

**“He’s got more degrees than a thermometer.”
Degree Mills and Detecting Fraudulent Credentials**



Ontario
College of
Teachers
CAPSLE 2009

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Introduction

This paper will consider the issues raised by the submission of fraudulent credentials by applicants in support of their applications for membership in regulated professions.

Specifically, the paper will explore the following areas:

- the existence of degree mills, what they do, how they create fraudulent documents, who purchases them, and the extent of the problem
- how professional regulators generally, and the Ontario College of Teachers specifically, evaluate credential authenticity and identify fraud
- the legal consequences (if any) for the mills, for those who purchase fraudulent credentials, and for those who issue professional licences on the basis of fraudulent credentials.

What the College is

The Ontario College of Teachers (the College) is the self-regulatory body charged with the responsibility to license, govern and regulate the profession of teaching in Ontario. It was established in May 1997 following the recommendation of the Royal Commission on Learning for increased public accountability and improved quality and co-ordination of pre-service and in-service teacher education programs.² The College's powers and duties are contained within its enabling legislation, the *Ontario College of Teachers Act* (the Act)³, the regulations under that Act and its bylaws. In carrying out these duties, the College has an overriding statutory duty to serve and protect the public interest.⁴

The College is the largest regulatory body in Ontario and Canada and currently has over 220,000 members who are licensed and eligible to teach in Ontario's publicly funded elementary and secondary schools.

¹ "Navy résumé doesn't quite hold water", <http://diplomamillnews.blogspot.com/2008/10/navy-rsum-doesn-quite-hold-water.html>.

² *For the Love of Learning: Report of the Royal Commission on Learning* (1994); <http://www.edu.gov.on.ca/eng/general/abcs/rcom/full/royalcommission.pdf>.

³ S.O. 1996, c. 12.

⁴ *Ibid.*, s. 3(1).

Self-Regulators

(i) General Duties

Professional self-regulating organizations are the licensing entities responsible for setting educational, technical and ethical standards for their respective professions.

The nature and importance of these functions were described by Justice McRuer, Chair of the Ontario Royal Commission Inquiry into Civil Rights, in the following terms:

The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to public interest. The power is not conferred to give or reinforce a professional or occupational status. The relevant question is not, “do the practitioners of this occupation desire the power of self-government?”, but “is self-government necessary for the protection of the public?” No right of self-government should be claimed merely because the term “profession” has been attached to the occupation.

The obligation to maintain high standards of competence and ethical conduct is not discharged once an applicant has been admitted into practice. There is the continuing obligation to see that practising members of the body provide service to the public. The service provided will only be valuable so long as it is a combination of a high degree of technical competence and a vigilant observance of the ethical requirements of practice.⁵

In other words, while the power allows the grantee to determine who should be admitted to, or be allowed to continue to practise, a particular profession, the power cannot be exercised in the interests of the profession. It is to be exercised in the interests of the public.

As the Supreme Court of Canada said, it would be difficult to “overstate the importance in our society of the proper regulation of our professions.”⁶

Thus, the power of self-government has two aspects: (i) the power to license applicants; and (ii) the power to discipline members. In its simplest terms, self-governing entities act as gatekeepers to⁷, and regulators of, their professions.

It is the former of the two powers that is the focus of this paper – the “gate keeping” or the power to license applicants.

(ii) Entry-to-Profession Requirements

Why Entry-to-Profession Requirements Exist

As noted above, professional regulators have a duty to protect the public interest. In fact, many, if not all, regulated professions are subject to a statutory duty to serve and protect

⁵ *Royal Commission Inquiry into Civil Rights* (1968), Vol. 3, pp. 1162, 1181.

⁶ *Rocket v. Royal College of Dental Surgeons (Ont.)* (1990), 71 D.L.R. (4th) 68 at 80.

⁷ *Trinity Western University v. B.C. College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772; <http://scc.lexum.umontreal.ca/en/2001/2001scc31/2001scc31.html> .

the public interest.⁸ That duty includes the responsibility to the public to ensure that certified or licensed individuals are qualified and competent (and qualified and competent individuals are licensed) *before* they enter a profession. Certification (or licensure) is the equivalent of an institutional guarantee of an acceptable level of professional training.

Thus, self-regulatory organizations (SROs) have a responsibility to assure the public that they have done “due diligence” in examining academic and professional credentials to ensure that the credentials not only meet the regulators’ entry standards, but that they are authentic – that is, they are what they purport to be and applicants actually have the qualifications and training they claim to have. SROs protect the public by differentiating between certified members and non-members, who cannot provide any “assurance of competence, integrity, confidentiality or independence.”⁹

In this sense, the credential assessment process is no different than the requirement that applicants undergo a criminal records check. It is simply part and parcel of the self-regulatory body’s duty to the public – and viewed from an applicant’s point of view, it is part of the price of admission to a profession.

Entry-to-Profession Requirements

Self-regulatory bodies, as statutory entities, are governed by legislation (enabling statutes and the regulations passed thereunder). Generally speaking, that legislation will set out mandatory entry-to-profession qualifications that applicants must satisfy before they are licensed or certified to practise a profession.¹⁰

Apart from the payment of required registration fees, the qualification requirements generally include proof of successful completion of a professional degree at an accredited educational institution and proof of identity, as well as the requirement that the applicant be of good moral character (generally verified through a criminal records check and evidence of good standing in other jurisdictions, where the applicant is qualified to practise in other jurisdictions). For those educated or qualified outside Canada, proof of citizenship or residency, or a work permit, would likely also be required.

Some professions, such as law¹¹ or nursing¹², also require applicants to pass an entrance exam.

⁸ See above, note 4. See, as well, for example, s. 3(2) of Schedule 2 of the *Regulated Health Professions Act*, which applies to all regulated health professions in Ontario and states that in carrying out their objects, each regulated College has a “duty to serve and protect the public interest”.

⁹ *Fortin v. Chretien*, [2001] 2 S.C.R. 500.

¹⁰ See, for instance, s. 27(1) of the *Law Society Act*, which provides for classes of licences, as set out in the bylaws, and states that all applicants must “be of good character”, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90108_e.htm#BK37; and the bylaw 4, which sets out entrance requirements, such as graduation from an acceptable law school, the successful completion of a 10-month term of articles, and a licensing exam; <http://www.lsuc.on.ca/media/bylaw4.pdf>; <http://rc.lsuc.on.ca/jsp/licensingprocesslawyer/index.jsp?language=en>; See, as well, requirements for profession of medicine, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_930865_e.htm [Registration regulation under *Medicine Act, 1991*, S.O. 1991, c. 30, O.Reg. 114/94]; the profession of nursing, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_940275_e.htm#BK1 [Registration regulation under the *Nursing Act, 1991*, S.O. 1991, c. 32, O.Reg. 275/94].

¹¹ In the case of the Law Society of Upper Canada, applicants must successfully complete the Bar admission course.

¹² Applicants for membership in the College of Nurses of Ontario must pass a national examination; http://www.cno.org/reg/nonmemb/reg_exams.html.

Ontario College of Teachers – Membership Requirements

The College undertakes a document-based assessment of applicants' education and professional credentials. Certification requirements, which are set out in the Teachers' Qualification Regulation¹³, require that applicants must first:

- have completed a minimum three-year postsecondary degree from an acceptable postsecondary institution
- have successfully completed a one-year acceptable teacher education program
- provide a current criminal records check and complete a statutory declaration
- provide proof of identity
- provide evidence of language proficiency.

In addition, those applicants who have completed their teacher education outside of Ontario in a language other than English or French or who are not Canadian citizens must provide a number of documents, including the following:

- proof of proficiency in either English or French
- Canadian employment authorization
- proof of certification/authorization to teach in a jurisdiction outside of Ontario even if they have never taught there
- a Statement of Professional Standing, which is a letter from a licensing institution such as an education ministry, indicating that the teacher's right to teach has never been suspended, revoked or cancelled
- statutory declaration and a current criminal records check.

Diploma/Degree Mills

(i) What Are They and What They Do?

There are a number of definitions of degree mills (or diploma mills).¹⁴ The most comprehensive definitions are the following:

A diploma or degree mill is an organization or individual producing and selling diplomas, degrees, transcripts or other academic records that are meant to give the impression of academic achievement, but in reality represent little or no study.¹⁵

Diploma mills are schools or universities selling or awarding diplomas requiring less than the minimum level of standard academic work. Diploma mills are normally unaccredited or accredited by "accreditation mills", *i.e.*, by illegitimate or unrecognized accreditors.¹⁶

¹³ O.Reg. 184/97, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_970184_e.htm.

¹⁴ V. Phillips, "Fraud Alert – How to Protect Yourself from College Diploma Mills & Degree Mills": "Diploma mills, also known as degree mills, are bogus universities that essentially sell college diplomas – the piece of paper itself rather than the educational experience. Diploma mills literally crank out paper diplomas to anyone who pays the requested "tuition" amount – generally a lump sum of about \$2,000, though sometimes much more; <http://knol.google.com/k/vicky-phillips/fraud-alert-how-to-protect-yourself/1oreu3w9mgsai/4#>; WES, "Diploma Mills", A diploma or degree mill is an entity that sells postsecondary credentials without requiring appropriate academic achievement", <http://www.wes.org/ewenr/DiplomaMills.htm>.

¹⁵ N. Katz, "Doing a Background Check on Your Performers: Foreign Education Document Alteration and Diploma Mills", AACRAO International Education Services, Washington, 2004.

¹⁶ G. Grolleau, *et al.*, "An Introduction to the Economics of Fake Degrees", J. of Economic Issues, vol. XLII, No. 3, Sept. 2008, 673 at 675.

Or put another way, “[a] fake degree is just the click of a mouse and a cheque away”.¹⁷

Transcript fraud has been described as:

Any alternation to a legitimately issued transcript from a genuine college or university, which the student’s name, Social Security or student identification number, age, courses, grades, grade point average, graduation status, or any other information on the document, is changed or deleted or information that does not belong to the original of the document is added...

Any creation of a document purporting to be a transcript issued by a fictional college or university (so-called “diploma mill” or degree mill”)...

Any creation of a document purporting to be an official record of academic work, showing courses or other academic work, with grades and/or credit, in which the student did not actually enroll, did not complete, for which appropriate academic work was not required, or which otherwise does not reflect real and/or appropriate academic achievement¹⁸

(ii) What is the Extent of the Problem?

