



# **Contract Cheating in Canada: Exploring Legislative Options**

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### Abstract

**Purpose:** The purpose of this report is to provide background information to develop deeper awareness about contract cheating in Canada and generate conversations about possible legislative approaches to address this growing problem.

**Methods:** A qualitative legal analysis of legislation from the UK, Ireland, New Zealand, Australia, and US (17 states) was conducted. In addition, a synthesis of current research relating to legal aspects of contract cheating is provided.

**Results:** There is inconsistency in how various jurisdictions have approached legislation intended to address contract cheating. Although some legislation was enacted in several US states in the 1970s, there has been increased activity in recent years to pass legislation in Australia, New Zealand, Ireland, and most recently, the UK. A failed attempt in Ontario, Canada to enact legislation in 1972 is also discussed.

**Implications:** Legislation against contract cheating may have limitations, but is nevertheless a useful way to combat commercial academic cheating enterprises that compromise the integrity of credentials awarded by institutions. Recommendations for institutions, scholars, and policy makers are offered.

**Additional materials:** 1 table; 55 sources referenced; 12 legal authorities referenced

**Keywords:** academic integrity, academic misconduct, academic dishonesty, Canada, contract cheating, legislation

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### Executive Summary

The purpose of this report is to provide useful background information to develop deeper awareness about contract cheating in Canada and generate conversations about possible legislative approaches to address this growing problem. This report does not provide or intend to provide legal advice.

Contract cheating occurs when “third party makes a contribution to the work of the student, such that there is reasonable doubt as to whose work the assessment represents” (Draper & Newton, 2017, p. 1).

It is illegal to supply academic cheating (i.e., contract cheating) services in Australia, New Zealand, Ireland, the UK, and 17 US states. Contract cheating is not illegal in Canada. There was an attempt to legislate against term paper mills and examination impersonators in Ontario, Canada, in 1972; the bill never made it past the first reading. Contract cheating services have continued to proliferate in Canada ever since.

The global contract cheating industry is estimated to be worth \$12 Billion USD.

Empirical research on contract cheating in Canada has been limited. Much of what we know in Canada comes from other countries such as Australia and the UK, where research projects have been well-funded and supported by government agencies. Not surprisingly, in countries where contract cheating research has been funded and conducted, a strong base of empirical evidence exists that substantiated the case for the development and enactment of legislation.

Post-secondary institutions in Canada address academic misconduct through internal policy and procedures, which helps to maintain public confidence in the credentials bestowed upon their students. However, few universities or colleges in Canada explicitly name contract cheating as an act of academic misconduct in internal policy and procedural documents, resulting in these activities not being tracked or reported accurately by most institutions. Legislation that prohibits contract cheating operations would contribute to institutional integrity by addressing a root of the issue of academic misconduct.

We conclude with recommendations for policy, research, institutions, quality assurance bodies, and legislation.

## Preface

The purpose of this report is to provide useful background information to develop deeper awareness about contract cheating in Canada and generate conversations about possible legislative approaches to address this growing problem. This report does not provide or intend to provide legal advice.

### ***Our positionalities***

As part of our commitment to ethical approaches to our scholarship, we begin by being transparent about our positionalities, including our training, expertise, and limitations.

Alicia Adlington, MEd, is a second-year law student at the University of Calgary, Canada. She served as a program coordinator for the Werklund School of Education at the University of Calgary prior to commencing her legal studies. Alicia has contributed to several publications on teaching and learning in higher education including two book chapters focused on online learning skill acquisition for graduate students in education. She is interested in the areas of constitutional, criminal, and administrative law. Alicia currently volunteers for the Canadian Bar Association and Student Legal Assistance.

Sarah Elaine Eaton, PhD, is an Associate Professor at the University of Calgary, Canada where she also serves as the University's inaugural Educational Leader in Residence, Academic Integrity. Eaton's work focuses on ethics and integrity in higher education. Dr. Eaton serves as the Editor-in-Chief of the *International Journal for Educational Integrity* (BMC Springer Nature). She is the author of *Plagiarism in Higher Education: Tackling Tough Topics in Academic Integrity* (2021). She is a member of the Committee for Publication Ethics (COPE) Council, a co-founding member of the Alberta Council on Academic Integrity (Canada) where she also serves as the co-chair of the council's Contract Cheating Working Group. Dr. Eaton is a member of the European Network for Academic Integrity (ENAI) Policy Working Group and leads a national policy research team in Canada focusing on contract cheating and academic integrity.

