

# ASK EXPERIENCED PRACTITIONERS!

Association of Arbitrators  
(Southern Africa) NPC



## WEBINAR

# ADR Questions and Answers

Please join us for this interactive online workshop, presented by Mr Jonathan Mitchell, the Regional Branch Chairman of our Western Cape branch, as part of the Association's ongoing mission to provide regular upskilling opportunities for its members and for everyone interested in Alternative Dispute Resolution (ADR).

### ABOUT THE WORKSHOP:

The purpose of the online workshop is to upskill arbitrators who are not from the legal fraternity and may have become somewhat rusty on certain terminology which crops up from time to time in arbitration, adjudication and/or mediation. This workshop will also be beneficial to the Association's students as it will assist in preparing them to become competent arbitrators.

The online workshop will be an open discussion debate forum where Mr Mitchell, an experienced arbitrator, will act as the chairperson of the deliberations.

### Following are the topics for discussion, debate and deliberation at the workshop:

1. Dispute resolution by means of Adjudication is designed to be quick and relatively cheap. It is also sometimes regarded as being "rough justice". Could one except to a defective submission in Adjudication?
2. Under the latest JBCC Adjudication rules, the procedure laid down is for the initiating party to submit a Statement of Claim; the responding party to submit a Statement of Defence; and the initiating party may issue a Replication to the Statement of Defence. What happens if the responding party submits a counter claim? What happens if the responding party submits a Rejoinder to the Replication?
3. How does one go about enforcing an Adjudicator's Determination?
4. In an Arbitration, may a party request a security for costs? Is this dealt with in the Arbitration Act? Is this dealt with under the Association's Rules for the Conduct of Arbitrations? How does one secure the security for costs? What if the party ordered to furnish security for costs fails to do so?
5. In an international cross-border agreement, may a party build into that agreement with foreign companies that South African law applies, especially if the services are provided in South Africa, to the foreign company, and furthermore, can one insist that South African Mediation and Arbitration Rules will apply in the event of a dispute?
6. Cross-border international contracts frequently state that the applicable law to this contract will be the law of the country where the contract is executed. Does that then mean that interpretation of that law is to be in accordance with the common law of a different country?
7. What happens if an Arbitrator's Award or an Adjudicator's Determination is not dated? Alternatively, is not signed by the Arbitrator or Adjudicator?
8. What would be the correct scale of costs where Party A has to bring an application to court to have an Arbitrator appointed in terms of a valid Arbitration Agreement which is opposed by Party B?
9. What are qualifying costs and who do they apply to generally?

10. The Legal Practice Act requires instructions to be in writing. Are such instructions awarded or considered to be on an attorney and client scale, or are these instructions regarded as being party and party costs?
11. Under sections 32(2) and 33(1) of the Arbitration Act, 42 of 1965, are circumstances under which an Award can be remitted and/or set aside. Can an Award for Costs also be remitted and/or set aside?
12. Can the Arbitration Tribunal go back and amend the Award for Costs upon queries by a party to those proceedings?
13. Are the costs incurred by a Cost Consultant included in the cost of the Arbitration?
14. Can in-house legal resources costs be included in the costs of an Arbitration if no external lawyers are engaged?
15. Are opportunity costs of Members of Management, who are tied up in Arbitration and not able to earn revenue for their organisation during the time spent on Arbitration, claimable in an Arbitration?

**ABOUT OUR PRESENTER:**

**Mr Jonathan Mitchell:**



Jonathan is the Western Cape Regional Branch Chairman of the Association of Arbitrators (Southern Africa). He is also a Director and Fellow of the Association. He is a practicing Arbitrator; Adjudicator; and Mediator in the Western Cape and has been practicing since 1994.

Jonathan has a wealth of knowledge and experience in the field of Alternative Dispute Resolution and runs a busy consulting practice in Cape Town. He specialises in the field of disputes in the construction industry and is a Past President of the Master Builders and Allied Trades Association; is a Past Chairman of the Building Industry Bargaining Council; and is a Fellow of the Chartered

Institute of Building.

**DATE:** **Friday, 4 August 2023 Time: 10:00 to 12:00**

**LINK:** The Zoom link will be emailed to you upon receipt of your completed Registration Form and, where required, upon receipt of payment.

**COST (incl. VAT):**

AoA Members:	<b>R 0.00</b>
ACPM, BIArb, CESA, MBA, RICS, SAICE and WISA Members:	<b>R 50.00</b>
Non-members:	<b>R 100.00</b>
University Students, Professional Trainees, Pupil Advocates and Candidate Attorneys:	<b>R 0.00</b>

**RSVP BY:** **Thursday, 3 August 2023**  
 Please send your completed [Registration Form](#) to our Financial Manager **Michelle Venter** at [michelle@arbitrators.co.za](mailto:michelle@arbitrators.co.za)

**THEY SAID WHAT?**

*"Provided great insight into the subject matter."*

*"Thank you! Much needed for day to day practicalities."*

*"Thank you Jonathan, once again, for a very productive workshop."*

*"This was most useful. I will certainly attend the next one. Thank you very much."*

*"Very informative, thank you."*

*"I would like to see this as a regular feature. The workshop was very helpful with many issues where there is often uncertainty."*