While it is difficult, for obvious reasons, to get exact dollar figures for degree/diploma mill operations, what numbers do exist are jaw-dropping. It has been estimated that U. S. degree mills alone have an annual gross income of over \$200 million, and that over time the industry has cumulatively been a “billion dollar operation that has sold more than a million fake diplomas”. In 2008, Grolleau, Lakhali, and Mzoughi provided estimates that there were more than 2 million fake degrees in the United States alone.¹⁹

Grolleau *et al.* have estimated that there are as many as 300 unaccredited universities in the U. S. alone, and 800 worldwide. There is considerable uncertainty about the actual number, however, with estimates of the number of Internet diploma mills ranging from 400 to over 3,000 mills in operation throughout the world. At least as serious as the present number of degree mills is that by all accounts the number has been growing rapidly, particularly over the last decade, as a result of the growth of the Internet and the relative ease with which it can be accessed.²⁰

It has also been estimated that 50 to 80 per cent of all résumés contain misleading or false information about academic degrees or professional credentials.²¹ In 1986, one in six

¹⁷ A. Gillian, “A few clicks of the mouse, and you become a doctor. Guardian buys fake degrees and GCSEs, *The Guardian*, July 5, 2004.

¹⁸ A., Ezell, “Transcript Fraud and Handling Fraudulent Documents”, *College and University*, Winter 2005, p. 49 at 49.

¹⁹ G. Grolleau, T. Lakhali, and N. Mzoughi, “An Introduction to the Economics of Fake Degrees”, *Journal of Economic Issues*, Sept. 2008 at p. 674-83; J. Eaton and S. Uvalic-Trumbic, “Degree Mills: The Impact on Students and Society”, *International Higher Education*, Fall 2008; http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number53/p3_Eaton_Uvalic-Trumbic.htm.; T. Bartlett and S. Smallwood, “Degrees of Suspicion: Psst. Wanna Buy a PhD.?” *Chronicle of Higher Education*, June 25, 2004; J. Bear, “The \$200 Million a Year Competitor You Didn’t Know You Had”, *Degree.net*; http://www.degree.net/html/diploma_mills.html.

²⁰ Grolleau *et al.*, “Introduction”, at p. 683; B. Leonard, “Fraud Factories: Fake Institutions and Diploma Mills that Churn out Bogus Degrees Could Jeopardize your Human Resource Strategy”, *HR Magazine*, http://findarticles.com/p/articles/mi_m3495/is_ai_n29460527.

²¹ D. Brazao, “Phoney Degree Scam Exposed”, *Toronto Star*, Dec. 7, 2008; G. Grolleau, *et al.*, “An Introduction to the Economics of Fake Degrees”, *Journal of Economic Issues*, vol XLII, no. 3, Sept. 2008, 673 at 674.

doctorates was found to be fraudulent. A congressional subcommittee, which held public hearings in 1984 and 1985, determined that there were 500,000 fake degrees in the U.S.²², and (as noted above) the number has significantly increased since that time. The subcommittee estimated at the time of its investigation that about 500,000 Americans “secured employment or are employed...based on credentials they purchased, but did not earn. This included 10,000 doctors, or one in every 50 physicians, practising with falsified or questionable credentials. [But] this does not include about 30 million Americans, or one in three employed Americans, who may have been hired on the basis of a resume that has been altered or embellished”²³.

One institution, in operation from 1989 until 1996, cleared more than \$36 million, and earned an estimated monthly income of \$900,000.²⁴ It is not uncommon for a large degree mill to award 500 PhDs each month.²⁵ When you factor in the cost of fraudulent credentials (which can range from as little as \$100 to over \$5000, with an estimated average of \$1000 per degree),²⁶ the attraction of selling (and purchasing) an easy street degree is blindingly obvious.

(iii) Why Do Degree Mills Exist?

Degree mills are not a new phenomenon. One author has suggested that fraudulent degrees have been in existence for as long as authentic degrees have existed.²⁷ In the U.S., degree mills have been the focus of three congressional hearings (1924, 1984 and 1998)²⁸, several FBI-led investigations (one of which was named DIPSCAM)²⁹, and at least one investigation by the U.S. General Accounting Office (one of which involved an investigation into the operations of an organization calling itself Degrees-R-U).³⁰

Are they an epidemic? An unqualified “yes” must be the answer. Advances in technology explain much, and arguably, have a lot to answer for. Certainly the development of, and relatively easy and universal access to, the Internet has contributed to the veritable explosion of degree mills. The Internet provides a low-cost means to sellers of marketing and distributing degrees, diplomas and credentials to a world-wide market. A virtual and authentic-looking, but nonetheless fake, learning institution can be created easily, and spam ads can be sent out to millions of e-mail addresses without disclosing information that could be used to trace the identity of the actual sender.³¹ It can be deconstructed just as easily and re-established elsewhere under another name. And, as noted above, it’s a lucrative business.

²² A. Ezell, “Diploma Mills – Past, Present, and Future, *Washington*, Winter 2002.

²³ A. Ezell, “Diploma Mills – Past, Present, and Future, *Washington*, Winter 2002.

²⁴ “Fraud Alert – How to Protect Yourself from College Diploma Mills and Degree Mills”.

²⁵ J. Bear, “The \$200 Million a Year Competitor You Didn’t Know You Had”, *Degree.net*; http://www.degree.net/html/diploma_mills.html.

²⁶ *Ibid.*; Grolleau et al., “Introduction”, at p. 683.

²⁷ A. Ezell, *Accreditation Mills*, (2007) at p. 11.

²⁸ *Ibid.*, at pp. 11-20.

²⁹ A. Ezell, “Diploma Mills – Past, Present, and Future, *Washington*, Winter 2002.

³⁰ <http://www.gao.gov/new.items/d04771t.pdf>; <http://www.gao.gov/new.items/d03269r.pdf>; <http://www.gao.gov/new.items/d041096t.pdf>; <http://www.gao.gov/new.items/d04771t.pdf>.

³¹ D. Schemo, “Diploma Mill Concerns Extend Beyond Fraud”, June 29, 2008, http://www.nytimes.com/2008/06/29/us/29diploma.html?pagewanted=1&_r=3.

Technological advances in copying and printing enable degree mills to produce with relative ease and little cost professional and difficult-to-detect fraudulent credentials, diplomas, transcripts, letters, certificates and other credentials indicative of professional education and standing.

Legislative measures targeting fraudulent credentials do little to stem the flood of these virtual institutions. They are patchy at best, in large part because of jurisdictional issues. Education falls under provincial legislation in Canada, and in the U.S. is largely regulated by individual states. [This issue will be discussed later in the paper.] Judging from the recent attention paid to the issue by, among other organizations, UNESCO³², the OECD³³, the CICIC (Canadian Information Centre for International Credentials)³⁴, and CHEA (Council for Higher Education Accreditation)³⁵, there is perhaps a better understanding of the dangers presented by degree mills and the credentials they issue. [This issue will also be addressed later in the paper.]

But why is there a market (or a demand) in the first place? The adage, “there’s a market for everything”, really begs the question. A variety of factors may provide an explanation.

The globalization of the education market (a direct result of the Internet), or “education without borders”, may provide a partial answer.³⁶ It is important to remember, however, that cross-border education has also resulted in the development of legitimate distance education programs and, for that matter, entire virtual universities, such as Athabasca University³⁷, neither of which are degree mills. Rather, these programs and institutions offer students legitimate academic courses and genuine.

Many jobs now require post-secondary education³⁸ -- and, as American Express says, “membership [in that particular club] has its privileges” – in other words, there is a correlation between higher education and income.³⁹

Simple greed and laziness, the convenience factor and inability to pay the going (*i.e.*, rising) rate for legitimate credentials are important factors as well -- purchasing a degree is by far the easiest way to stay competitive with one’s colleagues, to get a job or a promotion without the expenditure of much time or effort, while spending considerably less money than would otherwise be the case with the pursuit of a legitimate degree or diploma.

³² January 29, 2009, “Unesco Takes On International Diploma Mills” <http://chronicle.com/news/article/5896/unesco-takes-on-international-diploma-mills>.

³³ “Annex: Guidelines for Quality Provision in Cross-Border Higher Education”, <http://www.oecd.org/dataoecd/27/51/35779480.pdf>

³⁴ Y. E. Beaudin, “International Quality Provision in Cross-Border Higher Education and the Internationalization of Canadian Degree-Granting Institutions”, http://www.chea.org/pdf/2009_IS_Combating_Degree_Mills_Daniels.pdf.

³⁵ <http://www.chea.org/>; http://www.chea.org/pdf/2009_IS_Combating_Degree_Mills_Daniels.pdf.

³⁶ B. Leonard, “Fraud Factories: Fake Institutions and Diploma Mills that Churn out Bogus Degrees Could Jeopardize your Human Resource Strategy”, *HR Magazine*, September 2008, http://findarticles.com/p/articles/mi_m3495/is_9_53/ai_n29460527.

³⁷ <http://www.athabascau.ca/>.

³⁸ January 29, 2009, “Unesco Takes On International Diploma Mills” <http://chronicle.com/news/article/5896/unesco-takes-on-international-diploma-mills>.

³⁹ *Education at a Glance*, 2008; <http://www.oecd.org/dataoecd/23/46/41284038.pdf>. See, in particular, chapt. A-10.

(iv) Telltale Signs of Degree and Accreditation Mills

Some degree mills go out of their way to appear to be a legitimate educational institution. For instance, they may decry diploma or degree mills, include “edu” in their Internet address, offer “scholarships, grants, tuition payment plans” and various other educational insignia (such as rings, pennants, pens, pencils and rings bearing the name of the institution), and establish an alumni association. They may provide free videos to applicants, extolling the virtues of the institution (while not actually providing footage of physical facilities, students, or faculty members. They may claim to be accredited by recognized accrediting institutions, may even create their own accrediting institution through which they claim accreditation, or may simply claim to be accredited “nationally” or “world-wide”.⁴⁰

“Trappings of legitimacy”⁴¹ aside, the old rule, “if it seems too good to be true, it probably is” applies here. Common feature of degree/diploma mills include:

- the degrees can be bought
- the organization claims to be accredited, where there is no evidence of accreditation or the accrediting body itself is questionable
- the organization lacks proper authority to operate
- students are not required to attend classes
- few or no assignments or other coursework are required to earn credits
- a degree can be earned in a relatively short period of time (*e.g.*, within 30 days)
- a degree may be backdated on request by the purchaser
- the organization promises that a degree will be “conferred” on the basis of personal “life experience”, claims made in a resume (neither of which is independently corroborated), and/or the provision of a valid credit card number
- applicants are asked to complete a questionnaire, which is then “converted” into a “grade point average”
- applicants are assured that they cannot be turned down and/or that their application is “risk free”
- the organization charges relatively high fees in comparison with average fees charged by legitimate educational organizations or charges fees that are too low to be related to the actual cost of providing education
- the amount charged is not on a per-credit basis, but rather is a lump sum fee and relates to the degree
- the organization provides no information about its campus, location, address, and relies solely on a post office box number, or the location frequently changes
- the organization provides no information about its faculty members and their academic and professional qualifications, or lists faculty members who have attended education organizations that have not been accredited or have been accredited by an accreditation mill

⁴⁰ A. Ezell, “Diploma Mills: Past, Present and Future”, *College and University*, Winter 2002, 39 at 45.