Our combined qualifications, expertise, and training provide the foundation for our work, but we make no claims with regards to expertise in criminal or civil prosecutions, or legislation development.

### ***A note about citing and referencing***

Our respective fields of law and education differ in their approaches to citing and referencing. We have endeavoured to strike a balance between the referencing conventions of our respective fields, with the primary goal being to provide evidence for the sources we have consulted. We accept full responsibility for any errors in citing and referencing in this document.

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We extend additional thanks to colleagues in Australia (TEQSA), with thanks especially to Helen Gniel and her team, as well as experts in the UK (QAA), with acknowledgements to Gareth Crossman and colleagues, who have provided us with ongoing support and communications about legislation in their countries. David House at the University of New South Wales in Australia supplied us with background information about criticisms of legislation in Australia, providing useful counterpoints to consider.

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## 1. Introduction

This report examines legal issues regarding contract cheating from a Canadian context. An overview of legislation and laws from English-speaking countries is presented. An examination of the challenges in enacting legislation against contract cheating in the Canadian context is also presented. The intended audience for this report is broad, and includes educators, scholars, educational administrators, members of government, quality assurance personnel, and policy makers.

This report is organized into seven (7) sections. Following the introduction, we provide an overview of academic integrity and contract cheating. We then offer a brief overview of legal structures in Canada. In the fourth section we discuss the role of quality assurance bodies and the ways they have catalyzed action against contract cheating in countries such as Australia, Ireland and the UK. In section five we offer a review of contract cheating legislation in other English-speaking jurisdictions (e.g., USA, Australia, Ireland, New Zealand, and the UK). From there, we move into the penultimate section where we discuss possible future directions to address contract cheating in Canada. We conclude with a call to action for more pro-active solutions to take action against this predatory industry.

## 2. Academic Integrity and Contract Cheating Background

Breaches of academic integrity can occur in many ways, one of which is contract cheating. Contract cheating happens when a “third party makes a contribution to the work of the student, such that there is reasonable doubt as to whose work the assessment represents” (Draper & Newton, 2017, p. 1). Other phrases used to refer to such third party contributions include “academic outsourcing”, “term paper mills”, and “essay mills”. The term “contract cheating” was coined in 2006 by two computer science professors in the United Kingdom (UK) who found students outsourcing their coding assignments (Clarke & Lancaster, 2006). Since then, contract cheating has become the preferred term to refer to all kinds of academic outsourced work including, but not limited to, essays, theses, computer coding assignments, discussion board postings, assignments requiring students to draw on personal experiences and reflections, and various other types of assignments (Bretag et al., 2019a). In addition, hiring proxies to take examinations or entire courses on behalf of a student is another form of contract cheating (Bretag et al., 2019a).

Previous scholars have noted that practice of students paying an individual to complete work on their behalf dates back hundreds of years (Mallon, 1989). The first evidence of a scaled-up service specializing in supplying outsourced academic work is from the 1930s in the United States (see Benjamin, 1939; Buerger, 2002). In a 1939 article, one business owner operating out of New York City claimed to employ six writing assistants and six typists, supplying essays, book reports, and graduate theses at both the master’s and doctoral level, to more than 600 customers across the United States (Benjamin, 1939).



By the late 1960s and early 1970s, the commercial term paper mill business was flourishing, particularly on the eastern seaboard of the United States, with industry expansion into Ontario and other Canadian provinces around the same time (Buerger, 2002; Eaton 2021a, 2021b). These early term paper mills operated physical store fronts where students could place orders in person, by telephone or by mail order. It is difficult to know the size and scope of the early industry in Canada, but using existing historical documentary evidence, it has estimated that by the mid-1980s, term paper mills in Toronto alone were generating revenue in excess of a million dollars (CAD) per year (Eaton, 2021b).

With the commercialization of the Internet in the 1990s, much of the contract cheating industry, at least in English-speaking markets, moved online where it has proliferated, developing into a global industry serving customers around the world (Bretag et al., 2019a; Eaton 2021a, 2021b; Lancaster & Clarke, 2007; Lancaster & Cortarlan, 2021). As of 2021, the global contract cheating industry has been valued at approximately \$15 Billion USD (Eaton 2021a, 2021b).

