



# The SAML Review

Newsletter of the South African Medico -Legal Association  
 Non-Profit Company reg No 2005/013822/08  
<https://medicolegal.org.za/index.php>

## YOU STRIKE A WOMAN, YOU STRIKE A ROCK

August marks Women's month, a time in which we commemorate the iconic freedom fighters and political activists who fought in the struggle against apartheid. Women's month is also a time when we empower, honour, and celebrate the beauty, courage, strength and resilience of South African women and the role they play in society.

Women's month is a tribute to the 20 000 brave women who marched on 9 August 1956 to the Union Buildings in Pretoria to challenge inequality and oppression on the basis of race and gender and to petition against the enforcement of black women needing to carry an identification document. This internal passport, the 'dompas', under the Pass Laws Act of 1952 served to maintain segregation by controlling and restricting the freedom of movement of black people under the apartheid regime. This mass demonstration was organised by the anti-apartheid Federation of South African Women (FEDSAW) and led by Lillian Ngoyi, Helen Joseph, Rahima Moosa and Sophia Williams. Their aim was to strengthen the voices and influence of women of all ethnicities in the struggle for a democratic society.

The protest was scheduled for a Thursday, the day on which African domestic workers had their 'day off'. This ensured that there would be large multicultural groups of women to march. The protest was supported by mothers, daughters, sisters and friends who decided enough was enough and came together to initiate change by handing over a petition containing more than 100 000 signatures opposing the introduction of passes for African women. During the procession, the thousands of women stood silently outside the Union Buildings for 30 minutes in a powerful display of unity and solidarity, this was followed by a protest song composed in honour of the occasion, 'Wathint' Abafazi Wathint' imbokodo!

The message was clear, 'you strike a woman, you strike a rock'.

As we celebrate National Women's Day, we are also reminded of the present realities and issues that women in South Africa and across the world still face. Issues such as gender-based violence, discrimination, unequal pay, harassment at the workplace, access to sanitary products and fair access to education. The plight of women globally has never been easy and for black women in particular the burden remains heaviest.

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The COVID-19 pandemic has shown us that our struggles continue. In South Africa, gender-based violence has been a visible pandemic for a long time with women and girls being violated and abused on a daily basis with their needs and safety neglected.

One in four women experience harassment in the workplace and the psychological impact of such victimization cannot be overstated.

Women are more likely to be unemployed and underpaid, yet they contribute about 50% of the country's GDP. Period poverty affects 30% of adolescent girls and young women by preventing them from going to school and work due to a lack of access to appropriate health services. Women and girls are also at a disadvantage in attaining quality education. Because of the patriarchal nature of South African society, women tend to occupy a lower social status than men and are socialized to work in the home and be mothers. This deemphasizes the importance of receiving an education. Women are entitled to live in dignity, safety and security. Empowering women and girls is an indispensable tool for advancing development and reducing poverty. Women who are healthy, educated and in charge of their lives contribute to the health and wealth of families and communities. The women of 1956 have taught us that our fight for equality should not be exclusive. Their sacrifices made the ground fertile and now it is our turn to continue fighting the good fight against injustices, marginalisation and gender-based violence. Our constitution and many South African statutes include provisions for equality which were negotiated in 1994 and that should be brought to full effect.

It is up to us as South Africans to take up the space that the month of August offers by joining in the celebrations and conversations as a form of activism for future generations.

## **AMANDLA. AWETHU!**

Article written by Robin Monakali and *Conflict Dynamics* <https://www.conflictdynamics.co.za/Blog/You-Strike-a-Woman-you-Strike-a-Rock>

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# **THREE JUDGES RAISE CONCERNS ABOUT ROAD ACCIDENT FUND'S ABILITY TO FUNCTION**

*Zelda Venter – Chief Reporter at Pretoria News*

**Pretoria - The Road Accident Fund (RAF) came under the spotlight yesterday when three Mpumalanga judges raised concerns about its ability to function, and asked how and when it would up its game.**

The president of the Mpumalanga Division of the High Court, Judge Francis Legodi, his deputy, Judge Sheila Mphahlele, and Judge Brian Mashile peppered the legal counsel acting for the RAF, Cedric Puckrin SC, with questions such as what contingency plans were in place when it fired its panel of attorneys in 2020.