⁴¹ *Ibid* at 44.

- one person appears to perform a wide variety of functions
- the organization provides no opportunity to interact with other students (*i.e.*, there is no physical building)
- the organization’s web site is fraught with spelling mistakes and grammatical errors
- the organization’s name is similar to other legitimate colleges or universities or has been misspelled to resemble the name of a legitimate organization
- the organization’s claims are not backed up by evidence.
- the organization’s literature contains words or phrases such as “pursuing accreditation; licensed; (state) authorized; recognized; or chartered”.⁴²

The key signs of accreditation mills, the entities which provide “accreditation” to fraudulent education institutions, include the following:

- the operation permits the purchase of accredited status
- the operation publishes lists of institutions or programs they claim to have accredited, without institutions/programs knowing that they appear on the list or have been accredited
- the fees for accreditation are relatively high in comparison with fees charged by legitimate accrediting institutions
- the operation publishes few or no standards
- accreditation may be obtained in a relatively short time
- accreditation reviews do not include site visits or interviews, but rely on documents
- permanent accreditation is granted without provision for subsequent periodic review
- the operation uses a name that is similar to legitimate accrediting organizations
- the operator makes claims that are not supported by evidence⁴³

(v) Different Kinds of Fraud

There are a number of different kinds of fraud, and the type will determine how the fraud is detected:

- The educational institution exists and is fully accredited, but the person did not attend the institution, did not finish the academic program, or is not satisfied with his or her actual grades, and knowingly purchases from a degree mill fraudulent credentials/forged credentials purporting to be from the institution with the intent of deceiving one or more of the following: a professional regulatory body for the purposes of certification; a university, for the purposes of gaining entrance to a graduate level or professional program (such as law or medicine); or a potential employer for the purposes of securing a job.

⁴² V. Philips, “Fraud Alert”; “Important Questions About Accreditation, Degree Mills and Accreditation Mills”, CHEA, http://www.chea.org/degree_mills/main.asp; Colorado Department of Higher Education, “Degree/Diploma Mills and Accreditation Mills”, <http://higher.ed.colorado.gov/Academics/Colleges/mills.html>; “Online Diploma Mills and Degree Mills: How Can You Tell?”, <http://www.distance-learning-college-guide.com/diploma-mills.html>; “Diploma Mill”, Wikipedia, http://en.wikipedia.org/wiki/Diploma_mill; Federal Trade Commission, FTC Consumer Alert, “Diploma Mills: Degrees of Deception”, Oct. 2006, <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt149.shtm>.; S. Peckham, “Addressing the Problem of Degree and Accreditation Mills”, *The Education Digest*, (2008) Vol. 73, Iss. 9, p. 75; A Ezell *et al.*, “Diploma Mills – Past, Present, and Future”, *College and Universit*; Winter 2002, 39 at 46.

⁴³ S. Peckham, “Addressing the Problem of Degree and Accreditation Mills”, *The Education Digest*, (2008) Vol. 73, Iss. 9, p. 75.

- The educational institution does not exist, but is a degree mill and falsely claims that it is an accredited institution (*e.g.*, St. Regis claimed that it was accredited by the Liberian government), so a student may actually believe that he/she has a legitimate degree
- The educational institution does not exist, and markets (*i.e.*, sells) degrees, with no or minimal course work required (*i.e.*, at a level that is significantly less than would otherwise be required for a legitimate degree – no pain, lots of gain)
- The educational institution does not exist, and markets/confers degrees on the basis of applicants’ uncorroborated “life experience”
- The educational institution does not exist, and once students have paid for courses (generally online with a credit card), they never hear from the institution again and do not receive the promised credentials⁴⁴

(vi) Why Does the Existence of Degree Mills Matter?

It matters for a number of reasons. The existence and operation of degree mills have a profound impact on self-regulators’ ability to offer members of the public assurance that regulated professionals are who they say they are – qualified and competent members of the profession.

If members of the public are exposed to “professionals” who have been certified by the relevant licensing body, but who are in reality untrained “professionals” in possession of fraudulent credentials, it then becomes a question of safety, depending on the profession. This factor is particularly true when the profession is, for instance, health or medical related, or in the fields of aviation, engineering, law enforcement or national security.

The reputation, credibility and credentials of legitimate institutions are devalued in their home countries as well as in foreign countries (where foreign students are the victims of a scam) by the existence and use of fraudulent degrees. Students with genuine credentials from those institutions are also similarly affected. On the reverse side of the coin are the unsuspecting students who may have genuinely believed that their degree/diploma was legitimate and now find that they have wasted both time and money, and who may lose employment or, if they are doing graduate or further university work, their place in educational programs.

Employers who have hired individuals on the basis of fraudulent credentials run the risk of embarrassment and injured business reputations at the least, and potentially face liability for the damage caused to clients or customers by an ill-trained (or completely untrained) employee. Or as one author put it, “who hasn’t received a haircut that immediately called into question the person’s training”.⁴⁵

⁴⁴ A., Ezell, “Transcript Fraud and Handling Fraudulent Documents”, *College and University*, Winter 2005, p. 49 at 49.

⁴⁵ “He Attended Harvard. The One in New Guinea”, *Tech Trends*, Mar./Apr. 2005, p. 70.

Employers may also have unwittingly footed the bill for the purchase of fake credentials. For instance, a 2004 study conducted by the U.S. Government Accountability Office discovered that 463 federal employees had received fraudulent degrees from degree mills. The U.S. federal government spent more than \$150,000 in reimbursing employees for the tuition costs of such degrees.⁴⁶

More recently, fraudulent credentials have been identified as posing a threat to national security, if, for instance, those credentials are used as a means to gain entry into a country and/or access to sensitive jobs and/or information.⁴⁷

Does the foregoing overstate the case? No, not at all. Consider an 11-year investigation led by the FBI into U.S.-based diploma mills – it was dubbed “Operation Diploma Scam”, or “DIPSCAM”. The investigation led to 39 convictions and the closing of over 50 so-called “colleges”.

The investigation began as a result of a complaint about “Southeastern University” – an educational institution that “occupied the front two bedrooms and the living room of” the president and founder, Dr. Jarrett.⁴⁸ The FBI executed a federal search warrant, and seized student files, correspondence, blank degrees, transcripts and seals from the university’s “offices”. The following morning, the university’s founder committed suicide.⁴⁹

A review of the documents collected during the search revealed that there 620 “graduates”, 171 of whom were employed by federal, state and local governments and some of these were “high-ranking officials in Washington D.C.”.⁵⁰

Consider too a list of almost 10,000 names released in July 2008 by *The Spokesman Review*⁵¹. This list was compiled as a result of a recent eight-month federal investigation in 2005⁵² into an “international diploma” mill. St. Regis, which operated from 1999 to 2005, created 121 fictitious universities⁵³, netted \$1.65 million in its last year of operation, and “issued” thousands of undergraduate and graduate “degrees” and “transcripts from both the fictitious institutions, as well as from genuine universities. Overall, the main operators “earned” an estimated \$6.3 million. The list was then released

⁴⁶ GAO, “Diploma Mills: Diploma Mills Are Easily Created and Some Have Issued Bogus Degrees to Federal Employees at Government Expense,” <http://www.gao.gov/new.items/d041096t.pdf>; and GAO, “Diploma Mills: Federal Employees Have Obtained Degrees from Diploma Mills and Other Unaccredited Schools, Some at Government Expense,” http://www.credentialwatch.org/reports/gao/diploma_mills_1.pdf.

⁴⁷ D.J. Schemo, “Diploma Mill Concerns Extend Beyond Fraud”, *The New York Times*, June 29, 2008, http://www.nytimes.com/2008/06/29/us/29diploma.html?_r=1; A Ezell, “Diploma Mills – Past, Present, and Future”, *College and University*, Winter 2002, 39 at pp. 40-41.

⁴⁸ “Not for Novelty Purposes Only: Fake Degrees, Phony Transcripts and Verification Services”, <http://arucc2004.centennialcollege.ca/documents/A3.pdf>.

⁴⁹ A. Ezell, “Diploma Mills – Past, Present and Future”, *College and University*, Winter 2002, Vol. 77, Iss. 3 p. 39.

⁵⁰ A. Ezell, “Diploma Mills – Past, Present and Future”, *College and University*, Winter 2002, Vol. 77, Iss. 3 p. 39.

⁵¹ “Leaked List Shows Top Government and Law Enforcement Officials Possess Bogus Degrees”, July 30, 2008 <http://www.guidetoonlineschools.com/blog/2008/07/30/leaked-list-shows-top-government-and-law-enforcement-officials-possess-bogus-degrees/comment-page-1/>; <http://www.spokesmanreview.com/data/diploma-mill/>.

⁵² Dubbed “Operation Gold Seal”.

⁵³ The “universities” included St. Regis University, Ameritech University, Pan American University, James Monroe University, All Saints American University, Robertstown University, Holy Acclaim University, Fort Young University, Hampton Bay University, Hartland University, North United University, Intech University, North United University, Port Rhode University, St. Lourdes University, Saint Renoir University, Stanley State University, Van Ives University, West American University, and New Manhattan University. Fictitious degrees were issued from genuine institutions, including the University of Maryland, George Washington University, and the University of Missouri.

anonymously to the media by a government official.⁵⁴ The investigation culminated in a variety of charges and eventual convictions (including conspiracy and wire/mail fraud).⁵⁵

At least 300 federal employees bought counterfeit degrees (including a White House staff person, as well as State Department and Department of Justice employees), 135 purchasers had some affiliation with the military, and 39 were connected to educational institutions.⁵⁶

Those who purchased fraudulent credentials included: a NASA employee, who bought an electrical engineering degree; a U.S. Department of Health oncology expert who bought a doctorate in health care administration; two National Security Agency employees, each with top-secret clearance; a contract employee with the CIA, who bought a degree in information systems management and who also had top-secret clearance; a deputy U.S. marshal, who bought a criminal justice degree, an employee with an operator of two nuclear plants in Minnesota, who purchased degrees in nuclear engineering and accounting; a building inspector with the city of Spokane, who bought a degree in construction management; and a school district superintendent, who bought a doctoral degree in public administration.

Also included among the list were 220 Canadians, several of whom were featured in a recent *Toronto Star* series of articles.⁵⁷ They included a Hamilton man who practised medicine for 15 years without a licence; another man posing as a doctor, who practised medicine in Michigan and Ontario, although he had not graduated from medical school; a Montreal man who used false nursing credentials to treat patients at a clinic; a Toronto man who taught high school for 30 years; and the former VP of the Toronto Stock Exchange.