In terms of prevalence, prior to the COVID-19 pandemic, scholars estimated that on average, about 3.5% of students engaged in contract cheating, though with variations across countries, program of study, and other criteria (Curtis & Clare, 2017). Of particular note is that researchers found that almost two-thirds of students who engage with a contract cheating company once are likely to do so more than once (Curtis & Clare, 2017). New research conducted in Australia during the COVID-19 pandemic has found that actual rates of contract cheating in that country may be much higher than previously anticipated (Curtis et al., 2021). It is reasonable to assume that if this is the case in Australia, then it may be similar other countries.

There is a growing body of research globally on contract cheating, though much remains unknown because the industry operates mainly online, with no over regulatory oversight. Although some companies are publicly held, many remain privately owned and closely guard details of their operations.

In addition to supplying academic cheating services, some companies have been known to engage in the additional practice of extorting students for more money. This happens when companies continue to charge customers' credit cards after an initial order has been placed. If students refuse to pay or cancel their credit cards, the company might report them to their school for academic misconduct, supplying the school with details of the order and communications between the student and the company. In such cases, the students can face severe academic misconduct penalties, while the companies continue to operate unhindered. Students are often unaware of these risks (Yorke et al., 2020). In 2021, the Better Business Bureau issued a scam alert about extortion by contract cheating companies (BBB, 2021). Scholars have suggested that there are parallels between the contract cheating industry and organized crime including: (1) being motivated to generate profit from illicit or illegal activities; (2) being a unique sub-culture; (3) being self-perpetuating; (4) willing to use coercion against individuals to achieve its goals; (5) being difficult to prosecute; (6) laundering money through legitimate or quasi-legitimate

products or services; and (7) being difficult for any single individual to have power to take action against the business (Grue et al., 2021).

We know much more about the contract cheating industry today than we did at the turn of the millennium, as there is now a global network of academic integrity scholars, educators, and other professionals who regularly share research findings and information to bring awareness to the issue of contract cheating and its impact on academic integrity. Since 2016, the International Center for Academic Integrity has supported the International Day of Action Against Contract Cheating (Mourelatos, 2020), a global initiative in which universities, colleges, quality assurance bodies, and other organizations around the world concerned with academic integrity hold awareness events, educational campaigns, and collectively commit to taking action against the predatory contract cheating industry.

This report builds on the work of others before us who have investigated legal aspects of contract cheating internationally (e.g., Newton & Lang, 2016; Draper & Newton, 2017; Draper & Reid-Hutchings, 2019; Term paper companies and the constitution, 1974) and in Canada (see Jamieson & Kanani, n.d.; Lang, 2017). In their book chapter, “Custom essay writers, freelancers, and other paid third parties”, Newton and Lang (2016) provided a summary of key issues, focusing on written assignments, including pre-written essays, as well as custom-written essays that can be quickly and easily ordered using online services. They point to a previous study in which it was found that bespoke essays ordered from online suppliers had an average turnaround time of about 5 days, and about a quarter of all online orders were fulfilled within twenty-four hours (see Wallace & Newton, 2014). They point out that attempts to catch students who engage in this form of misconduct only addresses issues related to “demand”, but does little to address “the supply side of the equation” (p. 258). They offer a synopsis of legal cases, mainly from the United States, the country with the longest-standing laws against contract cheating.

Draper and Newton (2017) presented an overview of “legal basics” (p. 2) and limitations of the law regarding contract cheating, summarizing basic differences between civil and criminal law, with a focus on Commonwealth countries. They propose a specific law against contract cheating that would apply the principles of strict liability, asserting that:

*If a strict liability offence was enacted against contract cheating, then the person supplying the assignment, be they an ‘essay mill’ or individual, would be liable simply for supplying an assignment, unless they could prove they had taken all reasonable steps to ensure that a student would not submit the assignment to a Higher Education provider as their own work (i.e. a defence of due diligence). (p. 5)*

Draper and Newton go on to discuss potential complexities related to the international nature of contract cheating in which the student, the company supplying the services, individuals who complete the assignments, and the company hosting the website, along with a number of other actors involved in the business, can all be located in different countries. Draper and Newton urge readers to consider

issues of territoriality and jurisdiction in terms of enforcement. They explore additional legal considerations with regards to contract cheating, concluding that “a legal approach should be seriously considered as it would satisfy the two main criteria for pursuing a prosecution; evidence would be available, and it would be, on balance, in the public interest to do so” (p. 14).

