

Dealing with Examination and Assessment Irregularities in an Era of Rapid Change: a South African Judicial perspective.

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Abstract

The occurrence of examination and assessment irregularities can seriously damage public confidence in the validity and legitimacy of examination and assessment results and should be dealt with as a matter of urgency within the judicial framework established for this purpose. Thus, the National Policy on the conduct of Senior Certificate examinations indicates that, a Senior Certificate may not be issued to a candidate found guilty of an irregularity even though he/she satisfies the requirements for a Senior Certificate., pending the holding of a hearing.

The problem that emerges where candidates fail to appear for a hearing as it raises the question whether the department can cancel the results of a candidate without the said candidate having personally presented his/her case.

The purpose of this paper is to address this issue in lieu of common law development prior to the advent of the 1996 constitutional dispensation and the way in which the common law rule has been altered by Section 34 of the 1996 Constitution.

INTRODUCTION

Assessment practices in the further Education and Training (FET) band, in South Africa, are currently based on Report 550 (2000/08) which focuses on the attainment of the Senior Certificate in schools. Current assessment comprises of an external (written) examination and continuous (site-based) assessment.

External assessment in schools refer to assessment that is conducted by an entity such as a provincial examinations and assessment body, national department of education or private assessment body which is not directly involved with the instruction of the learner. These bodies has an important role to play in ensuring that the curriculum and learning outcomes are assessed in a rigorous and fair manner and that assessments leading to the exit certificate are reliable and valid.

The occurrence of examination and assessment irregularities can seriously damage public confidence in the validity and legitimacy of examination and assessment results and should be dealt with as a matter of urgency within the judicial framework established for this purpose.

The focus of this article is to:

- clarify the concept of examination and assessment irregularities
- discuss the material internal control measures in the dealing with and control of assessment practices
- discuss the legal issues pertaining to sanctions such as the blocking of results or marks of candidates, allegedly involved in assessment irregularities.

DEFINING EXAMINATION AND ASSESSMENT IRREGULARITIES

According to Glidden (1996) assessment irregularities can be defined as:

- Events which can cause “assessed” performances that are not related to actual performances.
- Process variations (intentional or not) which creates a bias of outcomes.

Assessment irregularities are described in TechTalk (2005), as acts that involve noncompliance with the organisation’s agreements. In addition to this it should also include aspects such as: manipulations, falsification, forgery or alterations of documents, whether electronic or in paper format (Information Systems Audit and Control Association, 2005:1). The World Bank Group (2001) defines malpractice in public examinations as “a deliberate act of wrongdoing, contrary to official examination rules, and is designed to place a candidate at an unfair advantage or disadvantage”.

The following table (adapted from the World Bank Group, 2001), gives an indication of the more general forms of malpractice, experienced world wide:

Table 1: Forms of malpractice in high stakes examinations

Development	Description	Involvement
Leakage	Contents of the examination disclosed	Usually involves teachers, examiners, printers, proofreaders or school administrators
External assistance	Unauthorised assistance to candidates during examinations	Involves invigilators, writing answers on the blackboard, circulating

		sheets of work during the course of the exam
Smuggling of foreign materials	“crib notes”, charts and answer booklets. Frequently smuggled in pants, shoes, hems or parts of the body	Involves only the candidates and/or their friends
Copying	Reproduction of another candidate’s work with or without permission	Usually relates to inadequate spacing between desks and lax supervision
Collusion	Unauthorised passing of information between candidates (scripts or notes)	Usually relates to inadequate spacing between desks and lax supervision
Intimidation	Examination officials, even markers of papers) are physically threatened	Involves candidates (sometimes places weapons in clear view of officials)
Substitution of scripts	Replacing answer sheets handed out during the course of the exam with ones written outside the centre	Usually involves invigilators, even teachers working outside the examination room

The World Bank Group (2001:2) further indicates that learners get involved in examination irregularities and malpractice mainly because, success in a public examination can have profound, immediate and long-term impact on a candidate’s life. In many developing countries, examination success and secondary school graduation represents the sole avenue for poor students to

secure a non-menial job. “Large-scale testing is not the culprit; it is large-scale testing with high stakes attached to the results that, in some instances have resulted in cheating”

An important aspect related to the above is the lack of material internal control measures put in place by the education departments and/or examination bodies to protect and ensure the credibility of assessment outcomes. As such, a material internal control weakness is a serious reportable condition in which the design (or operation) of the education departments (examination bodies) internal control structure does not adequately reduce, to an acceptable level, the risk that errors and irregularities can occur (TechTalk, 2001).

