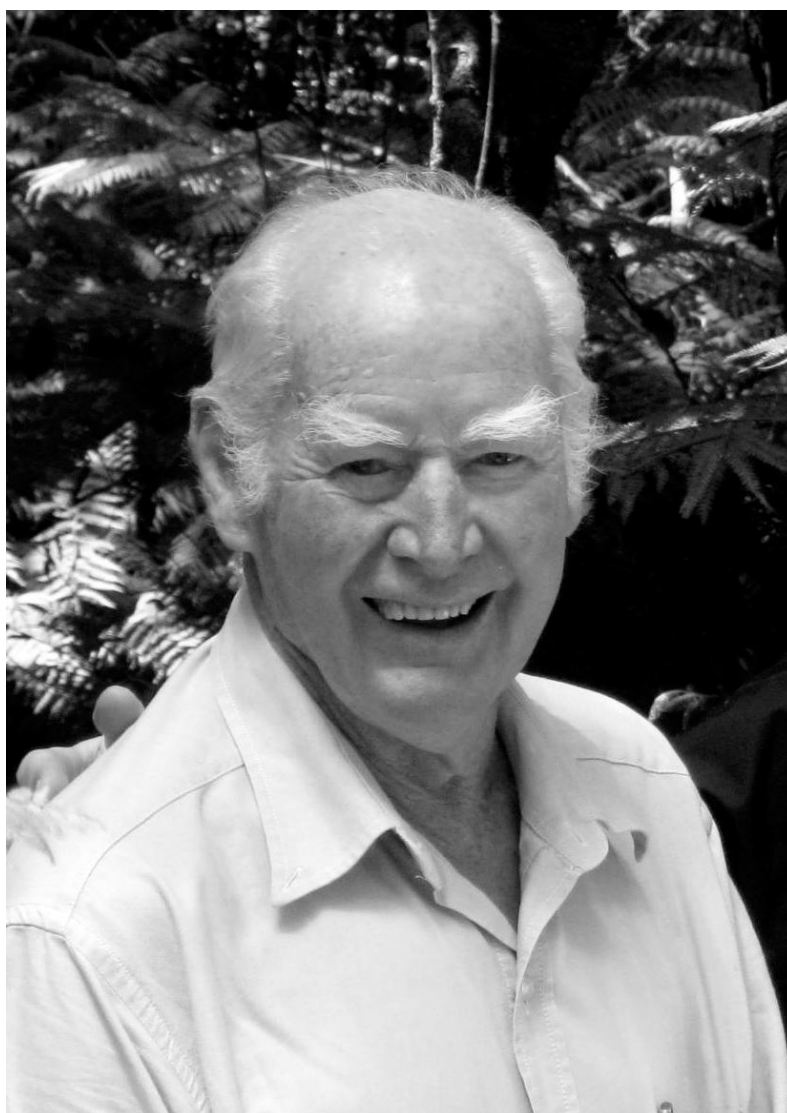
**Editor**  
**Donald Joubert**  
donald@bca.co.za

*Arbitrarily speaking ...*

Newsletter of the Association of Arbitrators (Southern Africa)



## A TRIBUTE TO DICK CHRISTIE



## CHAIRMAN'S LETTER

I am sure that most of you will by now have learned of the sad passing of Professor Richard (Dick) Christie, our honorary President, on 9th February 2010. By virtue of his enormous contribution to the law in Southern Africa as well as to this Association, it was deemed appropriate to dedicate this Newsletter solely to honouring Professor Christie. Accordingly you will find tributes in this newsletter from his son, Brian as well as contributions from the Vice Chairman, Judge Fergus Blackie and

Professor David Butler.

On behalf of the Association I attended the memorial service in Mowbray in February and once again would like to extend this Association's sincere condolences to Dick Christie's wife and family.

Sincerely,

**CHRIS BINNINGTON**

## FROM THE FAMILY

To us, his children and grandchildren, he was Pop or Grampa.

To Claire, friends and colleagues, he was Dick. To generations of students, Prof. Latterly, to the wonderful nurses at Woodside, Prrof.

Some time back, Pop claimed that his ambition was to retire to the Cape and become an alcoholic. Well, he failed. He never retired, so he never had a chance to test the second part of his ambition.

All of us are here because in one way or another he touched our lives. I think it is worth sketching the framework of his life so we can visualize where each of us fits in.

Pop was born on the 27th February 1924 in Downe, Kent, England. He used to tell us he was a sickly child and spoke with a stammer, so he had to learn to speak loudly to correct it. Schooled at St Peter's, Seaford and Marlborough, he qualified for entry to

Cambridge at age 14, which he claimed wasn't unusual in those days. When he left school at 18, it was straight into the air force and the war. Qualifying as a pilot and narrowly missing the Battle of Britain, he was sent to Southern Rhodesia as an instructor. This was our good fortune as kids, because while out there he met and married Philippa, our mother.