Do these fraudulent degree holders pose a serious threat of one kind or another? More assuredly yes.

Detecting Fraud – How to Tell the Real Thing from the Fake

Since 2001, the College has opened 58 possible fraud files, and of these more than half (35) were opened after 2005. The documents purported to be from a variety of countries, including Guinea, Zimbabwe, Haiti, China, Democratic Republic of Congo, Argentina, India, Iraq, Nigeria, Russia, Egypt, Swaziland, Morocco, Kenya, Iran, Mali, Columbia, Pakistan, Kuwait, Philippines, Sri Lanka, Nairobi, Israel, Senegal, England, Moldova, Ukraine and the United States (Illinois).

⁵⁴ V. Strauss, “Hundreds Linked to Diploma Mill: Government, Military Probed for Violators”, *The Washington Post*, July 31, 2008, p. B01, <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/30/AR2008073002300.html>; D. Schemo, “U.S. Diploma-Buying Case Raises Terrorism Concerns”, *International Herald Tribune*, June 30, 2008, <http://www.iht.com/articles/2008/06/30/america/diploma.php>.

⁵⁵ “Owners and Employees of Diploma Mill Indicted for Conspiracy to Commit Wire Fraud, Mail Fraud and Money Laundering”, U.S. Department of Justice Press Release, http://www.hep.uiuc.edu/home/g-gollin/pigeons/USA_press_release.htm; “Diploma Mill Promoter Sent to Prison, U.S. Department of Justice, Press Release, August 5, 2008, http://www.usdoj.gov/usao/wae/press_releases/2008/docs/080508_Randock_Sentence.pdf.

⁵⁶ B. Morlin and J. Cadman, “Buyers of Bogus Degrees Named”, *The Spokesman Review*, July 30, 2008, <http://www.spokesmanreview.com/breaking/story.asp?ID=15898>.

⁵⁷ D. Brazao, “Phony Degree Scam Exposed”, *Toronto Star*, Dec. 7, 2008; “Forged Degree Investigation: Transcript”, *Toronto Star*, Dec. 7, 2008; “Phony Degrees Catch Up to Buyers”, *Toronto Star*, Dec. 13, 2008; “Fake Degree Costs Woman Articling Job on Bay St.: Law School Marks Also Inflated, Employer Find”, *Toronto Star*, Dec. 17, 2008.

College receives over 1,000 documents each day, which means that fact verification is both labour intensive and time consuming.

The College follows this general approach:

(i) Detailed Knowledge of Country-Specific Education Systems

Given that the number of documents the College receives each day, it is important that the staff be knowledgeable generally about the problem of degree and diploma mills and, specifically about the possibility of fraudulent documents – conduct ongoing research into what documents are legitimately issued by various countries, including developing, maintaining, and updating a country-specific database of sample documents. In other words, it is crucial to know each education system, so that documents purportedly from another country.

There are a number of directories and lists of accredited and unaccredited educational institutions (both online and paper-based) that are useful points of reference for regulatory bodies and for any other institution or person wanting to verify the bona fides of a particular educational institution (although they should be used with caution).

In the College's case, where the institutions do not appear in either the electronic or paper-based resources, and the legitimacy of an institution cannot be determined from an inspection of its web site, the College may contact organizations such as embassies or ministries of education for additional information and confirmation.

A number of organizations have developed online directories of accrediting or accredited institutions, and have posted them on their respective web sites. While the directories are available to anyone with access to a computer, there are issues with the currency and comprehensiveness of the information. Neither issue is particularly surprising, given the ease with which degree mills can close up shop in one jurisdiction and be open for business in another the very next day. Most degree mills don't have a physical presence in any particular place – they are largely Internet-based and use electronic means to communicate with “students” and/or they use other simple means of communication, such as post office box number.

There are also issues with respect to the extent to which the posting organization assesses the information it is provided – in other words, the listed organizations may simply have been taken at face value with no rigorous examination of their degree-granting practices.

For instance, the U.S. Department of Education established a searchable online database in 2005 of all organizations that participate in the federal student-aid programs, which require participating entities to be accredited by an agency, which, in turn, is recognized by the Department (within the meaning of the *Higher Education Act 1965*). The database contains around 6,900 postsecondary educational institutions and programs. However, the Department provides the following cautionary notes on its web site.

The database does not include a number of postsecondary educational institutions and programs that elect not to seek accreditation but nevertheless may provide a quality postsecondary education. The U.S. Department of Education recommends that the database be used as one source of qualitative information and that additional sources of qualitative information be consulted.⁵⁸

The U.S. Department of Education recommends that the database be used as one source of qualitative information and that additional sources of qualitative information be consulted. The database is compiled entirely from publicly available information obtained by the U.S. Department of Education from recognized accrediting agencies and state approval agencies. The U.S. Department of Education cannot, therefore, guarantee that the information contained in the database is accurate, current, or complete.

The U.S. Department of Education will periodically update the database to reflect additional information the Department receives from recognized accrediting agencies and state approval agencies but makes no guarantee that the database will be updated immediately upon receipt of such information.

The database is provided as a public service without warranty of any kind. The database does not constitute an endorsement by the U.S. Department of Education of any of the educational institutions or programs.⁵⁹

The Council For Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, includes a list of accrediting organizations recognized by CHEA as having “standards and processes...[that] are consistent with the academic quality, improvement and accountability expectations that CHEA has established, including the eligibility standard that the majority of institutions or programs each accredits are degree-granting”.⁶⁰

The Distance Education and Training Council's (DETC), a non-profit educational association located in Washington, D.C., also has a comprehensive list of accredited online degree institutions on its web site.⁶¹ The directory, which is issued by the DETC Accrediting Commission, is listed by the U.S. Department of Education “as the nationally recognized accrediting agency for distance education institutions”. The Commission is also recognized by CHEA.⁶²

The Oregon Office of Degree Authorization⁶³ has devoted a considerable portion of its web site to degree mills. The site contains an overview of the problems associated with degree mills, an extensive discussion of the effectiveness of other states’ legislation, as well as links to other organizations, a critique of the effectiveness of other screening

⁵⁸ http://www.ed.gov/admins/finaid/accred/accreditation_pg4.html#Diploma-Mills.

⁵⁹ <http://ope.ed.gov/accreditation/>.

⁶⁰ www.chea.org; http://www.chea.org/pdf/2008_2009_Directory_of_CHEA_Recognized_Organizations.pdf.

⁶¹ www.detc.org.

⁶² <http://www.detc.org/downloads/2008-09%20DETC%20Directory%20-%20Aug%2021%202008.pdf>.

⁶³ <http://www.osac.state.or.us/oda/index.html>.

agencies (such as UNESCO and WHO)⁶⁴, and a list of unaccredited colleges that operate in the state with and without Oregon's approval.⁶⁵

On the international front, jurisdictions such as Australia⁶⁶, Netherlands⁶⁷, Sweden⁶⁸, Africa⁶⁹, India⁷⁰, and the U.K.⁷¹ each have developed web sites outlining the issues, and in some cases, including lists of accredited and unaccredited educational institutions. In the case of the Netherlands, the Centre for Information on Diploma Mills takes e-mail inquiries and promises to respond within 48 hours.

The Canadian Information Centre for International Credentials was established after Canada ratified the UNESCO Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, in 1990, to assist Canada in carrying out its obligations under the terms of this Convention.⁷² The directory contains information on:

- Public and private recognized and authorized postsecondary institutions – institutions that have been given the authority to grant academic credentials by their provincial or territorial governments through charters or legislation that ensures or enables mechanisms for institutional and program quality
- career colleges and vocational/technical schools – institutions that are registered or licensed, under provincial or territorial legislation, to offer private occupational and vocational training programs
- second-language schools – institutions offering second language programs that meet the quality assurance standards of Languages Canada (LC) for curriculum, teacher qualifications, student services, student admissions, marketing, promotion, facilities and administrations.

The directory also lists all member institutions of the Association of Canadian Community Colleges (ACCC); Association of Universities and Colleges of Canada (AUCC); Languages Canada (LC); National Association of Career Colleges (NACC)

Association of Universities and Colleges of Canada (AUCC) represents 94 Canadian public and private not-for-profit universities and university-degree level colleges, and provides information on AUCC members.⁷³

International organizations have also combined their efforts to establish online directories and information. The online portal at the UNESCO web site offers access to information on higher education institutions recognized or otherwise sanctioned by competent authorities in each of the 23 participating countries. The information is managed and

⁶⁴ See, for instance, the ODA's comments with respect to UNESCO and WHO, and the ineffectiveness of their respective lists of colleges; <http://www.osac.state.or.us/oda/faq.html>.

⁶⁵ <http://www.osac.state.or.us/oda/unaccredited.aspx>.

⁶⁶ <http://www.aqf.edu.au/register.htm>.

⁶⁷ <http://www.diplomamills.nl/Engels/contact.htm>.

⁶⁸ <http://www.hsv.se/aboutus/publications/reports/reports/2005/fakeuniversitiesandbogusdegreesswedenandtheworld.5.539a949110f3d5914ec800074186.html>.

⁶⁹ AAU: *Association of African Universities*; www.aau.org/.

⁷⁰ University Grants Commission – Fake Universities list; www.ugc.ac.in/inside/fakealerts.html.

⁷¹ <http://www.dcsf.gov.uk/recognisedukdegrees/>.

⁷² <http://www.cicic.ca/en/post-sec.aspx?sortcode=2.20.26>.

⁷³ http://www.aucc.ca/can_uni/index_e.html.

updated by the relevant authorities in each of the participating countries. It is intended to provide students, employers and others with information with respect to the status of higher educational institutions. The country-specific information is provided, managed and updated by relevant authorities in each of the participating countries.⁷⁴

In addition to these online sources, the College also refers to the following print-based materials to determine whether or not an educational institution is legitimate:

- International Association of Universities (IAU) – *International Handbook of Universities, World List of Universities*⁷⁵
- Association of Commonwealth Universities (ACU) – *Commonwealth Yearbooks*⁷⁶
- National Office of Overseas Skills Recognition (NOOSR) - based in Australia⁷⁷
- Association of Indian Universities (AIU) – *Universities Handbook India*.⁷⁸

(ii) Standard Approach to Reviewing and Evaluating Documents

It is important to have a standard and methodical approach to the task of document assessment. The College, for instance, has a primary document assessment team that reviews documents. While all documents are scanned into the College’s application database, the original document is examined in its original state (*i.e.*, as it arrived at the College) before the scanning process. If an anomaly is identified, the document is then reviewed by a second team, the questionable document team, and a recommendation is made, based on this team’s assessment and findings.