To date there has been limited research about contract cheating conducted in Canada (see Eaton, 2021b). The most recent empirical evidence, though limited in scope, found that in some cases, more than 17% of student survey respondents admitted to turning in a paper obtained from a term-paper mill or website that charged a fee (Stoesz & Los, 2019). The results of this study cannot be generalized across Canada given its small sample size and regional limitations (i.e., it only surveyed Manitoba students). Nevertheless, the results of the Stoesz & Los study indicates that there is an urgent need to understand and reduce the rate of contract cheating among students in Canada.

Most post-secondary institutions in Canada have policies and procedures to address academic misconduct. For a full discussion of the various approaches used to address student academic misconduct in Canada see Morrison and Zacharia’s (2021) work on this topic. However, a national-level analysis of academic misconduct policies in publicly-funded Canadian universities and colleges has shown that with few exceptions, most institutions fail to adequately address contract cheating in their policies and procedures (Eaton, 2019; Miron et al., 2021; Stoesz et al., 2019; Stoesz & Eaton, 2020). For example, it was found that only two universities in Canada (Ryerson University and MacEwan University) and one college (Sheridan College) use the term “contract cheating” in their policy documents, while other post-secondary institutions use vague or indirect language such as “unauthorized assistance”. Although many universities track instances of academic misconduct and then produce an annual report that is made available to institutional-level governing bodies such as the senate or equivalent, the misconduct behaviours that are tracked often align with specific forms of misconduct that are articulated in policy documents (e.g., plagiarism or exam cheating). Contract cheating is not generally tracked by educational institutions as an act of misconduct because it is not named in policy documents. Instead, contract cheating is often subsumed under other categories such as plagiarism, collusion, or unauthorized collaboration. As a result, Canadian universities and colleges have little evidence regarding the rates of contract cheating within their own institutions because this form of misconduct is neither named in policy documents, and nor is it tracked as a discrete form of misconduct (see Eaton, 2021a). In short, there is a paucity of data available about the rates of contract cheating in Canadian higher education because institutions lack the policies and systems to accurately track this type of academic misconduct and academic research on this topic remains limited. This is due, in part, to lack of funding to support such studies (see Eaton & Edino, 2018).

### 3. Brief Overview of Legal Structures in Canada

In 2017, Draper & Newton suggested the enactment of new laws to address the growing problem of contract cheating in higher education (p. 2). Their work focused on the possibility of enacting legislation in the UK. As Canada operates within a commonwealth model of law, the recommendation for legislation continues to be the best possible way to sanction and address contract cheating.

Simply put, the law in Canada operates under two branches: (a) public law, which includes constitutional, criminal, and administrative law; and (b) civil law, which includes the law of torts, property, and contracts. The relationship between universities and the law is a grey area. Universities fall within the scope of constitutional and administrative law given their legislative authority, but certain matters lie outside of legislation and within the realm of civil law.

Although several Commonwealth countries and a number of states in the United States have enacted legislation that sanctions contract cheating service providers, provincial or territorial legislation that does the same has yet to be enacted in Canada. Action against contract cheating companies, if viable and not vexatious, should be taken through tort or contract law. The need for legislation to sanction contract cheating operations becomes apparent as limitations associated with action in tort, contract, or criminal law are explored.

#### 3.1 Current post-secondary legislation in Alberta

Legislation is law enacted by the government that regulates public operations and life. This section focuses on legislation in Alberta due to the scope of knowledge of the authors of this paper. Pursuant to their legislative authority, universities in Alberta have adopted policies and procedures that thoroughly address student academic misconduct. This includes students engaging in contract cheating. Existing legislative structures, however, do not specifically target the operations of contract cheating companies to deter academic misconduct.

Pursuant to s. 93 of the *Constitution Act, 1867*, education, including post-secondary institutions, fall under the legal jurisdiction of Canadian provinces (McKay-Panos, 2020). The *Post-Secondary Learning Act*, SA 2003, c P-19.5 in Alberta provides universities and authorized post-secondary institutions with the legal authority to manage their affairs. This includes university faculties determining the conditions under which students may continue or withdraw from their programs, and the conditions under which they are granted their degrees. Universities are also authorized to determine discipline for students.