He returned to Cambridge to study law and rowing, not necessarily in that order, and Martin and I were born there. Apparently when I was born, they registered me as a vegetarian during the rationing so they could have extra cheese. For some time I wondered if it was me they wanted or the cheese.

Returning to Southern Rhodesia, he practiced as an Advocate both in Northern Rhodesia, which was English Common Law, and in Southern Rhodesia, Roman Dutch. He took Silk in both jurisdictions in the early sixties, then refused a judicial appointment at a young age because of a fundamental objection to the

death sentence, and instead took up an appointment at the University College of Rhodesia to establish the Law Faculty there – this is where the Prof label first came in.

He found himself drawn into the Rhodesian conflict in two ways. Firstly, he was requested to advise the then Governor on the legal issues around UDI, and was subsequently drawn into mediation effort between the Rebel government and the British. Secondly, there was a severe shortage of pilots in the air force, and was asked to join the reserve, which he did, serving with distinction and earning a combat decoration. It was a testing time balancing the responsibilities, and he would often appear to lecture at the university in his flying uniform, and then go off to his flying duties. Not all of his students appreciated the balance.

Shortly after the end of the Rhodesian conflict, in 1980, our mother died in a flying accident. He retired from the University and moved for a while to Cambridge, which was probably his spiritual and intellectual home. In 1991 he married Claire and they set up happily in the Cape, quite possibly in pursuit of his professed ambition. But he couldn't stay away from academia and when UCT offered him a room and a stipend, he accepted with great pleasure, enjoying getting back into the collegiate atmosphere of the Law Faculty. He was still there, working on the sixth edition of his book on Contract, when he suffered his first incapacitating stroke in December 2008.

So that's the framework, what of the man? We each of us here have our memories. To Martin and me as little ones, he was austere, disciplinarian, Victorian, like his father and grandfather before him. And then along came our three sisters into his life, and behold! He

was loving, gentle, fun, deeply involved in all our lives (and in due course, those of our families), and he remained so until his death.

To try and isolate the elements of the person: He had a deeply serious and spiritual approach to life, and then the mischief would break out and he would be at the booming centre of a party – employing what we called his party voice. He was the Chancellor of the Anglican Synod in Rhodesia, but he also had a wonderful repertoire of rowing songs and Mrs O'Flaherty stories. His faculty, air force and rowing parties became the stuff of legend. I remember a few years ago Cookie and I went with him and Claire to a wine estate to test the wares. The wine was dreadful, although full of character, and you could see from the red faces that the owners enjoyed their provenance in full measure. Pop and Claire settled themselves onto stools, and in no time there were great stories flying around, and half dozen bottles of the family reserve vintage open on the table. Ouma came out of the kitchen wiping her hands and sometime later we staggered out with two or three cases of undrinkable wine.

Above all, he was a teacher, in the deepest sense of the word. He had a great mind and his abiding love was to connect with and to share his thought processes with all who would accept and could use them. Hence his book on Contract, a practitioner's delight. Hence his connection with thousands of young minds now spread all over the world.

Of the many tributes we received, I close with one from Sean Ross, QC, from the Temple in London, and one of his first students:

"He had the treasured ability, though analysis, to make the solutions to the most complex problems appear simple and obvious – a

wonderful gift in a teacher because it encouraged us to believe that we could strive to the same goal ourselves.”

Thank you

**BRIAN CHRISTIE**

## PROFESSOR DICK CHRISTIE QC – A PERSONAL TRIBUTE

I became acquainted with and began to appreciate Professor Christie as a lawyer when I purchased the first edition of his book *The Law of Contract in South Africa* in the year of its publication, 1981, more than ten years before I met him in person. The book had been planned as a third edition of Wessels’ book with the same title, but this plan was abandoned when it became clear that it was not practical to update the original text.

In 1981 I still taught Unjustified Enrichment as an LLB elective at Stellenbosch University. While I continued to teach the subject, I started my first lecture each year with the following quotation from Christie’s preface to his first edition:

“I have tried, in areas that the law seems unsatisfactory, to draw a clear line between what the law is and what it ought to be. I do not believe any useful purpose is served by sweeping unsatisfactory cases under the carpet. Better bring them out into the open and suggest reasons why the judges should reconsider them.