What Should an Assessor Look for in “Official” Documents⁷⁹

The list below is a collection of tip-offs that a document may be fraudulent.

- What are the first impressions of the overall look and feel of a document?
- Are there discrepancies or inconsistencies in data contained on the application form?
- What information is contained on the envelope in which the documents arrived – is the address of the issuing institution correct, was there a pre-printed return address, was the address typed or rubberstamped?
- Did the envelope arrive with a postage stamp or a postage meter machine with the name of the issuing institution?
- Was the envelope sealed, and if so, how?
- Is the date contained on the envelope current?
- Did the document arrive directly from the issuing institution or from another third party?
- Does the institution actually exist, and did it exist at the time the documents were issued?

⁷⁴ http://portal.unesco.org/education/en/ev.php-URL_ID=49864&URL_DO=DO_TOPIC&URL_SECTION=201.html

http://portal.unesco.org/education/en/ev.php-URL_ID=56833&URL_DO=DO_TOPIC&URL_SECTION=201.html [Canada]

⁷⁵ <http://www.unesco.org/iau/directories/handbook.html>.

⁷⁶ <http://www.acu.ac.uk/yearbook/yearbook.html>.

⁷⁷ http://www.ilo.org/public/english/employment/skills/hrdr/init/au_30.htm.

⁷⁸ <http://www.aiuweb.org/publication/publication.asp>.

⁷⁹ E. Adán, “The Forensics of Academic Credential Fraud Analysis and Detection”, 2002, at pp. 8-9.

http://www.nafsa.org/_/Document/_/forensics_of_academic.pdf; N. Katz, “Doing a Background Check on Your Performers: Foreign Educational Document Alteration and Diploma Mills” Oct. 27-28, 2004 at p. 5 <http://www.iacrao.org/October2004/docs/diploma.pdf>; A. Ezell, “Transcript Fraud and Handling Fraudulent Documents”, *College and University*, Winter 2005, 49 at pp. 52-53.

- Is there evidence of corrections of personal data such as names, birth dates or gender?
- Is there evidence of white-out-erasures, corrections, burn-marks?
- Are there interrupted or obliterated lines, where information would generally be printed or typed?
- Are there missing pictures in degrees or professional identification cards?
- Are there partial seals on the surface of superimposed pictures on the document surface?
- Are there horizontal and/or vertical misalignments on the document?
- Are there incompatible type-faces or fonts in a single document, or within a sentence or word?
- Are there missing words or portions of words?
- Is there irregular spacing between words or letters, or is there insufficient space for the text that appears in the document?
- Does the document contain unprofessional language, poor grammar or misspelled words?
- Is the paper quality, texture, size (*i.e.*, legal or letter) or colour questionable?
- Is ink colour and/or quality of ink is inconsistent with standard documents issued by the country?
- Does the overall appearance of the document bears striking similarity to those of legitimate institutions?
- Are there incorrect seals or emblems (including colour or shape)?
- Are there inappropriate or outdated signatures (*e.g.*, signatures from the wrong officials or officials who were not employed at the institution at the time the document was purportedly issued)?
- Are there aberrations in the signature, including shading, clarity and continuity?
- Are cultural and anachronistic details inconsistent with actual data, such as dates of institutional name changes, institutional mergers, and institutional closures?
- Are there educational aberrations in data on the documents particular to the specific country, such as hours of study, uncharacteristic grading system, years of study or program cancellations?
- Are there issues with a non-traditional format of transcripts or have grade certificates been prepared in a language other than that of the official country from which the document originated (although some countries issue documents in English)?
- Are there numerical aberrations in details such as number of credits or grade point averages (that are mathematically impossible)?
- Are there chronological gaps in educational data, inconsistencies in length and structures of programs?
- Are the grades unusually high -- in countries or courses where higher grade ranges are not typically present, *i.e.*, is the student just too good to be true?

(iii) Procedures to Handle Suspected Fraud and Guidelines to Handle Anomalous Situations, Where Documents are Unavailable

Where fraud is suspected, the College uses a standard letter, sent to the appropriate educational official, such as the registrar of a university or a Ministry of Education official, asking for authentication of the documents and for confirmation of the details contained in the documents submitted by the applicant to the College.

The College also has in place an intervention process to assist applicants in instances where the documents are unavailable and where they have been unsuccessful themselves in obtaining the required documentation. While the College will not accept copies of documents and generally insists that documents must be issued and received directly from the granting institution, it also recognizes that there are instances where this may not be possible.

Where fraud is confirmed, the file would not be processed and the applicant would be notified of the reasons, including the specific details pertaining to the suspected fraud. In the absence of a satisfactory explanation, the applicant's file would be closed.

Combatting the Problem - Legal Issues and Solutions

What are the legal issues? There are a number of them.

- **Whom do you go after**
- **How do you go after them**
- **Complicating factors**

(i) Whom Do You Go After?

Who should be targeted -- the end users of fraudulent credentials or those who issue them in the first place, or both? Clearly, the most effective method of dealing with the issue is to go after both supply and demand side. In simple economic terms, as long as there is a demand, there will be a supply. Some jurisdictions, most notably some U.S. states, have chosen this route.

Among the factors to be considered is whether the purchaser is truly a victim in the sense that he or she truly believed that the degree was awarded on the basis of "life experience" or "work experience" or whether the purchaser knew the degree was fraudulent but weighed the cost of getting a legitimate degree against the costs of buying a degree and decided to take a gamble and run the risk of detection. Those issues may determine how to proceed.⁸⁰

⁸⁰ G. Gollin, "Brief Comments On Diploma Mill Legislation Contained In the "Higher Education Opportunity Act, HR 4137", August 2008, http://www.hep.uiuc.edu/home/g-gollin/pigeons/HEA_analysis.pdf; ⁸⁰ A Ezell, "Diploma Mills – Past, Present, and Future", *College and University*, Winter 2002, 39 at 45.

(ii) **How Do You Go After Them?**

There are a number of options:

- legislation specifically designed to catch degree mills *and* purchasers
- legislation designed to make it harder for any education institution to carry on business without genuine accreditation or registration or legislation restricting who can set up a university or private educational institution
- legislation designed to deal with fraud or misleading business practices, such as criminal proceedings, actions for trademark infringement, misrepresentation, actions brought under consumer protection legislation
- disciplinary actions taken by professional regulators or action taken by educational institutions pursuant to academic dishonesty provisions of a student code of conduct.

Legislation Aimed Specifically at Sellers of Fraudulent Academic Credentials and Those Who Buy Them

A number of U.S. states have addressed the degree mill problem through legislation aimed specifically at both the degree mills *and* those who purchase fraudulent academic credentials from them.

As noted earlier in this paper, however, not every American state has in place laws that deal effectively with degree mills or purchasers. A brief review of some of the more effective legislative measures now in place (or soon to be in place) follows.

A number of states either restrict or make explicitly illegal the use of academic credentials from diploma mills and unaccredited schools for the purposes of employment, a promotion, or admission to another university or educational institution, and such credentials cannot be used in connection with any business, trade, profession or occupation. Some states even go after the mills themselves, and make sales of fraudulent academic credentials illegal. Those states include Florida, Illinois, Maine, New Jersey, North Dakota, Oregon, Texas, Virginia, and Washington. A more detailed discussion of the legislation in place in those states appears in Appendix 1.

Missouri is in the process of enacting similar legislation. In 2008, at least 4 Missouri residents were linked to a Washington-based diploma mill investigation. They either obtained or asked about obtaining degrees from St. Regis University, a now discredited (*i.e.*, bogus) educational institution. Three of the four were employed in the education field and the remaining person was in the military.⁸¹ The Missouri Department of Higher

⁸¹ "Weak Laws Make Missouri Vulnerable to Phony Degrees", Missouri Department of Higher Education, News Release, Nov. 13, 2008 <http://www.dhe.mo.gov/mdhe/pressreleaseprocess.jsp>.

Education has proposed legislation that would make it illegal for individuals with fraudulent credentials to use them to get a job or a promotion.⁸²

In early 2007, Bill H.R. 773⁸³ (also known as the *Diploma Integrity Protection Act of 2007*) was introduced as a direct response to the proliferation of diploma mills. It was the first piece of federal U.S. legislation of its sort. Had it passed, the Secretary of Education would have been directed, among other things, to establish a Diploma Mill task force to develop guidelines for distinguishing between legitimate and fraudulent degree granting institutions, a strategic plan to combat mills and address issues such as the sale and use of fraudulent degrees, and legislative language to give effect to the plan. The legislation was intended to “reduce and prevent the sale and use of fraudulent degrees in order to protect the integrity of valid higher education degrees that are used for federal purposes”.⁸⁴

Although Bill H.R. 773 was never enacted, much of the language was incorporated into the original version of subsequent legislation, the *College Opportunity and Affordability Act*⁸⁵. Unfortunately, most of the language was deleted from the final version of the Act, which became law on August 14, 2008. All that remained of the original language was a definition of “diploma mill”⁸⁶ and a direction to the Education Secretary to “place information on the Department's web site to assist students, families, and employers in understanding what diploma mills are and how to identify and avoid them”.⁸⁷ It was, not to put too fine a point on it, an ideal legislative opportunity that was entirely wasted.

Legislation Aimed Specifically at the Degree Mill Alone

Although there is no one comprehensive Canadian federal law that deals specifically with fraudulent academic credentials in Canada, provincial legislation restricting what institutions can lawfully grant academic degrees may be of use. In Ontario, for instance, the *Post-Secondary Education Choice and Excellence Act, 2000*⁸⁸, prohibits anyone from directly or indirectly:

- granting a degree
- providing a program leading to a degree
- advertising a post-secondary program leading to a degree; and
- selling, offering for sale or providing in exchange for a fee, reward or other remuneration a diploma, certificate, document or other material indicating or implying the granting or conferring of a degree,

unless they have been authorized to do so.⁸⁹

⁸² “Weak Laws Make Missouri Vulnerable to Phony Degrees”, Missouri Department of Higher Education, News Release, Nov. 13, 2008 <http://www.dhe.mo.gov/mdhe/pressreleaseprocess.jsp>; <http://dhe.missouri.gov/files/BB0908.pdf>; <http://dhe.missouri.gov/mdhe/boardbook2content.jsp?id=56k7>.

⁸³ <http://www.govtrack.us/congress/bill.xpd?bill=h110-773>; <http://www.govtrack.us/congress/billtext.xpd?bill=h110-773>.

⁸⁴ http://www.hep.uiuc.edu/home/g-gollin/pigeons/SR_com_Bill_targets_diploma_mills.htm.

