

Newsletter of the South African Medico-Legal Association

Non-Profit Company reg No 2005/013822/08

<https://medicolegal.org.za/index.php>



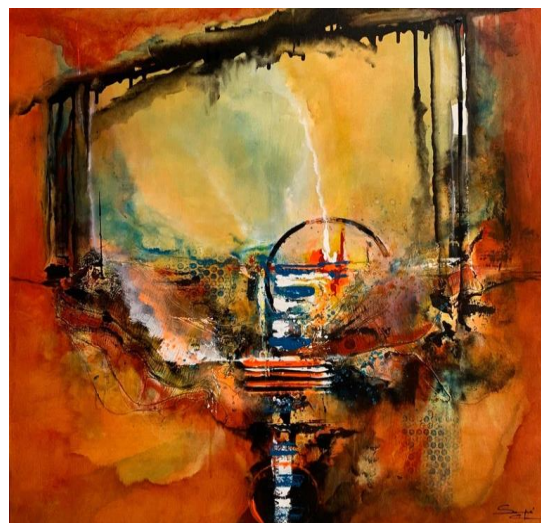
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SAMLA: The critical medico-legal organisation



Yamilet Sempe, 2019. Hope, abstract painting.

This edition of The SAMLA review is a detailed explanation of SAMLA as an organisation. Medicolegal work is exceptional in its complexity and the functions of SAMLA mirror that complexity. SAMLA was started with a simple and clear vision: to bring people with interest in medico-legal work together to communicate and learn from one another. As in the beginning, that vision remains the core guiding principle of all that SAMLA does.

SAMLA, then, is about communication and teaching. The cross-multidisciplinarity is a powerful tool that encourages and allows us to participate in ongoing critical reflection about received and/or new medico-legal practice. It is about constantly reconfiguring our theoretical frameworks, perspectives, and practices. This philosophy allows SAMLA to operate as a 'critical' educational organisation, one that constantly engages, refigures, reframes, revises, and works for mutual understanding.

What started as an informal organisation has metamorphosed into a formalised non-profit company with all that goes with it - registration with CIPC, an MOI, a Board of Directors, special interest groups, and many sub-committees which address essential aspects of medico-legal practice. This organisational structure provides the stable core from which SAMLA can work and work well.

Physiotherapists teach us that people move efficiently on dynamic bases if they have core stability that can adapt to constant movement of a dynamic base. This newsletter will clarify for our Members what the dynamic base of SAMLA is, what is at SAMLA's core to provide the stability from which to function optimally, and how it moves.



THE DYNAMIC BASE:

The medico- legal world



There is nothing static about the medico-legal territory of South Africa. Unfortunately, South Africa is plagued by an exceptionally high rate of injury on our roads and trains, in our mines, and in our hospitals.

The Covid-19 pandemic, along with its unexpected health hazards, has been extreme in its speed and uncertainty, and is no doubt going to change the face of medico-legal practice. Several academic articles have been published examining the concerns related to the pandemic, the potential financial cost of claims, and the resulting impact on resources in monetary terms and in administrative/clinical terms. As has been stated in some of these publications, the Covid-19 pandemic has highlighted and exacerbated pre-existing issues in the medico-legal sphere and requires meaningful action to promote justice on a broad scale.

The pandemic has, in the words of one of the advocates in South Africa, “put the new mediation rule 41A of the High Court at the centre of our legal system¹”. Mediation in medico-legal work is not something new but it is now something that both parties have no choice but to consider. In some ways, enforced mediation is the antithesis to the core principle of mediation – a voluntary action by both parties. Indeed, mediation is not a simple matter. For

one, the parties must appoint a “suitably qualified mediator” but we are not certain what features and knowledge are required to become “suitably qualified” to mediate in medico-legal matters. Few attorneys are familiar with the different styles of mediation, how to participate in mediation, and how to reach settlement that is in everybody’s interests. There is also little clarity on what constitutes a satisfactory settlement through the mediation process – the aim of mediation is settlement, but settlement may not, in fact, be the best outcome.

The financial burden on State institutions because of medical negligence has become unmanageable in many respects and has resulted in significant changes in case law – including the notion of payment in kind.

The situation of the Road Accident Fund has plagued the country for decades. The recent furore around this particularly important social welfare contributes to pervasive insecurity.

The science of healthcare is a rapidly evolving one. New forms of treatment and medications, diagnostic tests and approaches are developed and introduced at a rapid pace. Just few years ago, the focus of medical negligence in cerebral palsy cases was on the CTG; those days are long gone.

The socio-political climate is constantly evolving, changing, and challenging. Governments and health systems have an obligation to ensure adequate provision of care for all to the best of their ability. The Covid-19 pandemic has simply brought into clear sight the meaning of limited resources. Setting priorities and rationing resources in many instances means making hard choices – tragic in some cases.