... I have referred only minimally to the writers of contemporary textbooks or articles, not out of disrespect but because I am not by nature an academic controversialist. I prefer to get on with the job of stating the law as I see it, remembering that the judges

write the law while academics write about it. So I direct the reader’s attention to the cases, and if he wants a second opinion he will gain more from reading them in the original than from my imperfect representation of them. Nevertheless I have allowed my agreement or disagreement with other writers to come to the surface on occasion.”

This quotation exactly captured my approach in attempting to teach enrichment law, with the qualification that it is not a subject on which I have published. The quotation also made it clear to my students that I was more interested in assessing their understanding of the prescribed cases than their knowledge of the views of other academics on these cases.

Dick Christie read law at Cambridge, whereas I received my legal education at Stellenbosch, at a time when the law of contract was taught by the late Professor JC de Wet. For Stellenbosch students of that era, there was only one textbook we needed to study on the law of contract, in addition to the cases: “die groen bybel” written by Professor JC de Wet. Unlike Professor Christie, he tended to put his own views on what the law should be in the text, and relegate the unsatisfactory views of judges, particularly those sitting in provincial divisions, to the footnotes. Given my admiration for Professor De Wet, it seemed a

bold move for me to be buying a new book on the South African law of contract, a field in which for De Wet's students, there was only one important authority. As the "groen bybel" was written in Afrikaans, I was partly motivated by the need to make sure that when making statements on the law of contract in English, I was at least using the correct technical vocabulary.

One afternoon, within a year or two of Christie being published, I was in my office at the university when a commerce student came to see me with a problem on the law of contract. They were to write a test on contract that evening, and my colleague who actually taught the module was not in his office. The student put his question and I picked up Christie for the answer and explained the law as stated by the courts to the student. The next morning, I mentioned the incident to my colleague. We soon discovered that he had taught the students on the basis of the law as stated by Professor De Wet who had naturally relegated the relevant case to a footnote. My colleague duly explained to the students that there were different views about the law and marked the test accordingly.

Dick Christie's mastery of the law of contract has over the years made sure that his book is the first choice of many practitioners when confronted with a problem regarding the law of contract. He also demonstrated through his book one of the prerequisites for appointment as a lawyer arbitrator: expertise in the substantive law.

I first met Professor Christie in person early in 1993, by which time he had moved to Franschhoek. We arranged to have lunch together in Stellenbosch to discuss arbitration. On that occasion he generously gave me copies

of the typescripts of his articles comparing South African arbitration legislation with the UNCITRAL Model Law, which were subsequently published in (1993) volume 9 of Arbitration International and the 1994 South African Law Journal. By then I had been doing extensive research on the contents of a proposed new Arbitration Act to replace the existing Arbitration Act for domestic arbitration for over four years. I had, however, not given much thought to South Africa's response to the Model Law, and was rather lukewarm about it, influenced by the response in England contained in the 1989 report of the Mustill Committee. As a result of that lunch, and having read Dick's articles, I had a Damascus Road conversion experience, and realised that the only way for South Africa to go as regards legislation for international arbitration was to adopt the Model Law. However, it was a partial conversion, in that I then, as now, favoured a separate and more detailed statute for domestic arbitration. In September 1993 we were two of three low-key South African participants at the LCIA Centenary Conference in London. This was still before South Africans became respectable at such meetings and we were asked to keep a low profile particularly at the inaugural meeting of the PAC (LCIA Pan African Council), which was held in London during the conference. Dick was nevertheless elected as one of the first Vice Presidents of the PAC.

On 1 August 1994, the Association of Arbitrators submitted its proposal for a new domestic arbitration statute to the Minister of Justice, who responded by authorising the South African Law Commission to proceed with an investigation entitled "Arbitration". As the Association had focused only on domestic arbitration, it did not deal with how South

Africa should respond to the Model Law in sufficient detail. The logical starting point for the Law Commission's investigation therefore appeared to be the question of South Africa's response to the Model Law and a Working Paper on this topic was circulated by the Commission in September 1995. Only two detailed submissions were received among the responses, one being from the Association of Arbitrators, which was written by Dick and me. By this time Dick and Claire, his second wife, had moved from Franschoek to Harman Road, Claremont in Cape Town. The structure and content of the Association's submission was settled during a very pleasant day sitting in the garden at their home, an entirely different atmosphere from a soulless modern committee room, typically designed with a low ceiling and no windows to discourage both elevated ideas and lateral thinking.