Most post-secondary institutions in Alberta have drafted and adopted student academic misconduct policies and procedures, and certainly all those considered publicly-funded have such policies. For example, the University of Calgary (2019) Student Academic Misconduct Policy indicates that presenting all or a portion of a third party's academic work as a student's own is plagiarism, a sanctionable offence.

This provision is inclusive of students who purchase or otherwise acquire the academic work that they present. The penalties for engaging in plagiarism range from remedial work to revocation of a credential obtained as a result of academic misconduct (University of Calgary, 2019).

Courts in Canada generally uphold decisions made by universities regarding academic misconduct except in cases where judicial review of a decision has determined that procedural fairness was not followed (see Kelleher, 2016). For example, revocation of an academic credential was affirmed in *John Measor v General Faculties Council Student Academic Appeals Committee*, 2018 ABQB 662. The university discovered that the applicant, Mr. Measor, plagiarized a portion of his master's thesis and, as a result of the plagiarism, rescinded his master's degree more than a decade after it was awarded. The case went through various levels of appeal, finally making its way to court. The court upheld the university's decision to rescind the degree. The Hon. Justice Neufeld notes at paragraph 13 that "denying the University the power to revoke a degree based on a subsequent finding of academic dishonesty would sterilize its ability to bestow meaningful academic credentials and maintain institutional integrity." Here, the court affirms that post-secondary institutions have a mandate enshrined in both common law and legislation to ensure that the academic credentials bestowed upon students are meaningful and rightfully earned. Legislation that prohibits contract cheating operations would contribute to institutional integrity by addressing a root of the issue of academic misconduct, and contribute to the above mandate.

Post-secondary institutions in Canada address academic misconduct through internal policy and procedures to maintain public confidence in the credentials bestowed upon their students. Critics may argue that sanctioning persons who provide contract cheating services runs contrary to a free market economy. Yet 17 states in the United States and several Commonwealth countries have enacted legislation that sanctions contract cheating service providers. Contract cheating is a problem that legislators in other countries have addressed, and the focus is not on students: it is to deter the operations of contract cheating companies.

### **3.2 The civil law approach**

Civil law, in general, relates to relationships between private individuals—this includes corporations. Although existing legislation does not sanction contract cheating operations, civil action may be brought against contract cheating companies through tort or contract law. The threat of civil suits serves as a possible deterrent to companies offering contract cheating services. Civil law, however, presents an imperfect solution to the problem of contract cheating.

When distilled to its essence, the areas of contract and tort law dominate the relationship between the student and the contract cheating service provider. As identified by Draper and Newton (2017), the student engages in the basic elements of the contractual relationship when they hire, pay for, and receive academic material or services produced by the third-party contract cheating company (p. 1). Any

litigation between the student and the contract cheating company would therefore be civil, and privity of contract generally only allows action to commence between the directly involved parties.

A hypothetical example illustrates how the civil suit operates with respect to the relationship between the student and the contract cheating company. A student may feel that they were induced into purchasing third-party academic materials through sophisticated marketing that promises a high grade and original work with a low risk of academic misconduct (i.e., plagiarism) being detected. Should these promises not be true, the student may consider options including suing the supplier of such materials. Litigation, however, may be prohibitively expensive for the average student. Jurisdictional issues may also arise as many contract cheating companies operate overseas.

Financial costs are not the only challenge for a student seeking damages from a contract cheating company. As noted in *Davidson v The Three Spruces Realty Ltd.*, 79 DLR (3d) 481, [1977] 6 WWR 460, the court hesitates to interfere with freedom of contract unless an issue of unconscionability rises (p. 492). In *Uber Technologies Inc. v Heller*, 2020 SCC 16, the Supreme Court of Canada holds that an unconscionable agreement is one where unequal bargaining power prevents the contract from being fair. It must also result in an improvident bargain where the stronger party is unduly advantaged, or the weaker party is unduly disadvantaged. Although it may be possible for a student to successfully argue that an agreement with a contract cheating company is unconscionable, action in contract only targets one contract cheating company at a time. This does not deter contract cheating operations as a whole.

Additionally, as noted in *Bowlay Logging Limited v Domtar Limited*, 135 DLR (3d) 179, [1982] 6 WWR 528, the courts will not award damages resulting from a bad bargain. This includes situations where the buyer has entered into a legally valid contract but later regrets their decision.