Everybody in the medico-legal space must adapt to these ongoing changes. Working on a dynamic base that constantly changes requires stability.

¹ <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/mediation-and-arbitration/mediation-rule-41a-of-the-high-court>

THE STABLE CORE:



SAMLA, The Company

SAMLA'S mission

Having a central purpose, SAMLA ensures that all its functioning accords with its mission. The purpose and business of SAMLA, as articulated in the MOI is as follows:

- (1) Promoting ethical and professional medico-legal practice;*
- (2) educational and other similar activities which enhance and complement the interaction between healthcare and law within the health professions and legal professions in order not only to actualize the right to education as envisaged by section 29(1) of the Constitution of the Republic of South Africa, 1996 but also to promote excellence in its activities;*
- (3) Educational and similar other activities that enrich and foster the inter-relationship between healthcare and law in the medico-legal field of study and practice of health professionals, legal professionals, academics, and students, enhancing freedom of association as contemplated in section 18 of the Constitution of the Republic of South Africa, 1996; and*
- (4) Educational and other similar activities that promote the rights to dignity, life, equality, freedom of expression and the advancement of human freedoms including, but not limited to, facilitating medico-legal litigation, mediation and arbitration where apposite.*

SAMLA's MOI clearly articulates the business of SAMLA and is available at

<https://medicolegal.org.za/files/SAMLA%20MOI-Amended%20for%20SAQA-Approved-AGM-20191130-SIGNED.pdf>

The Who's Who of SAMLA, May 2021

SAMLA is overseen by a **Non-Executive President**, currently retired **Judge CN "Neels" Claassen**.

SAMLA comprises a National Board as well as five Provincial Branches, and a Faculty that is responsible for the Foundations Course in Medico-Legal Practice and 10 Workshops offered in Association with UCT.

The NEC and SAMLA itself comprises several sub-committees to ensure smooth functioning.

The current Board reflects the multidisciplinary of SAMLA comprising members from several professions: nursing, medicine, physiotherapy, occupational therapy, speech therapy, educational psychology, clinical psychology, industrial psychology, philosophy, legal including advocates and attorneys, and actuarial science.

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The Board members are:

The National Executive Committee:

- **Prof Ethelwynn Stellenberg**, *National Chairperson*
- **Prof Henry Lerm**, *Deputy National Chairperson: Legal, and Chairperson of Eastern Cape Branch*
- **Dr Sharon Munyaka**, *Deputy National Chairperson: Health*
- **Mr Johan Jordan**, *Treasurer*
- **Mr JP Venter**, *Administrative director*
- **Dr Karen Levin**, *Communications Director*
- **Ms Phillipa Styles**, *Chairperson of KZN Branch (ex officio)*
- **Ms Stacey Aires**, *Chairperson of Gauteng Branch (ex officio)*
- **Mr Thabiso Rapapali**, *Chairperson of Free State Branch (ex officio)*
- **Ms Romany Sutherland**, *Chairperson of Western Cape Branch (ex officio)*
- **Prof Ramodungoane Thabane**, *Principal of Faculty (ex officio)*

The other Board members are:

- **D/Adv Anton van den Bout** (*Founder*)
- **Adv Joanni Barnardt**
- **Ms Barbara Donaldson**
- **Dr Hans Enslin**
- **Mr Renier Jacobs**
- **Dr Willem Moore**
- **Dr Carlien van Heerden**

- **Ms Yvonne Raganya**
- **Ms Desiree David**
- **Ms Gerbri van Heerden**

SAMLA coordinates various projects.

The Mediation Pilot Project, under the direction of **Dr Trevor Frankish** with **Dr Herman Edeling**, is a research project that investigates several aspects related to mediation in medico-legal matters, partnering with the RAF as well as with the State and some private hospital groups.

Special Interest Groups of SAMLA include:

The special interest groups are:

- **Quantification (Convenor: Mr JP Venter)**
- **RAF Interest Group (Convenor: Dr Hans Enslin)**
- **Protection of Funds Interest Group (Convenor: Mr Johan Venter)**

SAMLA Board approves of Honorary Life Memberships in recognition of exceptional service to SAMLA and to the field of medico-legal practice. The current members holding Honorary Life Membership are:

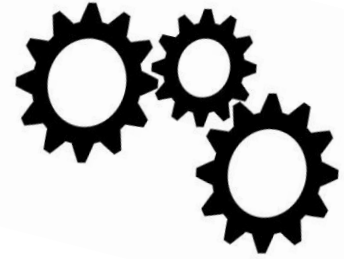
- **Judge CN Claassen**
- **Dr/Adv Anton van den Bout**
- **Prof Hennie Becker**
- **Dr Herman Edeling**
- **Mr Trevor Reynolds.**

SAMLA's secretary, **Mrs Christa Koelewyn**, is the only paid employee of SAMLA. She runs the administration of SAMLA, and can be contacted at info@samla.org.za

THE MOVING PARTS:

SAMLA'S activities

Running SAMLA



The **Board of SAMLA** meets at least three times per year and oversees all SAMLA's functions.