MATERIAL INTERNAL CONTROL MEASURES

Appropriate assessment preparation activities promote quality, long-term learning. Examinations and assessment bodies the world over should agree that the best way to promote assessment practices is to help teachers and administrators become aware of what is and is not acceptable practice (Michigan Department of Education: 2005).

Penalties to discourage malpractice have been features of public examination systems since the sixteenth and seventeen century, when in China penalties for malpractice included the death penalty and the exile of corrupt examination officials. The World Bank Group (2001:4) listed the following control or counter measures introduced by examinations and assessment bodies the world over:

- Pay examination officials slightly higher salaries than personnel in comparable positions in the Ministry of Education (Uganda).
- Paper setters set individual questions rather than complete papers.
- Print examination papers in secure printers outside of the country (Kenya and Zimbabwe).

- Entrust the typing of the entire examination to one typist (Ethiopia)
- Provide secure packaging (sealed envelopes within metal or wooden boxes) and storage of papers.
- Enlist the support of other government agencies to facilitate delivery and collection of material (Philippines).
- Recruit supervisory staff in a school other than that in which the exam is being held
- Give magisterial powers (including the right of arrest to examination board officials (AJK in Pakistan).
- Conduct a public awareness campaign to highlight the importance of the integrity of the examination system (Cambodia, Pakistan).
- For common exams conducted in a number of countries on the same day, administer exams at the same GMT time to counteract the threat of faxing or e-mail (One Pakistani board commences testing in Karachi at 12:00 hours at 10:00 in Jeddah and at 9:00 in Cairo. South Africa has a similar ruling).
- Reduce human access by replacing candidates names with examination numbers. In some cases original identification numbers are replaced by other numbers (fictitious roll numbers) and a record of matching numbers are stored on computer file (Lahore Board in Pakistan).
- Increase transparency in the administration of the public examination system.
- Encourage political and civic leaders to speak out in favour of a public examination system that is administered by adequately qualified people and according to accepted rules.

In South Africa, nine public examination and assessment bodies deal with internal (site-based) and external (common) examinations and assessment activities. These activities are centrally governed by the National Education Policy Act (NEPA) of 1996 (Act No 27 of 1996, Annexure G, Section 2). At the provincial level, each of the nine provinces administers examinations and

assessment in accordance with national regulations (Regulations for the conduct, administration and management of assessment for the Senior Certificate, SA: 2005), and subordinate provincial legislation. These regulations categorize fourteen (14) distinct types of irregularities and provide guidelines on how to deal with each (SA, 2005).

Due to the limitations of this paper, the authors will deal mainly with the administration of examinations and assessment and related internal control measures applied by the Gauteng Department of Education (Gauteng Department of Education, 2005), with specific focus on the Rules and Regulations pertaining to the Senior Certificate (Grade 12) public examinations (Gauteng Examinations and Assessment Act. Act No 7 of 1997).

As is the case in other countries listed above the GDE established some firm internal control measures in order to prevent and/or deal with examination irregularities, especially during the high stakes Senior Certificate (Grade 12) public examinations. These measures included aspects such as: public awareness campaigns in order to discourage malpractice, procedural and operational training of public examination officials, reporting of alleged irregularities to the Head of Department and the Member of the Executive Council for Education in the province. A specific set of internal control measures deals with the investigation of reported cases of malpractice by an Irregularity Committee, in terms of Section 27 of the General and Further Education and Training Quality Assurance Council Act, 2001 (Act No 58 of 2001), which states that an assessment body must “take adequate measures, to combat irregularities at assessment and marking centres and must take adequate security measures to ensure the integrity of the assessments”.

DEALING WITH ASSESSMENT IRREGULARITIES AND UNETHICAL CONDUCT

Candidates and other persons who are directly implicated in an irregularity affecting the validity of examination scores are usually subject to sanctions including: the exclusion from examinations, withholding or non-reporting of results and even decertification (ABEM, 2004; Linn, Baker & Dunbar: 1991).

Similar to other public-service sectors, education in South Africa, is guided by a framework established by law, and Public Administration, must be governed by the democratic values and principles enshrined in the Constitution and the Bill of Rights. National legislation must be adopted to give effect to the individuals' right to administrative justice and just administration (Promotion of Administrative Justice Act 3 of 2000). Thus, the National Policy on the Conduct of Senior Certificate Examinations indicates that, a Senior Certificate may not be issued to a candidate found guilty of an irregularity even though he/she satisfies the requirements for a Senior Certificate, pending the holding of a hearing.

The moment an irregularity has been declared, the candidate's results are blocked on the examination system if *prima facie* evidence indicates that the mark obtained may be irregular due to either cheating or malpractice as previously suggested. The candidate together with his/her parents, as well as the principal of the examination centre are notified in writing of the alleged irregularity and requested to secure an appointment for a hearing, where the candidate will be afforded the opportunity to present his/her case in accordance with the common law principle referred to as the *maxim audi partem* rule (Ramawele, 2004).