The judges made it clear that as things stood, the courts had to step in to ensure claims were dealt with adequately and to try to ensure that things ran smoothly. They said the courts were inundated with claims against the RAF daily, while it seemed the entity was not doing its part in ensuring that the litigation process ran smoothly.

The full Bench application, in which the judges wanted answers from the RAF, was sparked by two cases which were, against the directives of the division of the court, settled at the last minute, as the trials were supposed to begin. The judges wanted explanations from the RAF and its CEO Collins Letsoalo, among others, about why the court should not award a personal costs order against him in the cases. At the start of yesterday's hearing, Judge Legodi wanted questions answered, including who was responsible for late settlements and why the RAF was absent in the cases before court. The judges also wanted answers about the way forward in the many cases the courts were confronted with but, due to the entity firing its panel of attorneys, was mostly no longer defending. Puckrin said one of the problems was that the fired attorneys held on to case files, and there was nothing the RAF could do about it. But, he added, there were contingency plans in place, as the RAF's corporate lawyers would take over the matters as a "stopgap measure" until it appointed state attorneys. He said that by September, there should be 175 new state attorneys.

The judges persisted in their questioning about what systems were in place, as it seemed that nothing was in place as the RAF was absent in court, potentially causing it to lose a lot of money as it was not defending cases. "Why would you resort to stopgap measures? Were there people to take over? What plans do you have in place? Must the courts meanwhile deal with these problems?" the judges kept asking. Puckrin said he could not answer all the questions, as he was briefed to deal with only the two subject matters in the case. But the judges made it clear they were concerned about the non-involvement of the RAF in claims. They wanted to know for how long the courts would have to deal with the problems. They doubted there were contingency plans, as the courts continued to be faced with the issues. They also doubted that the handful of corporate lawyers could deal with the fired panel of attorneys' duties.

Puckrin said one of the big issues was that claims submitted to the RAF were incomplete. An audit done on May 31 this year showed that only 8.26% of claims were complete. But the judges said the RAF had the means to deal with the issues. Puckrin said the RAF was not making excuses but was trying its best to turn things around. "The RAF is acutely aware of its failures," he said. He added that fingers should also be pointed in other directions, such as at legal practitioners who milked the RAF. "We can criticise the RAF for days, but there is no solution if we don't move forward," he said. In answering one of the judge's questions, about whether the RAF understood its mandate, Puckrin said it did, and its finances had improved over the past two years. Advocate Brenton Geach, who appeared for one of the claimants, told the court that "it is clear" that appeals to the RAF over the years to observe its statutory duties and constitutional functions had fallen on deaf ears. "The RAF is either incapable of, or disinterested in, serving individuals who are often among the most vulnerable members of society. Its failure to do so leads to the waste of huge sums in legal fees and expenses and opens the door to abuse of the system," he argued – Pretoria News.

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## JUDGEMENTS

\*\*Master of the High Court v The Pretoria Society of Advocates (1st amicus curiae) and Others Case 35182/2016 – delivered 20 May 2022. The Master of the High Court requested guidance on certain identified issues involving the Master's supervisory powers over trustees and curators *bonis* in matters where damages have been awarded by courts\*\*

\*\*Judgment by the Full Bench in the matter of The MEC & Five Others v The Legal Practice Council & 86 Others was just handed down\*\*

***Please revert to the website for full articles.***

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## MEDIATION PILOT PROJECTS

Article written by: Ms. Leigh de Souza-Spagnoletti (Attorney, conveyancer, mediator (Conflict Dynamics, NABFAM and CEDR) Chair SAMLA RAF Committee) assisted by Trevor Frankish (*Views expressed in the article are those of the authors and do not necessarily represent the views of SAMLA*).