The **National Executive Committee** meets every 4 weeks or so - sometimes more often - to ensure the smooth running of the organisation. The NEC is the management branch of SAMLA, responsible for all day-to-day functions.

SAMLA runs an **office**, with a part time secretary, Mrs Christa Koelewyn.

The finances are controlled by the **National Treasurer**, Mr Johan Jordaan. In addition to the treasurer, SAMLA has a Business Development Committee which oversees the financial viability of the Company. At this time, it is headed by Mr Rowan Haarhof.

The **administration of SAMLA** is managed by the Administrative Director, Mr JP Venter. He runs aspects such as the registration with CIPC, the various administrative meetings, and he oversees the work of the secretary. The Administrations Director also convenes an Administrative Committee.

Communications, including SAMLA's Facebook and LinkedIn pages, newsletter, and website, as well as communications within and outside of SAMLA, are managed by the Communications Director, Dr Karen Levin, who also convenes a Communications Committee.

SAMLA also has many **sub-committees** that report to NEC as well as the Board including:

Administration, Business Development, Communication, Disciplinary, Education and Training, Credentialling, Faculty, Research, and Quality Control.

You can follow SAMLA on social media:

info@samla.org.za

<https://medicolegal.org.za/index.php>

<https://www.linkedin.com/company/42274256/admin/>

<https://www.linkedin.com/company/42274256>

Education: The core business of SAMLA

SAMLA's education is offered through SAMLA Central, Faculty, the Provincial Branches, as well as the Special Interest Groups. All Education and Training falls under the "Education and Training Committee".



The Faculty of SAMLA, headed by the Principal of Faculty, currently Prof Ramodungoane Tabane, runs the UCT-affiliated Foundations Course in Medico-Legal work and the 10 Practical Workshops. SAMLA has an SLA with Azlyn Creative, the company that was employed to project manage, market, and run the technical side of SAMLA-UCT courses and workshops. The Foundations Course which was taught in 2018 was available online until 30 April 2021 but is no longer available. The practical Workshops 1 - 9 (with 10 being taught at the end of 2021) were taught in person and when the pandemic prevented meetings in person, were delivered online. The participants meet once or twice in small 'syndicate' groups to complete their assignments. **However, these courses have reached their time limit and will not be provided after the end of 2021 in their current format.**

The Education and Training Committee of SAMLA, which oversees the functions of Faculty, all education offered by SAMLA Central, as well as the provincial branches, is in the process of reimagining the courses so that SAMLA will continue to offer fundamental as well as ongoing training in medico-legal work.

What is crucial to bear in mind is that all SAMLA's courses in association with UCT were envisioned, taught, and managed by SAMLA members. The courses were accredited by UCT, but no UCT staff were involved in the teaching or management of the courses. SAMLA members gave of their expertise and time for free. Azlyn Creative were employed by SAMLA to project manage. Sustaining these courses entails rigorous review of the existing lectures, modernising them, and introducing new concepts. This task takes enormous manpower as well as costs, and whether SAMLA will attract the number of participants to cover the costs is being examined.

SAMLA will continue to offer fundamental as well as advanced training but more than likely in a different format, with a different cost structure, and a different focus. As a 'critical' educational body, SAMLA constantly interrogates what it does, and what needs to be changed.



The Provincial Branches meet at their discretion and are responsible for provincial meetings that fulfil the requirements of education and training. Provincial workshops/courses/seminars are arranged by the Branches independently, and they are responsible for the control of standards, content, and organisation. SAMLA strives to present monthly workshops/seminars, but the Covid-19 pandemic as well as the focus on the National Courses has interfered with this ideal. Nevertheless, SAMLA is committed to ensuring on-going training in the form of Provincial activities.

SAMLA's Provincial branches are organising seminars and webinars on an almost monthly basis. Please keep visiting the SAMLA website for more information.
<https://medicolegal.org.za/index.php>

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SAMLA Central also offers courses/workshops/seminars/lectures but on a discretionary basis.



SAMLA has three Special Interest groups, each with its own convenor. Any member of SAMLA is invited to join in with these groups, by e mailing Mrs Koelewyn at info@samla.org.za who will put you in touch with the relevant convenor. These special interest groups hold discussions, presentations, and provide networking opportunities. They meet three to four times per year, and sometimes more often.

