

THE CHAIRPERSON'S REPORT FOR 2019

Introduction

1. In the previous Chairperson's report I expressed the view that SAMLA's influence and activities may grow substantially during 2019. I am of the view that 2019 has indeed resulted in further growth on many fronts. In the same vein, I believe next year will be a very exciting year in that it will be the final year of our series of SAMLA-UCT Post Graduate Workshops in Medico-Legal Practice. It will also hopefully allow us to expand further by appointing permanent salaried staff and renting suitable offices if our drive for sponsorships and donors is successful.

SAIME and the Approach to the President

2. During March this year an organisation calling themselves the South African Institute of Medicolegal Experts approached SAMLA for a discussion on possible collaboration. An exploratory meeting was held on Monday 22 April 2019. It transpired that the SAIME representatives sought to incorporate SAMLA into SAIME to make SAIME the exclusive organization representing the Medico-Legal Profession. However, on further investigation it appeared that SAIME had its inaugural launch on 4 April 2019, making them merely 3 weeks old! It was alleged that the Honourable President Ramaphosa would attend such launch, which was attended by Prof Ranavaya, the President of ABIME, as well by officials of SAQA and the Treasury.
3. As a result of this meeting it was represented to SAMLA that SAIME would arrange and pay for a meeting scheduled for Sunday 5 May 2019, 3 days prior to the election, where stakeholder organizations in the medico-legal field could address President Ramaphosa in person as to solutions for the medico-legal crisis in South Africa.
4. Strategy meetings were held during the week to settle the program for Sunday 5 May. The program, with details of stakeholder organizations, speakers, and topics is available for review on the SAMLA website.
5. In addition to the President, invitations were sent to the Minister of Health, the Hon Dr A Motsoaledi, The Minister of Justice the Hon Adv Masutha, and the Minister of Transport, the Hon Mr. Blade Nzimande. Somehow these invitations did not reach these ministers timeously although the Director- General of Health was in attendance.
6. On Sunday 5 May the meeting was held, although in the absence of the President and the representatives from SAIME. In the absence of SAIME representatives, SAMLA had no option but to pay for the costs of the venue. The meeting was held and recorded as if the speakers were in fact addressing the President. All the submissions made by the speakers were

sent to the President and the other ministers. SAMLA received, in a letter dated 14 August, an acknowledgement from the President's office confirming receipt of the complete documentation prepared of the meeting as well as video recordings of each of the speakers. See Annexure "A" attached hereto being photographs of the bundles. Similar bundles were also hand-delivered to 5 cabinet ministers. The full presentation, with video-recordings and supporting documents, is publicly accessible on the SAMLA website by taking the following link <https://medicolegal.org.za/SubmissionToThePresident/Medico-legal-Crisis-Presentation-to-the-President.html>

7. Although SAMLA has received no further response from any of the Members of the National Executive, this project was conducted in the spirit of the President's "thuma mina" call.

8. SAQA Membership

9. Trevor Reynolds, Dr Herman Edeling, Dr Brad Beira and myself attended an information session at the offices of SAQA in Pretoria on the 4th of April. It was apparent to us that SAMLA already complies with the criteria for Professional Body Recognition, but that certain prescribed policies needed to be formulated. Trevor Reynolds was tasked with overseeing the process of registration with SAQA, which required adaptations to the SAMLA website by our service provider, ITNT. This process is virtually complete.
10. The benefit to SAMLA of being recognized by SAQA as the official body representing the Medico-Legal Profession is threefold: (i) It will enhance the stature of SAMLA when interacting with State institutions; (ii) it establishes and recognizes the Medico-Legal Profession; and (iii) it creates the opportunity to establish a Register of Medico-Legal Practitioners.

Proposed Collaboration between SAMLA and the RAF

11. On 5 August 2019 Dr Edeling and I wrote to the acting CEO of the RAF, offering a "no strings attached" collaboration with the RAF, for the benefit of the RAF as well as the public good. The proposed areas of collaboration were (i) the inculcation of a social security mindset in all RAF staff and agents, in line with the RAF Corporate Social Responsibility policy and Constitutional values; (ii) professional training of legal-, medical- and other medico-legal practitioners; (iii) mediation of disputed claims; (iv) establishment of a register of competent, ethical and accredited medico-legal practitioners; and (v) joint appointment of single independent experts, with instructions to write factual and logically sound reports, rather than

partisan or adversarial reports. To date we have had no formal response from the RAF.

State Liability Amendment Bill

12. On 16 November 2018 Adv Ian Dutton, obo SAMLA, provided a written submission to the Parliamentary Portfolio Committee on Justice and Correctional Services, and lodged a formal request to make oral representations at the appropriate time. This indulgence has not yet been granted to SAMLA. On 26 January 2019, at the SAMLA National Seminar, Adv Ian Dutton presented a lecture on the Bill and some of its implications. This lecture generated great interest and enthusiasm among those present. We therefore posted a copy of the Bill and the SAMLA Submission for comment on the Forum.

SASOG lecture on Expert Medical Evidence

13. On 9 May 2019 Adv John Mullins and myself, at the request of SASOG, addressed their convention on the issue of Expert Evidence.