The RAF Mediation pilot project has reached its conclusion and the Gauteng Health MEC project is well out of its infancy. SAMLA committed to mediate 100 RAF cases *pro bono* as well as to 50 medico-legal claims against the Gauteng Department of Health. The RAF target has been achieved and approximately 30 medical negligence claims have been mediated in Gauteng since the pilot projects commenced end of 2019/beginning of 2020.

SAMLA recognises and applauds the innovative and brave move by the management and officials of the RAF and the Gauteng Premier's office to embrace the opportunity to test the benefits of mediation over litigation. The voluntary contribution of time and energy by the members of SAMLA to prepare for, conduct and file reports after the mediations is greatly appreciated. Special recognition must go to the two people who arranged for four SAMLA participants (lead mediator, co-mediator and two observers as per the SAMLA model) for each of the pilot cases and administered the project.

These projects have showcased mediation in the delictual law arena with some positive as well as some surprising results. Such projects now stand as proof that mediation is an effective means of dispute resolution in the field of personal injury law. This is surely the most positive outcome of the projects. The RAF and the Gauteng provincial government showed a huge commitment to mediation and we are hopeful there might be an allocation of mediation-dedicated employees within the organisations.

In addition to the positives however, some interesting developments have been seen within the context of these mediations.

Firstly, the parties to delictual law mediations have a pretty solid idea of what their settlement parameters are when they go into this process. While there is sometimes a fair deal of exploration on the liability aspect, particularly in relation to clinical negligence actions, this is not necessarily the case with regards to quantum. Because the parties are in possession of all their expert evidence, often (but not always) joint minutes included the issues in dispute are well crystallised. Being such a specialist field of law, the legal representatives themselves have a solid idea of the strengths and weaknesses of each case and inherently where the fertile settlement ground lies. This often makes for a significantly shortened explorative phase of the mediation and, with a mediator well versed in the assessment mechanics of delictual liability and quantification, the generation of options for settlement generally runs pretty smoothly. Future medical and related costs, by far the most contentious of damages in clinical negligence actions, have been well negotiated in these mediations.

Experienced legal representatives and delictual law mediators have a solid understanding of cost and risk, compromise and negotiation on earning scales, and the creative application of contingency deductions.

The MOUs of the projects required a facilitative style of mediation and this is by far the most popular style of mediation. There is little doubt however that a mediator experienced in anatomical injury assessment and action quantification makes for an effective and streamlined mediation. Secondly, both of concern and interest to the authors, was lack of victim participation which is pivotal to traditional mediation.

Very few accident victims in the RAF project showed interest in attending the mediations and the same, although to a lesser extent, applied to the Gauteng project. The restorative and transformative aspects which underpin traditional mediation, were glaringly absent. In almost all cases, plaintiffs did not attend the mediation which was left to their legal representatives. With the monetary motivation for these actions, it would seem particularly in the RAF arena, that things were left to the representatives who were either equipped with authority to negotiate settlement, or were in communication with plaintiff's and curators telephonically. We found this to be peculiar although not detrimental to the success of the mediations. In a handful of the medical negligence claims, plaintiffs did request direct interaction with the practitioners whom they felt had harmed them but this request to have the "offending" healthcare practitioner present was not arranged in any of the matters, often as a result of the efflux of time and non-availability of the practitioner concerned. However, legal counsel for the Gauteng Province made genuine and heartfelt apologies to victims on behalf of the Health Department. How this trend progresses as mediation becomes more and more mainstream, remains to be seen.