⁸⁵ <http://www.govtrack.us/congress/bill.xpd?bill=h110-4137>.

⁸⁶ Section 103.

⁸⁷ Section 109.

⁸⁸ S.O. 2000, c. 36, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00p36_e.htm.

⁸⁹ *Ibid.*, s. 2.

Further, the same legislation prohibits anyone from using the word “university”, a derivation or abbreviation thereof, holding themselves out to be a university, and using the word “university” or a derivation or abbreviation thereof unless they have been authorized to do so.⁹⁰

In 2005, Ontario enacted the *Private Career Colleges Act, 2005*.⁹¹ It was designed to allow private, for-profit and not-for-profit institutions (private career colleges or PCCs) to offer certificates and diplomas in fields such as business, health services, human services, applied arts, information technology, electronic, services and trades. PCCs must first register and have their programs approved by the Ministry of Training, Colleges and Universities, which, in turn, sets standards for, among other things, the PCCs’ programs, advertising, refund policies and instructor qualifications. The Ontario government provides a searchable database of registered PCCs⁹², and well as a list of organizations that are subject to non-compliance orders.⁹³ As of January 1, 2009, there is also a fund (Training Completion Assurance Fund) available to students who have been affected by the sudden closing of a PCC.⁹⁴

There are, however, significant loopholes in the legislation.⁹⁵ There are numerous exemptions from the registration requirement. For example, institutions that do not have a physical presence in Ontario need not register.⁹⁶ So, if the institution:

- does not have a head office in Ontario
- has no Ontario postal address, telephone or fax number
- does not occupy land in Ontario; or
- has no Ontario-based agent, manager, or employee who provides, arranges, teaches, or invigilates exams,

the Act does not apply and they would not be subject to government oversight.⁹⁷

Clearly, degree/diploma mill operations could easily steer clear of the legislation if their entire operation were Internet-based.

A number of other states have begun to reconsider their existing legislation and enforcement, but have chosen not to follow the approach taken by the majority of states – that is to say, they have not implemented legislation that targets both the seller and purchaser of fraudulent degrees. They include Alabama and Wyoming.

Once known as one of the “Seven Sorry Sisters” states and a haven for degree mills because of its weak and ineffective laws, Alabama put into place new rules, effective October 1, 2008, with the immediate effect of ousting 30 questionable educational organizations.

⁹⁰ *Ibid*, s. 3.

⁹¹ S.O. 2005, c. 28, Schedule L to *Budget Measures Act, 2005*, S.O. 2005, c. 28.

⁹² <http://www.edu.gov.on.ca/eng/general/searchpcc.html>.

⁹³ <http://www.edu.gov.on.ca/eng/general/compliance.html>.

⁹⁴ <http://www.edu.gov.on.ca/eng/general/tcaf.html>.

⁹⁵ <http://www.edu.gov.on.ca/eng/general/factsheet1.pdf>.

⁹⁶ http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060415_e.htm#BK1.

⁹⁷ *Ibid*, s. 2(1).

Alabama was frequently chosen as the fall-back location, when other jurisdictions enacted legislation aimed at closing down degree mills. The mills would simply pull up stakes and relocate in, among other states, Alabama, because of ineffective or non-existent legislation. When, for instance, Wyoming was able to shut down Preston University through its legislation, the organization reportedly then re-established itself in Alabama.⁹⁸

One of the issues that complicated enforcement was the split state authority over organizations which granted degrees. In addition, no staff or funding were dedicated to regulation and enforcement.⁹⁹ The new requirements include:

- Annual licensing (which replaces licensing every two years)
- Higher licensing fees, to allow Alabama's Department of Postsecondary Education to hire additional staff to perform the necessary oversight
- Requiring schools to provide audited financial statements (rather than unaudited ones)
- Requiring owners and operations to have "good reputations", including no convictions for offences involving "moral turpitude" and no successful suits for fraud or deceptive trade practices for the past decade
- Providing means through which to close schools offering poor-quality courses
- A department-issued annual report containing information about public colleges, private for-profit schools, including costs and accreditation information

Prior to a change in legislation in 2006, Wyoming was regarded as a diploma-mill "friendly" state.¹⁰⁰ After a year of study and considerable debate, private post-secondary institutions are now precluded from operating within the state unless they have first been accredited by an accrediting agency which, in turn, has been recognized by the U.S. Federal Department of Education.¹⁰¹

Other Legislation Not Specifically Aimed at Degree Mills

In Canada, fraud¹⁰² and forgery¹⁰³ provisions of the *Criminal Code*¹⁰⁴ might apply. These provisions were used in a recent Ontario prosecution that resulted from a police investigation into a counterfeit document ring.¹⁰⁵ Among the items seized were fraudulent degrees, diplomas, school transcripts, immigration documents and drivers' licences,

⁹⁸ "State Laws Governing Diploma Mills and Fake Degree: A Few Good States Drive Out Fraudulent Institutions";

<http://www.counterfeitdegrees.com/law/state.htm>;

<http://www.validityscreening.com/pdf/Earn%20Your%20Degree%20in%2028%20Days%20and%20Other%20Diploma%20Mill%20Scams.pdf>.

⁹⁹ News Release, Department of Postsecondary Education, July 14, 2008, <http://www.accs.cc/pdfs/News%20Release%20-%20No%20More%20Diploma%20Mills%20-%20071408.pdf>;

http://www.oanow.com/oan/news/local/article/alabama_chancellor_cracking_down_on_diploma_mills/27270/; A Jones, "Diploma Mill Crackdown Drives Some from State", Oct. 10, 2008, *Tuscaloosa News*;

http://www.tuscaloosaneews.com/article/20081010/NEWS/810090238/1007/NEWS02?Title=Diploma_mill_crackdown_drives_some_from_state.

¹⁰⁰ <http://www.insidehighered.com/news/2006/03/20/wyoming>.

¹⁰¹ <http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title21/Title21.htm>.

¹⁰² R.S.C, 1985, c. C-46, http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l_X/en#anchorbo-ga:l_X], ss. 380 [fraud].

¹⁰³ *Ibid.*, ss. 366 [forgery and making false documents]; 368 [uttering forged documents]; 406 [forgery of trade-marks and descriptions].

¹⁰⁴ R.S.C, 1985, c. C-46, http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l_X/en#anchorbo-ga:l_X

¹⁰⁵ *R. v. Chen*, 2008 ONCJ 580 (Ont. Ct. Jus.) (CanLII).

along with equipment used to make these documents.¹⁰⁶ Unfortunately, the case was thrown out at a preliminary stage for *Charter* violations.

As well, suits might be brought under consumer protection legislation and trademark legislation. Again, the U.S.-based St. Regis case serves to illustrate the point. Prior to the federal investigation and ensuing successful prosecution, a Jesuit school based in Denver, “Regis University” filed suit against a number of individuals who operated St. Regis for violating both the federal *Lanham Act* (federal trademark law, which prohibits trademark infringement,) and the *Washington Consumer Protection Act* for false advertising, unfair competition, and unfair business practices.

Comparable consumer protection legislation exists in Ontario¹⁰⁷, under which false, misleading or deceptive representations are prohibited.¹⁰⁸ Examples of false, misleading or deceptive representations include representations that goods¹⁰⁹ or services¹¹⁰ have sponsorship or approval that they do not have, or that the person supplying the goods or services has sponsorship, approval, status, affiliation or connections that he or she does not have. Such provisions might catch degree mills who claim to have accreditation or affiliation with legitimate institutions

Similar provisions appear in the *Competition Act*.¹¹¹ For instance, proceedings under the conspiracy provisions could be considered – specifically, conspiracy to lessen or restrain competition.¹¹² These provisions might be specifically employed where the degree mill has used a name that is similar to a legitimate educational institution

Under s. 52, it is an offence to knowingly or recklessly make a representation to the public that is false or misleading in a material respect for the purpose of indirectly or directly promoting a product or business interest.¹¹³ It is not necessary to prove that the

¹⁰⁶ “York Region Police Smash Counterfeit Document Ring”, *Windsor Star*, April 14, 2007.

¹⁰⁷ *Consumer Protection Act, 2002*, S.O. 2002, c. C. 30, Schedule A http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02c30_e.htm#BK16.

¹⁰⁸ *Ibid.*, s. 14.

¹⁰⁹ “Goods” are defined in s. 1 to mean “any type of property”.

¹¹⁰ “Services” are defined in s. 1 to mean “anything other than goods, including any service, right, entitlement or benefit”.

¹¹¹ *Competition Act*, R.S.C. 1985, c. C-34, http://laws.justice.gc.ca/en/showdoc/cs/C-34/20090227/en?command=home&caller=SI&search_type=all&shorttitle=competition%20act&day=27&month=2&year=2009&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50.

¹¹² 45 (1) Every one who conspires, combines, agrees or arranges with another person

- (a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,
- (b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,
- (c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or
- (d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

(2) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.

(2.1) In a prosecution under subsection (1), the court may infer the existence of a conspiracy, combination, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties thereto, but, for greater certainty, the conspiracy, combination, agreement or arrangement must be proved beyond a reasonable doubt.

¹¹³ 52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

person was in fact deceived or misled.¹¹⁴ Further, both the “general impression”, as well as the literal meaning of the representation can be taken into account in determining whether or not the representation was misleading or false in a material respect.¹¹⁵

A contravention of this provision could lead to a fine and/or a maximum five-year jail term.¹¹⁶

Because degree mills are now largely Internet-based and routinely use both the Internet and mail to conduct their business transactions, wire and mail fraud charges are useful.

For instance, after a lengthy U.S. multi-agency task force investigation¹¹⁷, the principal operators of the St. Regis “University” degree mill, Dixie Randock and her husband and daughter, were successfully indicted for, and eventually pleaded guilty under plea agreements, to conspiracy to commit wire and mail fraud – that is to say, they conspired, using the Internet, to manufacture, print and sell fraudulent academic documents, including high school diplomas, as well as college and graduate-level degrees throughout the world so that purchasers could obtain employment, job promotions and visas, and also fabricated a web site to facilitate all of these activities.

-
- (2) For the purposes of this section, a representation that is
- (a) expressed on an article offered or displayed for sale or its wrapper or container,
 - (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,
 - (c) expressed on an in-store or other point-of-purchase display,
 - (d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or
 - (e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,
- is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

¹¹⁴ 52(1.1) For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that any person was deceived or misled.

¹¹⁵ 52(4) In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

¹¹⁶ (5) Any person who contravenes subsection (1) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

¹¹⁷ The investigation was led by the United States Secret Service, in co-operation with the IRS, Criminal Investigation, Department of Treasury, the Bureau of Immigration and Customs Enforcement, the Washington State Attorney General’s Office, the Spokane Police Department, the United States Postal Inspection Service and the U.S. Attorney for the Eastern District of Washington.