Rules Board's new Rule 41A

14. On Friday 8th of March Dr. Herman Edeling and myself attended the Rules Board in Pretoria at the invitation of Mr. J Balkishun, the Principal State Law Advisor for the Rules Board for Courts of Law. We discussed the proposed new Rule 41A and suggested an amendment to include the holding of pre-mediation meetings, free of charge, similar to the pro bono work done by lawyers in the Small Claims Court. It was suggested that each Registrar of High Courts compile a list of qualified mediators to chair such pre-mediation meetings. This might create a market for such mediators to be appointed by the parties to act as the mediator in matters at an agreed remuneration.
15. The amendment we suggested was motivated as follows:

“Considering that the parties who, in terms of Rule 41A(2)(a),(b) & (c), will need to deliver a notice indicating whether they agree to or oppose referral of the dispute to mediation, together with reasons for their belief, while few if any such parties will have an adequate understanding of what mediation is or how it may be to their benefit, one would recommend that the parties be referred to a pre-mediation meeting, chaired by a suitable mediator, in order to place them in a position to give or withhold properly informed consent to mediation. They would then be able to comply more meaningfully with Rule 41A(2)(a), (b) & (c).”

The South African Medico Legal Data Institute

16. During November 2018, a concept document was drafted by Dr. Herman Edeling, Dr. Brad Beira and Adv Ian Dutton. The purpose being to gain statistical data in relation to medical negligence matters, for the use of all role players in both upstream and downstream interventions in addressing

the medico-legal crisis. This matter needs to be taken up again because of the crucial and central role of data, in promoting patient safety, CPD training, and understanding of the legitimate roles of mediation and litigation.

The Code of Conduct

17. On 18 June 2019 the final draft of SAMLA's Code of Conduct was completed. A copy thereof is attached hereto on the Forum. It was a long and arduous task with input from many members. I wish to express my thanks in particular to Dr Henry Lerm for his able and hardworking production of the first draft and seeing to the many amendments thereafter. I do believe this a document SAMLA can be proud of as it covers almost all aspects of ethical and non-ethical conduct of legal and medical practitioners involved in medico-legal work.

Administrative matters

18. The following admin matters were dealt with during 2019:
- 20.1 A Panopto Service and Licensing agreement with SAMLA was signed.
 - 20.2 A new contract was concluded with UCT Law@ work.
 - 20.3 A new National Treasurer, Mr. Johan Jordaan was appointed to deal with the finances of all branches together with new auditors in Bloemfontein to be approved at the AGM on 30 November.
 - 20.4 The creation of a Non-Executive President position, to be approved by the AGM, as well as amendment of the MOI to provide for such a position. A comprehensive motivation for this proposal was placed on the forum by Dr Lerm and Mr Reynolds, the two Deputy Chairpersons of SAMLA.
 - 20.5 Dr. Yash Naidoo of Norton Rose and Fulbright requested permission to use the Guidelines and Protocol when the firm conducts medical mediations. This permission was granted.
 - 20.6 Adv Ian Dutton resigned as Chairperson of the KZN branch. Adv Reshma Athmaram was elected the new Chairperson.
 - 20.7 The question whether or not companies or groups could become members of SAMLA was raised. As a provisional measure, it was suggested that such companies or groups nominate and sponsor a number of their members to become individual members of SAMLA. This issue will require further attention by the new Board of SAMLA.
 - 20.8 The fiduciary responsibility of directors of Non-Profit Companies such as SAMLA was revisited by a lecture from an auditor, and reference to a relevant article by Nick Price.
 - 20.9 SAMLA's application to be afforded status under section 18A of the Income Tax Act was refused by the SARS. This issue will require further attention by the new Board of SAMLA.

20.10 A letter was addressed to the Hon President Mr. Ramaphosa requesting the establishment of an Independent Multidisciplinary Medico-Legal Regulatory Authority. No response has been forthcoming.

Professional Indemnity Insurance Companies

19. Talks about collaboration have been conducted with MPS, Ethiqal, Natmed and Genoa. We are grateful to Ethiqal and Genoa for their contributions to workshops 4 and 5. Further talks are envisaged.

Mediation Pilot Project with Gauteng Premiers' Legal Officers

20. During March, Dr. Herman Edeling and myself were invited to address the annual meeting of the heads of legal matters in the Provincial Premiers' offices. Claims against the Gauteng MEC for Health have now been shifted to a legal department in the Premier's offices. At this meeting we were introduced to Ms. Pamela Hlengiwe of the Gauteng Premier's office. She heard of the Pilot Project that had been offered to the Gauteng MEC for Health, which had failed because of the lack of any person having settlement authority. She then asked if the pilot project could be transferred to her office, and this was agreed to by myself and Dr. Herman Edeling. Since then Ms. Johanna Mosime and I have successfully completed 3 mediations for Ms. Hlengiwe in terms of the pilot project, where we undertook to do 20 mediations free of charge.

Membership

21. The current membership of SAMLA of individuals who have paid their annual membership fees amount to 573. I refer to further details in the report of Dr Hanneljie Edeling.
22. During this year we lost the valuable input of Prof Rita Kellerman as one of SAMLA's directors.

Please refer to the Exco reports posted with this report on the Forum.

Wishing SAMLA and all SAMLA members a peaceful festive season and a prosperous 2020.

For presentation to the SAMLA AGM on 30 November 2019 in Johannesburg.



Judge Neels Claassen
CHAIRPERSON: SAMLA