Thirdly, setting a date for a mediation often had the same effect as a court date in triggering preparation for, and conclusion of, the RAF cases. The benefits of mediation of these cases in terms of financial savings, speed to resolution, satisfaction with the outcome and avoidance of adversarial court appearances for victims are still to be studied in some detail. This is work in progress. In the pilot projects there has been extensive learning by SAMLA members who participated. Assuming 4 SAMLA people giving up their time voluntarily to do the *pro bono* mediations with about 130 mediations, there have been more than 500 learning opportunities provided. Dozens of plaintiff legal practitioners and government/RAF officials have also been exposed to mediations, most of which have been successfully concluded.

The pilot projects have also produced a number of people who now have quite extensive mediation experience in the fields of personal injury and medical negligence and who are keen to use this experience to further promote mediation and provide on-going training.

SAMLA appreciates the work of the late Judge Neels Claassen and Dr Herman Edeling for spearheading this initiative and laying the groundwork for a positive, yet still infant, shift of the delictual law field into resolution through mediation.

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## OFFICIAL NEWS DECLARATION FROM THE Q-GROUP

Please contact JP Venter, Communication Head of the Q-Group via [info@samla.org.za](mailto:info@samla.org.za) for any additional information.

At the recent Annual Conference of the Society for Industrial and Organisation Psychology (SIOPSA) there was great interest in the first draft of the newly published Professional Practice Guidelines for Industrial and Organisational Psychologists. SAMLA's Quantification Interest Group (Q-Group) participated actively in this process. These guidelines are sorely needed as there were many concerns received from the Road Accident Fund, Several Actuaries, Judges and ultimately the Health Professions Council regarding gaps in the Medico-Legal work of Industrial Psychologists.

Although these guidelines are not enforceable rules it represents an effort by Industrial Psychologists to provide guidelines for the professional practice of Medico-Legal work. Over and above experienced Industrial Psychologists, Legal and Actuarial professionals were also involved.

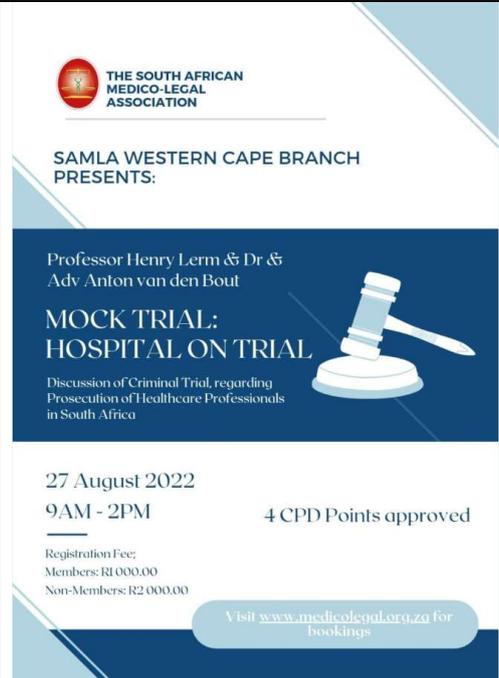
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It is noteworthy that the guides are very comprehensive and practical. It includes as annexures material by courtesy of the Actuarial Damages Committee (A sub-committee of the Actuarial Society of South Africa (ASSA), made up of Actuaries specialising in 3rd party and damages claims). The draft guidelines are now in a process of receiving comment from practising Psycho-Legal professionals during August 2022, whereafter the Psycho-Legal Interest Group of SIOPSA will officially publish it.

## TIERS FEEDBACK

It is confirmed that the revising of current tiers criteria is ongoing with the SAMLA board. Some applicants have been admitted using the current credentialing tiers as procedure. Medical-legal practitioners that have taken part in the foundation course, have been added to Tier One. A suggestion that tiers move towards experience and learning due to the fading out of foundation courses is being considered. SAMLA members should continue to apply for approval to be registered on the ML register'. Please be aware of that the workshops and the foundation courses as previously offered and managed by Azlyn have been discontinued, and that SAMLA is not involved. SAMLA has embarked on a new approach to education and training.