Self-Regulators and Their Enabling Legislation and Regulations

A number of provisions contained in many professional self-regulators' enabling legislation may also be of use. If, for example, the fraud is discovered prior to the applicant being admitted to the College, providing false credentials constitutes grounds for refusal to admit the person as a member of the College. The legislation of most, if not all, professional self-regulators contain similar provisions.

Specifically, s. 18(2) of the College's legislation states that the Registrar may refuse to issue a certificate of qualification and registration if he or she has reasonable grounds to believe the following:

- the past conduct or actions of the applicant afford grounds for belief that the applicant will not perform his or her duties as a teacher in accordance with the law, including but not limited to this Act, the regulations and the by-laws; or
- the applicant does not fulfil the requirements specified in the regulations for the issuance of the certificate.¹¹⁸

In addition, s. 51(1) of the College legislation, which applies to "every person" (and not just to College members), would apply. The provision states that anyone who knowingly makes a false representation, for the purpose of having a certificate issued is guilty of an offence and liable to a \$10,000 fine. Further, anyone who knowingly assists the person is also guilty of an offence and is also liable to a fine¹¹⁹.

If the fraud is discovered once the person has become a member of the College, several provisions of the College's Professional Misconduct Regulation would apply post-membership.¹²⁰ Any of the following acts are instances of professional misconduct, within the meaning of the Act:

1. Providing false information or documents to the College or any other person with respect to the member's professional qualifications.
2. Inappropriately using a term, title or designation indicating a specialization in the profession which is not specified on the member's certificate of qualification and registration.
3. Permitting, counseling or assisting any person who is not a member to represent himself or herself as a member of the College.

....

¹¹⁸ A very public and recent example of this emanated from the recent *Toronto Star* series of articles on degree mills. A third-year York University law student who was admitted to law school and landed a Bay St. articling job on the basis of fraudulent credentials, lost her job offer and now faces an academic disciplinary hearing and expulsion from York.¹¹⁸ York University is also considering "additional verification measures" to detect fraudulent credentials.

¹¹⁹ 51(1) Every person who makes a representation, knowing it to be false, for the purpose of having a certificate issued under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

¹²⁰ O.Reg. 437/97.

12. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false, improper or misleading statement.
13. Falsifying a record relating to the member's professional responsibilities.

Any of the more generic provisions might also apply, such as conduct unbecoming¹²¹ or disgraceful, dishonourable or unprofessional conduct.¹²²

The enabling legislation of many professional self-regulators restricts the use of a professional designation to those who are legitimately permitted to use it. For instance, under the *RHPA*, only those permitted under the regulations can use the title "doctor".

33(1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals.¹²³

The College recently announced its intention to grant a professional designation to all College members at their initial registration and its continued use so long as the member remains in good standing with the College. The professional designation has been trademarked under federal legislation, and the Minister of Education has been asked to amend the *Ontario College of Teachers Act* to limit the use of the designation to College members in good standing and to make it an offence to misuse the designation, with fines of \$2,000 and \$5,000 for first and subsequent misuses.

(iii) Complicating Factors

Jurisdictional issues

Education falls under provincial legislation in Canada, and in the U.S., is regulated by individual states, which means that there is little uniformity or consistency in approach among various jurisdictions, even among those in the same country. So, for instance, when a mill's operation is shut down in one jurisdiction, it simply re-emerges in another mill-friendly jurisdiction. Further complicating the problem is that in other jurisdictions, education is often controlled nationally, so many foreign students believe that education in the U.S. is similarly controlled.¹²⁴

Practically speaking, what this means is that the response is piecemeal, and a degree mill may be more successful setting up shop in one jurisdiction and not in another jurisdiction. In other words, they jurisdiction shop and hop. For instance, states such as California, Colorado, Delaware, Hawaii, and Mississippi have no legislation, weak legislation, and/or poor or limited enforcement of existing laws.¹²⁵

¹²¹ *Ibid*, para. 19.

¹²² *Ibid*, para. 18.

¹²³ *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18.

¹²⁴ A Ezell, "Diploma Mills – Past, Present, and Future", *College and University*, Winter 2002, 39 at p. 41.

¹²⁵ <http://www.osac.state.or.us/oda/unaccredited.aspx>.

Disclaimers

Those degree mills that are up front about being a degree mill frequently sell degrees/transcripts and other documents for “entertainment purposes only” or as “novelty items”¹²⁶. Such disclaimers have been effective in allowing degree mills to take advantage of legal loopholes, where intent to deceive is an element of an offence or a contravention of legislation.

Due Diligence

A professional self-regulator, as a “gate keeper” of a profession with the statutorily-imposed duty to serve and protect the public interest, is bound to exercise due diligence in assessing applications for membership. If it fails to detect fraudulent credentials submitted with a membership application, admits the applicant to the profession and harm to the public ensues, what is its legal liability?

The enabling legislation of most professional self-regulatory bodies, including the College, contains an immunity provision, giving the organization and staff immunity from civil suits for damages for acts or omissions in the performance or intended performance of statutory duties or powers.¹²⁷ Would an immunity provision protect a regulatory body in such circumstances? The answer may be, “it depends”.

A fairly recent decision of the Supreme Court of Canada, in which the question of a professional self-regulator owed a duty to a member of the public with respect to activities of one of its members was considered, may be instructive. The 9-member court unanimously decided in *Finney v. Barreau du Québec*¹²⁸ (*per* LeBel J.) that the Barreau’s behaviour amounted to “bad faith”, leaving it civilly liable for damages suffered by a member of the public. Despite the strikingly similar facts in *Finney*, the court gave only a passing nod to earlier decisions.¹²⁹ It may well be that the conduct of the regulatory entity was so egregious that it was distinguishable on that ground alone.

The facts of the *Finney* case, which the court described as “exceptional”¹³⁰, were the following. Mr. Belhassen (“B”), whose conduct led to the court action, qualified to practice in 1978, and went rapidly downhill from there. B might be best described as a “frequent flyer” of the Barreau’s disciplinary process (or in Scotland Yard terms, he was “known” to the Barreau).

¹²⁶ A. Ezell, “Transcript Fraud and Handling Fraudulent Documents”, *College and University*, Winter 2005, p. 49 at 50.

¹²⁷ 55. No proceeding for damages shall be instituted against the College, the Council, a committee established under this Act, a member of the Council, a member of a committee established under this Act or a member of a panel of a committee established under this Act, or an officer, employee, agent or appointee of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

¹²⁸ 2004 SCC 36.

¹²⁹ *Cooper v. Hobart*, 2001 SCC 79, <http://scc.lexum.umontreal.ca/en/2001/2001scc79/2001scc79.html>; *Edwards v. Law Society of Upper Canada*, 2001 SCC 80 <http://scc.lexum.umontreal.ca/en/2001/2001scc80/2001scc80.html>.

¹³⁰ Para. 45.

Four disciplinary complaints were made against B between 1980 and 1985, and he was found guilty of misconduct on three occasions between 1981 and 1987. The Barreau also had concerns about B's professional competence. The Barreau began its first investigation into his competence in 1985, and five years later the Professional Inspection Committee concluded that B was indeed incompetent and recommended that he be suspended and required to repeat his professional training "in its entirety". The five-year delay was attributed to the departure and replacement of a number of the Barreau's investigators. B was also required to submit to a medical exam to determine his physical and mental fitness to practise. He did so, but there was no information about the results of the exam included in the judgment.

It wasn't until 1992 that the Barreau's Executive Committee considered the Professional Inspection Committee's recommendation. It ultimately decided not to suspend him and required him to complete a "refresher training course" and to practise under supervision of an "eminent Montréal lawyer".¹³¹

During this time, the plaintiff (F) had the misfortune to retain B as her lawyer in a number of family-related matters – a business relationship that was to last 10 years. Within a few months of the initial retainer, F was dissatisfied with B's services. Repeated complaints were made to the Barreau beginning in 1991 through to 1996, alleging unprofessional conduct towards other counsel, abuse of the court system in bringing a barrage of actions, and unethical behaviour in respect of his clients.¹³²

The "eminent" lawyer charged with responsibility of supervising B throughout this flurry of activity, however, "noticed nothing" for much of the time, but around April 1993 he complained that he could no longer contact B.¹³³ He resigned from his supervisory position a few days later. B was finally served with a complaint containing 23 counts of alleged misconduct in 1994 and was provisionally struck off the rolls, but it wasn't until 1998 when he was found guilty on 17 counts and struck off for 5 years (retroactively to 1994).¹³⁴

In the meantime, F began her action against the Barreau for \$975,000 in compensatory, material, moral and exemplary damages.

Because the dispute arose in Quebec, a civil law province, the ensuing action was governed by the *Civil Code of Québec*¹³⁵, the *Professional Code*¹³⁶, and the applicable rules of civil liability. In particular, the court was asked to address the relationship between civil liability rules and ss. 23 and 193 of the *Professional Code*, under which professional disciplinary bodies are charged with the responsibility of protecting the public and are granted immunity for prosecution for acts done in the good faith performance of their duties, respectively.

¹³¹ Para. 4.

¹³² Paras. 6-9.

¹³³ Para. 8.

¹³⁴ Para. 9.

¹³⁵ *Civil Code of Québec*, S.C. 1991, c. 104.

¹³⁶ *Professional Code*, R.S.Q. c. C-26.

The gist of the court’s determination on this central point appears at para. 40, and the salient portions are reproduced below for your reference:

An immunity provision such as the one set out in s. 193...is intended to give professional orders [disciplinary bodies] the scope to act and the latitude and discretion they need in order to perform their duties. In the case of duties relating to the management of disciplinary cases, it would be contrary to the fundamental objective of protecting the public set out in s. 23...if this immunity were interpreted as requiring evidence of malice or intent to harm in order to rebut the presumption of good faith. Gross or serious carelessness is incompatible with good faith.¹³⁷[Emphasis added.]

As applied to the facts of this case, the court concluded that despite the administrative separation between the Barreau’s discipline and inspection functions, it had to have known B’s “problematic professional history”.¹³⁸ Further, although the Barreau was obliged to proceed with due regard for procedural fairness and the statutory framework, those obligations did not “explain the slowness and lack of diligence seen in this case” (para. 44). The “virtually complete absence of the diligence” called for in the circumstances of the case amounted to gross carelessness and serious negligence”.¹³⁹ Accordingly, the Barreau was held liable for F’s damages.