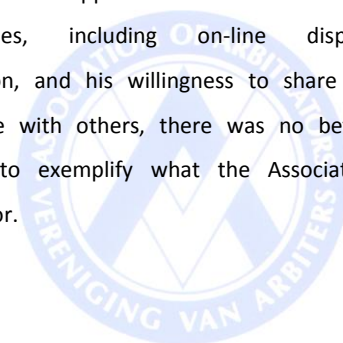
We were both appointed to the Commission's Arbitration Project Committee. Although I was designated the drafter of the two discussion papers and the two reports which the committee produced, Dick played a most important role throughout the five years which it took from the appointment of the committee to the publication of the second report, attending workshops in various parts of the country to gauge public response and in carefully reading and commenting on a small forest of committee papers and draft reports. I will always be grateful for his practical and wise inputs, both on the wording of legislation and on navigating through the minefields of arbitration politics.

While on the project committee, we went to several conferences, the most memorable being a conference co-hosted by the LCIA in Harare in October 1998. It was here that I

could see at first hand how this essentially very modest person was revered by his former students, both black and white. His huge role in establishing legal education in pre-independence Zimbabwe was very evident from the great affection and respect with which Professor Christie was treated by a broad cross-section of the Zimbabwean legal community. This conference took place before the Zimbabwean president saw fit to re-constitute the country's judiciary. The judges at the conference, again irrespective of race, showed an open-mindedness to judicial case management as a means of speeding up court proceedings and genuinely strong support for ADR, which were a shining example to their more conservative judicial colleagues elsewhere in the region.

I first discovered at Dick's memorial service, that he, whom I knew to be a staunch Anglican, very much enjoyed Cranmer's English and the traditional prayer-book liturgy. When it came to arbitration practice and procedure, however, Dick, as an arbitrator, was very much a modernist and innovative reformer. This I know from his lectures and conference contributions as well as his anecdotal accounts of preliminary meetings.

Dick was therefore eminently qualified to assume the position of Honorary President of the Association of Arbitrators in 1995, a position he held until his death. With his publications on arbitration, his involvement with arbitration law reform and his enthusiastic but balanced support for modern arbitration techniques, including on-line dispute resolution, and his willingness to share his expertise with others, there was no better person to exemplify what the Association stands for.



Like Eyvind Finsen, Dick did not know the “R” word: “retirement”. In spite of his erudition, he never admitted to regarding himself as an academic lawyer. He nevertheless held the position of research fellow at the Law Faculty of the University of Cape Town where he helped to develop LLM modules in Arbitration and International Trade Law. He was the external moderator for my LLM module in International Commercial Arbitration until his incapacitating stroke in December 2008. I also had the pleasure of being his external examiner, both for the arbitration module and a considerable number of LLM students, who did their LLM minor dissertation under his supervision. It must have been late 2006 or early 2007 when the late Professor Mike Larkin informed Dick (then at the age of 82) that he would have to stop being the coordinator of his two master’s modules because he was blocking the career paths of younger academics. I could nevertheless see how those much younger academics had developed and blossomed by presenting modules in tandem with Dick.

Dick was always great company and a supportive friend. I did not share his life-long involvement in rowing, the Eerste River at Stellenbosch not being suitable for boating, and he, being partly colour blind, did not share my passion for birding. I was very appreciative of his encouragement and prayers during my late wife’s terminal illness and my attempts to rise to the challenge of being an only parent to two teenage daughters. I knew that he was very close to his children and their families through his brief references to his visits to them in various parts of the world. I knew that his first wife had died, but he never referred to the circumstances. It was through others that I

heard it had been in a light plane crash. It was only in writing this tribute that I discovered the second last sentence of the author’s preface to the first edition of his book referred to above: “I must thank ... my dear wife whose forbearance and love made the work a pleasure and whose untimely death cast a shadow over its final stages.”

Dick Christie rightly criticised the very wide statutory discretion given to the South African courts not to enforce a valid arbitration agreement as the philosophy of “nanny knows best” – a philosophy of excessive court intervention with party autonomy decisively rejected by the Model Law ((1993) 9 Arbitration International 153 at 155). Dick himself has been an exemplary mentor for the reform of South African arbitration law and practice. As recently as March 2006, he was driving me through the traffic of Johannesburg to an international arbitration symposium in Rosebank, where we strongly criticised the lack of progress in implementing the Law Commission’s proposals. Dick certainly pointed the way, both for arbitration legislation and practice. As so often in South Africa today, the problem is not the lack of a plan but the apparent absence of the will and capacity to deliver. This comment is not just directed at the relevant government department(s) and the legislature, but also to those South African arbitrators who happily arbitrate under the High Court Rules, another clear but different abuse of party autonomy.

I last visited Dick, with my colleague Charl Hugo, in December 2009 at the Woodside Frail Care Centre. I was deeply impressed with his cheerfulness and Christian fortitude. One of the privileges of teaching arbitration and going to arbitration conferences for over a quarter of

a century is the number of fine people I have met and come to know in the process. Dick Christie ranks with the best of them. I use this opportunity to express my deep sympathy to

Claire and to Dick's family.