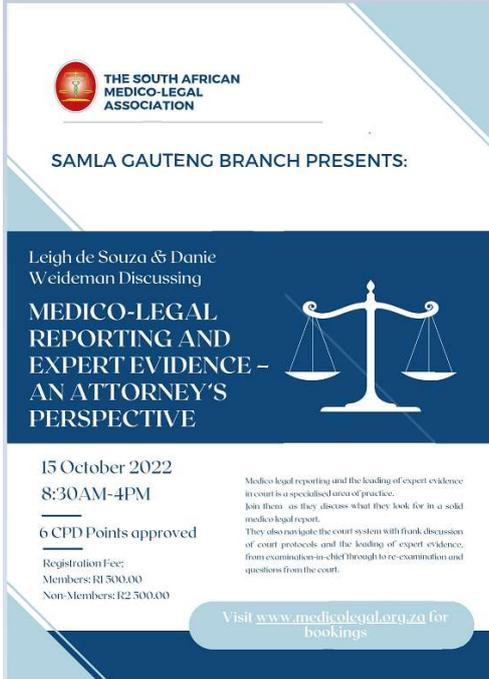
## UPCOMING TRAINING EVENTS

MONTH	COURSE / CONFERENCE	SPEAKERS	PROVINCES INVOLVED
27 AUGUST 2022	 The poster for the SAMLA Western Cape Branch Mock Trial: Hospital on Trial. It features the SAMLA logo at the top, followed by the text 'SAMLA WESTERN CAPE BRANCH PRESENTS:'. Below this, it lists the speakers 'Professor Henry Lerm & Dr & Adv Anton van den Bout'. The main title is 'MOCK TRIAL: HOSPITAL ON TRIAL' with a gavel icon. A subtitle reads 'Discussion of Criminal Trial, regarding Prosecution of Healthcare Professionals in South Africa'. The date and time are '27 August 2022, 9AM - 2PM', and it offers '4 CPD Points approved'. Registration fees are listed as 'Members: R1 000,00' and 'Non-Members: R2 000,00'. A call to action at the bottom says 'Visit <a href="http://www.medicolegal.org.za">www.medicolegal.org.za</a> for bookings'.	Professor Henry Lerm and Dr & Adv Anton van den Bout	Western Cape