Insofar as its previous decisions were concerned, the court simply concluded that the “common law would have been no less exacting than Quebec law on this point”.¹⁴⁰

What does this case mean for other regulators – particularly those in common law jurisdictions? An immunity provision is present in the legislation of most, if not all, professional regulators. But, arguably as a result of *Finney*, such a provision might not operate in the face of gross or serious carelessness, particularly where the regulator has known about the impugned conduct but has delayed instigating an investigation or has failed to investigate thoroughly or even at all. The court itself appears to have foreclosed the argument that *Finney*, having arisen in a civil law province, should not necessarily apply in a common law province. Certainly, some recent case law suggests that *Finney* could apply to common law jurisdictions¹⁴¹.

In *McClelland v. Stewart*, for instance, the B.C. Court of Appeal unanimously concluded on the basis of *Finney*, that it is “possible that the law of Canada on the liability of regulatory bodies is the same in common law provinces as it is in Quebec”.¹⁴² The court refused to strike a claim in negligence brought against the B.C. College of Physicians by patients of one of its member, alleging that they had been sexually assaulted, and that the College had a duty to “prevent or discourage” these assaults.¹⁴³ They further alleged that had the College investigated the doctor’s conduct earlier, it would have discovered that he was assaulting his female patients and could then have “taken steps to restrict his

¹³⁷ Para. 40.

¹³⁸ Para. 43.

¹³⁹ Para. 45.

¹⁴⁰ Para. 46.

¹⁴¹ See *McClelland v. Stewart*, 2004 BCCA 458, leave to appeal to the Supreme Court of Canada refused 247 D.L.R. (4th) vii.

¹⁴² Para. 16.

¹⁴³ Para. 52.

opportunities” to continue to assault other female patients, including those who brought the action.¹⁴⁴

The issue was considered even more recently by the B.C. Court of Appeal in *Allen v. College of Dental Surgeons (B.C.)*, with an interesting result.¹⁴⁵ The plaintiff complained about the conduct of a member of the College, and after investigating, the College decided to take no further action. The plaintiff then attempted to appeal the College’s decision, but tried to do so through a civil action against the College, and subsequently amended her pleadings to allege that the College’s investigation was negligent. The B.C. Supreme Court dismissed both the purported appeal and the negligence action. In respect of the first, the court held that she lacked the requisite standing in that she was not a “person aggrieved” within the meaning of the legislation. Insofar as the negligence action was concerned, she had failed to plead the requisite elements, and in any event, the statutory immunity provision provided the College with a complete defence.

On appeal, however, the appellate court held that while the negligence action could not stand for reasons set out by the lower court, the plaintiff-appellant was an “aggrieved person” and thus was entitled to appeal under the statute. To find otherwise would be to ignore “the importance of the complainant as an initiating party” at the investigatory stage of the process. The respondent College argued that the disciplinary process was a matter between it and the member whose conduct was the subject of an investigation, and likened its position to that of a prosecutor in the criminal process having discretion to decide how and when to proceed. The court, however, refused to accept this analogy, saying:

...I think the analogy is inapt and its use attenuates the public interest rationale for allowing professions to regulate themselves. It tends to insulate professional bodies from the accountability mandated by the modern statutes. Prosecutorial discretion stands on a very different footing than professional self-governance. There is a constitutional dimension to the former which is wholly absent in the latter.¹⁴⁶ [Emphasis added.]

Conclusion

It was noted early on in this paper that in the opinion of Canada’s highest court, it would be difficult to “overstate the importance in our society of the proper regulation of our professions.”¹⁴⁷ Self-regulators have been granted the power to license membership applicants and the power to discipline them, once they become members. They are, in other words, gatekeepers to¹⁴⁸ their professions, with the statutory duty to protect the public interest in carrying out their regulatory activities.

Assessing membership applicants’ credentials and verifying their accuracy, authenticity and legitimacy fall squarely within these duties, and the failure to do so can mean that

¹⁴⁴ Para. 56.

¹⁴⁵ 2005 BCSC 842, appeal allowed in part 2007 BCCA 75.

¹⁴⁶ Paras. 48-49.

¹⁴⁷ *Rocket v. Royal College of Dental Surgeons (Ont.)* (1990), 71 D.L.R. (4th) 68 at 80.

¹⁴⁸ *Trinity Western University v. B.C. College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772; <http://scc.lexum.umontreal.ca/en/2001/2001scc31/2001scc31.html>.

unqualified persons are let loose on the public. Depending on the circumstances, the failure to detect fraud can have dire consequences for the public.

The existence, and more recently, the proliferation, of degree and diploma mills make this task a challenging one. There are many of them, no doubt fuelled by the demand for no-work-required academic credentials, the ease with which mills can be established on the Internet and the profitability of such an enterprise with not much of a capital investment. Some of them are convincingly legitimate and produce documents that are very close to flawless, making detection difficult. The legislative controls and responses are inconsistent within and among jurisdictions, which means that the mills, as fly-by-night operations, can simply pull up stakes in one mill-unfriendly jurisdiction and relocate in another, more accommodating one.

Ironically, while the Internet has made the establishment of degree mills easier, it can also be used by self-regulators and other institutions to their advantage – primarily to gather information on legitimate and questionable educational facilities (and there is a lot of information) and the documents they issue and to share information about degree and diploma mills among themselves, either by posting information on their own web sites or working together to establish databases.

Appendix 1

Florida: In Florida, it is an offence for a person to represent to anyone, in writing or orally, that he or she has an academic degree or to claim the title associated with the degree, unless the degree has been awarded from an accredited institution (as defined in the legislation). In addition to a possible term of imprisonment or a fine, the person may lose his or her professional licence or certificate.¹⁴⁹

Illinois: The *Academic Degree Act* (Illinois Public Act 86–1324), in force since 1989, makes it unlawful for a person to knowingly manufacture or produce for profit or for sale a false academic degree, unless the degree explicitly states “for novelty purposes only.” It is also unlawful for a person to knowingly use a false academic degree for the purpose of obtaining employment or admission to an institution of higher learning or admission to an advanced degree program at an institution of higher learning or for the purpose of obtaining a promotion or higher compensation in employment. This law established as a matter of public policy that deception of the public resulting from the offering, conferring and use of fraudulent or substandard degrees must be prevented.¹⁵⁰

Maine: L.D. 1317 was passed and became law on June 23, 2005. The Act prohibits the manufacture, issuance and use of “false academic degrees” (defined to mean academic credentials, such as a degree or a transcript, issued by an institution that “is not a duly authorized institution of higher learning”, and includes degrees issued on the basis of a student’s life experience or without requiring “any substantial student academic work”). Such degrees cannot be used to obtain employment, a promotion, or admission to another university, and cannot be used in connection with any business, trade, profession or occupation.¹⁵¹

New Jersey: After it was discovered that three school administrators in Illinois used tax funds to purchase doctoral degrees from an Alabama-based diploma mill, Bill S-2127 was introduced on October 2, 2008 and passed unanimously by the Senate on October 23, 2008.

The Bill prohibits school district employees from using degrees from unaccredited degree mills in order to be reimbursed for the cost of the courses and for the purposes of job promotion. In addition, employees would have to seek pre-approval before enrolling in courses.¹⁵²

North Dakota: In 2003, North Dakota passed legislation making it illegal to issue or manufacture fraudulent academic credentials, an offence punishable by up to five years in prison and a sizable fine of up to \$25,000. Organizations that have been convicted of an offence may also be required to give notice of the conviction to those who have been harmed. It is also illegal to use false academic credentials for the purposes of gaining employment,

¹⁴⁹ *Florida Statutes*, Title XLVI, c. 817, s. 817.567, Fraudulent Practices, http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0817/SEC567.HTM&Title=%3E2007-%3ECh0817-%3ESection%20567#0817.567.

¹⁵⁰ <http://www.ilga.gov/LEGISLATION/ILCS/ilcs3.asp?ActID=1174&ChapAct=110%26nbsp%3BILCS%26nbsp%3B1010%2F&ChapterID=18&ChapterName=HIGHER+EDUCATION&ActName=Academic+Degree+Act>.

¹⁵¹ *An Act to Prohibit and Provide Penalties for the Issuance, Manufacture and Use of False Academic Degrees or Certificates*; <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280016536>.

¹⁵² http://www.state.nj.us/highereducation/PDFs/S2127_R1.pdf.

admission to educational facilities, or in connection with a business or profession. Doing so could result in a one-year term of imprisonment and/or a \$2,000 fine.¹⁵³

In addition, the North Dakota University System has published an online pamphlet, “Is this a Real Degree?” aimed at educating (and warning) students and the general public (including employers) about degree mills and fake degrees.¹⁵⁴

Oregon: Oregon has been aggressive in going after diploma mills, and its legislation¹⁵⁵, which prohibits both the sale and use of fraudulent academic credentials, has been used by other states as the “gold standard”.

Oregon’s Office of Degree Authorization has devoted a significant portion of its web site to providing information about degree mills¹⁵⁶, as well as a list of unaccredited agencies¹⁵⁷ and a link to the U.S. Department of Education’s web site for a list of legitimate accrediting agencies.¹⁵⁸

Texas: Under the Texas *Penal Code*, it is illegal to use or claim to hold a fraudulent or revoked postsecondary degree to promote a business; to obtain a job, a professional licence or certificate, or promotion or other employment-related benefits, admission to another state educational program or a government job.¹⁵⁹

Virginia: A new law (House Bill 766), which took effect on July 1, 2008, provides that anyone who issues, manufactures, or knowingly uses fraudulent academic credentials can be found guilty of a crime, punishable by a maximum one-year jail sentence and fines up to \$2,500.¹⁶⁰

Washington: The Washington State House and Senate unanimously passed legislation that makes it illegal both to knowingly grant or award false academic credentials and to use them for the purposes of getting a job, a professional licence or certificate, a promotion or other job-related benefits, and admission to an educational program.¹⁶¹

¹⁵³ <http://www.legis.nd.gov/cencode/T15C204.pdf>; <http://www.legis.nd.gov/cencode/T121C32.pdf>.

¹⁵⁴ <http://www.nd.gov/cte/private-post-inst/docs/RealDegree.pdf>.

¹⁵⁵ <http://www.leg.state.or.us/ors/348.html>.

¹⁵⁶ <http://www.leg.state.or.us/ors/348.html>.

http://www.osac.state.or.us/oda/diploma_mill.html.

¹⁵⁷ <http://www.osac.state.or.us/oda/accreditation.html>.

¹⁵⁸ www.ed.gov/admins/finaid/accred/index.html.

¹⁵⁹ <http://tlo2.tlc.state.tx.us/statutes/pe.toc.htm>.

¹⁶⁰ News Release, State Council of Higher Education for Virginia, April 24, 2008; <http://www.schev.edu/schev/newsReleases/nr-apr2008/nr42408.asp>.

¹⁶¹ <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bill%20Reports/Senate/2507-S.SBR.pdf>

<http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Session%20Law%202006/2507->



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