

## NEWS RELEASE

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### **Outcomes and Implications of the ATP SA vs. HPCSA Court Case**

There is currently much confusion in the market concerning who may administer psychological tests, the scope of practice of the psychology profession as amended by regulations published September 2008, and the recent court case between the Association of Test Publishers South Africa (ATP SA) and the Professional Board for Psychology. ATP SA is also of the opinion that certain individuals and organisations have been adding to the confusion by deliberately misrepresenting the association and the real issues at hand, for their own personal gain.

Amendments were made to the scope of practice of the profession of psychology by means of regulations published in Government Notice R993 in the Government Gazette No 31433, dated 16<sup>th</sup> September 2008. On the 10<sup>th</sup> November 2008, the Professional Board for Psychology published a notice addressed to test developers and distributors stating that “with effect from the date of promulgation of the amended scope of the profession of psychology (16 September 2008), it is not permissible to use unregistered persons to render psychological services including the administration of tests, instruments or techniques”.

ATP SA holds that the notice published on the 10<sup>th</sup> November 2008, and in particular the statement that “*it is not permissible to use unregistered persons to render the administration of tests, instruments or techniques*”, constituted a misrepresentation of the meaning and effect of the regulations published in Government Notice R993. Only after unsuccessfully trying to approach the Professional Board for Psychology regarding the matter, ATP SA applied to the High Court for an order concerning several points, including the review and setting aside of the apparent decision taken by the Professional Board for Psychology to publish the notice referred to as well as statements contained therein.

The case was heard on the 10<sup>th</sup> February 2010 in the North Gauteng High Court, Pretoria. On the 19<sup>th</sup> February 2010, the Honourable Mr Justice Bertelsmann gave judgment regarding this issue. The court order in this matter declared the notice published 10<sup>th</sup> November 2008 to be void and of no force and effect, and ordered that the Professional Board for Psychology pay the costs of the application.

As noted in the judgment:

“The notice was published prematurely and has no force, effect or binding character in the absence of an official Board Notice containing the list of the tests reserved for psychologists only... In light of the fact that the respondent was largely responsible for what has now proved to be litigation that was entirely unnecessary, it is only fair that it should be ordered to pay the applicant’s costs.”

The practical implications of this ruling mean that it is still permissible to use unregistered persons, including test administrators, to administer psychological tests, instruments or other similar techniques. Until such a time that test administration is deemed to constitute a use of a psychological instrument or other similar technique for the determination of psychological constructs as detailed in R993, it will be permissible for unregistered persons to conduct such test administration.

It is important to note that ATP SA and our member organisations feel strongly that registered psychologists should control all psychological acts. Only psychologists and, in certain cases or with special categories or types of tests, a psychometrist, should control psychological testing.

As noted in the judgment:

“Were the respondent’s contention to prevail, only psychologists would be empowered to administer or take down tests for later evaluation of the results. It is unlikely that the primarily mechanical function of the recording of test results should be reserved for psychologists.”

Further, ATP SA believes the focus should not be centred on the administration of tests, but rather should be shifted to the compilation of a new and revised test classification system. The current classification system of psychological tests in South Africa is inadequate as it does not make provision for differing levels of complexity: some psychological tests such as projective techniques are more complex to use while other psychological tests are highly structured and can be administered online without any supervision.

Both local and international research supports the position that appropriately designed instruments can be administered unsupervised online and still yield valid and reliable assessment data. Given the scientific evidence, ATP internationally, as well as ATP South Africa supports best practice and legal provisions that will be able to accommodate new scientific and technological developments such as the use of the internet for certain types of assessments.

ATP SA’s mission is to promote the ethical and effective use of assessment instruments through informing the public and governmental bodies about the contributions professionally developed tests can make. With this in mind, ATP SA believes that, in working together with the Professional Board for Psychology, we can bring the process of classification of psychological tests in line with international best practice but still accommodate local needs to the protection and benefit of all South Africans.

### **About ATP SA**

ATP SA consists of 22 founding organisations representing various South African developers and distributors of psychometric tests. Founded in 2005, ATP SA is a non-profit association organised to represent providers of tests and assessment tools and/or services related to education, employment, certification/licensing or clinical uses.

For more information about ATP SA, or to read the full judgment, visit [www.atp.org.za](http://www.atp.org.za).