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<p><b>17 SEPTEMBER 2022</b></p>	<p style="text-align: center;">SAMLA INVITES YOU TO THE</p> <h2 style="text-align: center;">MEDIATION HALF DAY WORKSHOP</h2> <p style="text-align: center;">Date: Saturday 17 September 2022 Time: 09h00 – 14h00 Platform: <a href="#">ZOOM</a></p> <p style="text-align: center;">Approved for 5 Ethics CPD points</p> <p style="text-align: center;">Adv. André Oosthuizen SC and Adv. Brigitta Schwulst will be presenting on the day.</p> <p style="text-align: center;"><b>REGISTRATION FEE</b> Members: R1 000.00 Non-Members: R2 000.00</p> <p style="text-align: center;"><b>REGISTER VIA SAMLA WEBSITE</b> <a href="http://MEDICOLEGAL.ORG.ZA">MEDICOLEGAL.ORG.ZA</a></p> <hr/> <p style="text-align: center;">PROUDLY SPONSORED BY</p> <div style="display: flex; justify-content: space-around; align-items: center;">   </div>	<p>Presented by: Adv. André Oosthuizen SC and Adv. Brigitta Schwulst</p>	<p>Western Cape</p>
<div style="background-color: #0056b3; color: white; padding: 10px;"> <h3 style="margin: 0;">Mediation Half Day Workshop</h3> <p style="margin: 0;">17 September 2022</p> <p style="margin: 0;">Adv. André Oosthuizen SC and Adv. Brigitta Schwulst will be presenting on the day. More details on the SAMLA website &amp; Facebook site</p> </div> <div style="background-color: #0056b3; color: white; padding: 10px; margin-top: 10px;"> <p>Christopher Group provides bespoke finance solutions to the legal &amp; medical industry. We offer tailor-made funding &amp; finance solutions within the field of personal injury law to:</p> <ul style="list-style-type: none"> <li>• Attorneys</li> <li>• Suppliers of medico-legal services and reports</li> <li>• Suppliers of medical services and</li> <li>• Claimants</li> </ul> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 10px;"> <div style="width: 60%;"> <p>Tell us your story</p> <p>+27 21 871 1171</p> <p><a href="mailto:admin@christophergroup.co.za">admin@christophergroup.co.za</a></p> </div> <div style="width: 35%; text-align: center;"> <p><a href="http://www.christophergroup.co.za">www.christophergroup.co.za</a></p> <p>3rd Floor, Newlink Centre, 1 New Street, Paarl, 7646</p> </div> <div style="width: 30%; background-color: #0056b3; color: white; padding: 5px;"> <p>Registration Fee: Members: R1 000.00 Non-Members: R2 000.00</p> </div> </div>		<p style="text-align: center; font-size: small;">Proudly sponsored by</p> <div style="text-align: center;">  </div> 	<p>Eastern Cape</p>
<p><b>OCTOBER 2022</b></p>	<div style="text-align: center;">  <p><b>THE SOUTH AFRICAN MEDICO-LEGAL ASSOCIATION</b></p> </div> <p style="text-align: center;">SAMLA EASTERN CAPE BRANCH PRESENTS:</p> <div style="background-color: #0056b3; color: white; padding: 20px; text-align: center; margin: 10px 0;"> <h2 style="margin: 0;">Euthanasia, End-of-Life and Medical Ethics</h2>  </div> <p style="text-align: center;">October 2022 Details to be confirmed      CPD Points Applied for</p> <div style="text-align: center; background-color: #0056b3; color: white; padding: 5px; border-radius: 15px; width: fit-content; margin: 0 auto;"> <p>Visit <a href="http://www.medicolegal.org.za">www.medicolegal.org.za</a> for bookings</p> </div>	<p style="text-align: center;"><b>Details to be confirmed</b></p>	<p>Eastern Cape</p>

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<p><b>15 October 2022</b></p>		<p>Leigh de Souza and Danie Weideman</p>	
<p><b>25 OCTOBER 2022</b></p>			<p>Western Cape</p>
<p><b>NOVEMBER 2022</b></p>	<p>SAMLA RAF committee moot mediation 2022 at 12h00 to 14h30.</p> <p>Members: free of charge</p> <p>Non-members: charge will be levied</p> <p>Flyer to follow</p>		<p>National endeavour as the committee members preparing same are from Gauteng, KwaZulu-Natal, and the Cape Provinces</p>

## DISCOUNTED CASE LAW SERVICE OFFER TO SAMLA MEMBERS

Keeping up to date with case law from our courts is vital to the medico-legal profession. If lawyers and experts are unaware of what the courts are deciding with respect to their practice, we will be found wanting as some recent judgements have shown where practitioners have been taken to task for their shortcomings. Such judgements have huge professional and reputational implications. SAMLA has approached Louis Case Law (see attached brochure) which provides summaries of all relevant case law using the FIRAC method (Facts, Issue, Rule of law, Application and Conclusion) to its subscribers. Subscribers are even able to pick the topics they want to see. The usual annual subscription to Louis Case Law is R1500, but they have kindly offered SAMLA members in good standing an **annual subscription of R600** if we can get over 50 members to subscribe. This is a MASSIVE 60% DISCOUNT for SAMLA members.

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About The Editor

Louis Podbielski was the managing editor at Juta, with ten years' law reporting experience, when he was head-hunted by LexisNexis.

There he spent four years pushing the boundaries of legal tech, using artificial intelligence and analytics to innovate cutting-edge case law products and features.

No-one can match Louis' wealth of experience or his passion for case law and for serving the legal community.



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