The Special Interest Groups are generally discussion groups, but often include short lectures and other presentations. The goal of these groups is to bring together those members who work in the medico-legal field who have a special interest in a particular topic. at this juncture are:

1. Quantification (Convenor: Mr JP Venter)
2. RAF Interest Group (Convenor: Dr Hans Enslin)
3. Protection of Funds Interest Group (Convenor: Mr Johan Venter)

SAMLA does not encourage profession-specific interest groups. The modus operandi of SAMLA is multidisciplinary. SAMLA therefore encourages individuals to approach their own professional associations to establish special profession-specific interest groups in medico-legal practice.

Members of SAMLA are invited to request the establishment of a special interest group at any time by contacting SAMLA.

All members of SAMLA are welcome to attend the meetings of the SAMLA Interest Groups. Please send us e mail and we will put you in touch with the convenors.

info@samla.org.za

SAMLA Registers

The registers of medico-legal practitioners and the register of MEDICO-LEGAL MEDIATORS were established by SAMLA as a route to professionalising medico-legal practice. SAMLA has a *long-term goal*, to have the designation of 'medico-legal practitioner' formally recognised by the South African Qualifications Authority. SAMLA has put forward the notion to the membership of SAMLA, who agreed that this goal is important. It is a long-term goal, given the enormity of the requirements of SAQA.

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The register of MEDICO-LEGAL PRACTITIONERS

The idea of being registered as a Medico-Legal Practitioner is two-fold:

(1) It is a register that **acknowledges a Member's on-going learning in medico-legal work** and (2) Members who wish to register as Medico-Legal Practitioners are expected to **sign and adhere to a code of conduct**. The code of conduct is subservient to the professional conduct code of the primary profession. In no way does SAMLA wish to be a regulatory body. The Disciplinary Committee of SAMLA is tasked with dealing with problems, and can, at their discretion, (i) report the member to their professional association (ii) request the Board of SAMLA to dismiss the individual as a Member of SAMLA.

Once admitted to the register (which is available on the SAMLA website), the Medico-Legal Practitioner, in future, will be expected to maintain proof of their ongoing learning annually to remain registered. The means to this ongoing registration will be through with what SAMLA calls "SAMLA points", which will be education points allocated to educational activities which address medico-legal practice. (These are not the equivalent of HPCSA CPD points - SAMLA points must be relevant to medico-legal work, not profession-specific work. Some HPCSA accredited points may be relevant).

The completion of the SAMLA Foundations Course was the benchmark for the credentialling committee, and the credentialling committee (under the leadership of Ms Barbara Donaldson), is constantly working on the recognition of equivalent learning, recognition of prior learning, as well as the development of the second and third tiers of the register (which have not yet been established).

The register of MEDICO-LEGAL MEDIATORS

Mediation in the medico-legal space is unlike mediation in other matters. SAMLA recognises individuals who satisfy SAMLA's criteria. These members have been **accredited by a mediation Accreditation Authority, sign the SAMLA code of conduct, and are familiar with the SAMLA Guidelines and Protocol for Medical Mediation**. Members of SAMLA who wish to appear on SAMLA's register may apply. Please see <https://medicolegal.org.za/verified-mediators.php>

Special projects

SAMLA, from time to time, identifies issues or practices in medico-legal practice that require the establishment of special projects.

Submission to the State President on the Medico-Legal Crisis

In 2019, SAMLA engaged in a major project to bring together several organisations to interrogate the medico-legal crisis and to come up with some solutions. In 2019, SAMLA made a submission to the State President, and is continuing to work to engage with the State. You can see all the documentation relating to this important initiative at <https://medicolegal.org.za/SubmissionToThePresident/Medico-legal-Crisis-Presentation-to-the-President.html>

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The Medico-Legal Mediation Pilot Project

Under the guidance of Dr Trevor Frankish and Dr Herman Edeling, SAMLA initiated, and has now partnered with the RAF as well as groups in the State and Private sectors in a pilot project to determine the characteristics of a qualified mediator in the medico-legal sphere, and the requirements of medico-legal mediation. The project has involved SAMLA-registered medical mediators engaging, for free, in several mediations in RAF matters and matters of medical negligence. As an aside, accredited mediators have had the opportunity to engage in these projects and learn the intricacies of 'medical mediation'. The project is on-going.

Please visit

<https://medicolegal.org.za/files/GuidelinesProtocol%20for%20mediation%20of%20RAF%20Personal%20Injury%20Disputes-HJE-v5.pdf>

<https://medicolegal.org.za/files/MpumalangaPilotProject%20-%20MedicalMediation-HE-NC-SAMLA-CD.pdf>

News from SAMLA

We welcome three new Board members:

Mr Renier Jacobs



Ms Yvonne Ranganya



Ms Stacey Aires.



SAMLA's Board held a two-day "Bosberaad" on 15/16 May 2021. Important issues were raised, debated and many resolutions taken. It was an exciting meeting and we are certain that SAMLA is stronger than ever, and ready to face the many challenges that the dynamic base of medico-legal work brings.