Irregularity hearings

Examination bodies need to deal with irregularity hearings in a manner that is judicially sound. In order to do so the Gauteng Department of Education (GDE) has established a Hearing Committee, chaired by an advocate, while evidence leaders are recruited from the office of the State Attorney. This in itself is a simple process; the problem arises when candidates do not turn up for the hearing. Although the irregularity notification letter clearly states that if candidates do not attend the hearing, the hearing will continue in his/her absence, the question we are faced with is, whether education officials can be allowed to nullify the marks of results without the said candidate having been afforded the opportunity to present his/her case in person (the *audi* rule).

Prior to the advent of the 1996 constitutional dispensation in South Africa, the decisions of the courts were essentially that, before a tribunal takes a decision which adversely affects the rights of another person, the affected person ought to be afforded an opportunity of presenting his case *unless a statute expressly or by necessary implication, provides the contrary* (Minister of the Interior & Another v Miriam 1994 (4) AD 751 and Real Printing Co. (Pty) Ltd v Minister of Justice 1965 (2) AD 784). Further to this the ruling was that a candidate has a right to be heard *unless the regulations either expressly or by necessary implication show a clear intention to exclude such a right* (Minister of Education and Training and Others v. Ndhlovu 1993 (1) SA AD).

It is apparent that, prior to 1996, the courts have consistently laid down the principal that, before a tribunal makes a decision which prejudices another person, the affected person should be afforded the right to be heard. It appears, however, that personal appearance is not always a prerequisite before a prejudicial decision is taken (Ramawele, 2004). In Bam-Mugwanyu v. Minister of Finance etc, Eastern Cape 2001 (4) SA Ck HC 128, (cited by Ramawele, 2004) the court held that although the applicant did not appear personally before the

Executive Council, she was not denied the opportunity of making a representation in writing.

Court decisions delivered after 1996, holds that the question to be asked in every case in which the *audi* rule is applicable, is whether the person who is adversely affected by the decision had a just and fair opportunity to state his case (Nortje en Ander v. Minister van Korrektiewe Dienste en Ander 2001 (3) SA 472).

The court further stated that the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests. Fairness will often require that he is informed of the main points of the case which he has to answer.

Burns (1998: 169), states that, where an official in the past had an obvious discretion whether to allow the personal appearance or not, Section 34 of the Constitution of 1996, now grants every person the right of access to court or, where appropriate, an independent and impartial forum. This has altered the common rule in that a person may now insist upon personal appearance before a tribunal. Fairness will often require that a person who may be adversely affected by a decision should have an opportunity of making representations, **before the decision is taken**, with a view to produce a favourable result. In the case of Kriel v. the Member of the Executive Council for Education in the Gauteng Provincial Legislature etc. 2003 SA 1651, the High Court overruled a decision by the provincial department to block a candidate's results prior to the hearing. The implication of this ruling is that a candidate's results cannot be blocked until after the hearing has been conducted, as the candidate acquires a right of recognition to his success and is in general entitled to be heard before a decision is taken (Ramaweale, 2004). If the decision goes against the candidate, the results can be nullified in accordance with Section 11 (a) of the General and Further Education and Training Quality Assurance Act, 2001(Act No 58 of 2001).

Ramawele (2004) is of the opinion that in the event of a candidate failing to appear at a hearing, after having been properly notified to do so, the results or marks obtained by the aforesaid candidate may be nullified during a hearing held in his absence, provided that the following internal control measures are applied:

- The affected candidate is given and receives notice from the examination and assessment body requiring his attendance at the hearing.
- The notice should inform the candidate about the charge and/or allegations against him.
- The notice should inform the candidate that should he fail to attend, an enquiry may nevertheless be held in his absence.
- The notice should further inform the candidate of the penalty that may be imposed upon him in his absence.

It is thus clear that a candidate will be entitled to a statement of results, indicating whether he/she passed the examination, as recognition of achievement prior to the hearing and/or enquiry into the alleged irregularity.

It is also clear that the issuing authority will be entitled to annul the results if the tribunal finds that the candidate was involved in cheating or malpractice during the examination.

Conclusion:

Everyone who participates in the development or implementation of examination and assessment systems has a responsibility in ensuring that it adheres to the requirements of validity, reliability and fairness.

In order to maintain public confidence in high stakes examinations in an era of rapid change, educational managers should continuously review the effectiveness of internal control measures including compliance validation and monitoring procedures. Non-compliance should be countered within the framework of the applicable legislation, in a manner that is judicially and constitutionally acceptable.

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