**Prof. David Butler**

## PROFESSOR RICHARD HUNTER CHRISTIE QC

This is not the complete story of the man nor a detailed critique of the work of the person known to almost everyone who met him simply as 'Dick'. It is a personal memory of my contact with and appreciation of the man and what he achieved. It is not intended as a hagiography. If it reads like one that is because of the nature of the man.

I was never an intimate of Dick's. We were professional colleagues. Our lives and work joined and separated and joined again over a period of forty five years.

My first contact with Dick was at the Bar in Rhodesia (now Zimbabwe) in 1968. I was starting at the Bar. He was a senior member and a silk.

Dick's family, educational and legal background were English and completely suited to his choice of career at the bar. His father was a bencher at one of the Inns of Court, his school was Marlborough and his university Cambridge.

His time at Cambridge was interrupted by the Second World War. He was called up and served with the RAF. During that service he was sent to Rhodesia as a flying instructor.

There he met and subsequently married his wife, Phillipa. After the war he returned to Cambridge to complete his degree. He then returned with Phillipa to Rhodesia and started practicing at the Bar.

When I started at the Bar, he was very helpful to me –always available to help and advise. Whenever Dick was in court, I would try to make time to sit in on his case to learn his court technique and presentation. He came to represent for me the best of the tradition of the Bar – very able, absolutely straight forward, welcoming, approachable and helpful.

One incident from that period that I remember particularly concerned a case he had in Zambia. He believed and advised his client that he had a cast iron case. In the trial, his principal witness unexpectedly changed his evidence on a crucial point. The case was lost. Dick was amazed and puzzled. He later discovered that his client had bet on the result of the case and stood to win more by losing it than winning it.

In time Dick left the Bar to become the first professor and head of the newly established Law Department in the University of Rhodesia and Nyasaland. He had been lecturing in law at the university for some time but part time and in another department. He was also the editor of the Rhodesia and Nyasaland Law Journal. In one of the editorials he wrote in the Journal he emphasised the need for a separate Law Department. I do not know if the editorial was the principal cause of the new department or his appointment as head of that department but both subsequently occurred.

Dick proved to be a very good choice for the

head of the Law department. He chose his deputy and his lecturers carefully. The department was efficiently run. Dick himself is still remembered with great affection and respect by those he taught and mentored.

When the Independence War started in Rhodesia, Dick volunteered to serve part time in the Rhodesian Air Force. He flew Dakotas carrying troops and supplies. Much of this flying involved flying low level at 500 feet. This was the best level for the accurate dropping of troops and supplies but it is a very tricky business accurately maintaining that height in broken and hilly country. Dick seemed to develop a special skill at it. It was said that when he flew over Lake Kariba, he left a wake behind.

It was while he was at the University that Dick developed his talent as a legal author. He had been editor of the Rhodesia and Nyasaland Law Journal. Now he embarked on a series of books on commercial and contract law.

Rhodesian Commercial Law appeared in 1981. It has been expanded and republished as Zimbabwe Business Law and is still in print and used today.

After retiring from the university, Dick went back to Cambridge. There he continued his studies. I rather lost touch with Dick at this time but I do know that he was appointed a Proctor by the University. This was a university disciplinary office. Part of its function is to control unruly behaviour by students in the city of Cambridge. The appointment involved patrolling in Cambridge with two strong men called Bulldogs. Dick got himself some publicity

by being the first Proctor in the history of the University to appoint a woman as a Bulldog.

In this period Dick remarried. He came to South Africa and settled here. He found a place for himself at Cape Town University and settled back into teaching law, supervising post graduate students in their further studies and writing. He published The South African Law of Contract. This book has been republished regularly. The latest edition came out shortly before his debilitating stroke. The book is very valuable to practitioners and students. It is continually referred to and quoted in lectures, exams, opinions, court proceedings and judgments.

When I came to South Africa in 2002, we re-established contact partly through the Arbitration Association of which he was President and I was a member. I tried to see him when I was in Cape Town. I last met him shortly before his stroke. The stroke destroyed most of his faculties. He could not move or speak but his eyes still seemed to communicate his old sparkle and humour. He was like this for two years. It must have been a very difficult time for him and his family.

When he died I felt a sense of tremendous personal loss. To me, he was a great personality, advocate and teacher of law. But, most importantly, he was a real Christian gentleman.

**JUDGE FERGUS BLACKIE**

Vice Chairman Association of Arbitrators  
(Southern Africa)