A possible argument lies in fraudulent misrepresentation, where the student may contend that the contract cheating company made a false representation to induce them into entering into an agreement. Fraudulent misrepresentation, however, is difficult to litigate due to the added *mens rea* or mental element associated with the fraud. In other words, the student would need to show that the contract cheating company *intended* on defrauding them. The savvy contract cheating company avoids a fraudulent misrepresentation accusation by stating that they provide materials for the purpose of supplementary learning rather than submission for academic credit.

Though pro-bono services and costs being awarded are possible avenues to justice for the average student with limited financial resources, the civil suit is not likely an attractive option for those who fall victim to contract cheating services. It follows that the possibility of a civil suit that has yet to materialize would not deter contract cheating companies from operating in Canada.

### 3.3 The criminal law approach

Federal criminal law in Canada has been unsuccessfully applied to contract cheating services. Like civil law, it provides an imperfect solution to address this growing issue.

Criminal law in Canada has been codified by federal parliament in the *Criminal Code*, RSC 1985, c C-46. This is in keeping with s. 91(27) of the *Constitution Act, 1867*, which grants the federal government jurisdiction over criminal law. In *R v Wholesale Travel Group Inc.*, [1991] 3 SCR 154 (“*Wholesale Travel*”), the Supreme Court of Canada describes the function of criminal law as prohibiting conduct that is “abhorrent to the basic values of human society”. The Court further held that offences in the *Criminal Code* are “usually designed to condemn and punish past, inherently wrongful conduct” where there is an element of “moral blameworthiness”. A successful conviction requires prosecution to argue that the accused committed the *actus reus* or act of the crime alongside the *mens rea* or mental element. The accused must also be found guilty beyond a reasonable doubt.

Only one known case from 1989 saw the Crown bring *Criminal Code* charges against a contract cheating company in Canada. The proprietors of Custom Essay Service, a company operating in Toronto, were charged with conspiracy to utter forged documents and uttering forged documents. The charges came as Custom Essay Service supplied bespoke academic materials to students at York University who were charged with academic misconduct (Buerger, 2002). The charges were later dismissed due to a lack of evidence of intent to commit a criminal act on the part of the accused (Buerger, 2002). A contract cheating company may rely on the defense that they were simply providing tailored academic materials and had no control over students submitting these documents for academic credit. There was therefore no falsehood associated with the documents they sold to students and the *mens rea* element required for conviction was absent.

Section 380 of the *Criminal Code* codifies fraud as a criminal offence. The requirement for fraud with respect to contract cheating is best argued as an offence committed by a student who is presenting third-party work as their own. As with the Custom Essay Service matter, it is difficult to argue that a contract cheating company is guilty of fraud if they are supplying students with “assistive” material. It is instead the student who defrauds the institution by submitting academic material that is not their original work.

There have been media reports of individuals being arrested for impersonating students during examinations, with incidents of arrest being reported in 2014 at the University of Waterloo (Caldwell, 2014; Eaton, 2020; Prisiajny, & Lai, 2015), in 2016 at Concordia University (Bernstein, 2016; Eaton, 2020; Meagher, 2016), and in 2019 at Simon Fraser University (Bains, 2019; Eaton, 2020; Wadhvani, 2019). As far as we were able to determine, these arrests have not yet led to charges or conviction.

The importance of the role that criminal law plays in Canadian society cannot be overstated. It serves as a deterrent against crime and protects the public. However, it is difficult to sanction a contract cheating company based on their operations through the *Criminal Code* due to the *mens rea* element found in codified offences. We do not suggest that *mens rea* is unimportant; it relates to the underlying presumption of innocence in Canadian criminal law. Contract cheating operations, however, are problematic in that they coercively target vulnerable student populations and undermine the integrity of post-secondary institutions. Furthermore, contract cheating companies may circumvent intent elements associated with criminal offences by raising a defense that they never intended for their materials to be used by students for submission for academic credit. The addition of contract cheating offences to the *Criminal Code* may therefore not provide the best avenue to address this growing issue.

Instead, a possible solution lies in the enactment of regulatory offences. In *Wholesale Travel*, the court describes regulatory legislation as a means to “protect the public...from the potentially adverse effects of otherwise lawful activity”. Regulatory offences are criminal in nature but relate to matters that provinces have jurisdiction over as per s. 92 of the *Constitution Act, 1867*. As education is a provincial matter pursuant to s. 93 of the *Constitution Act, 1867*, the potential to sanction contract cheating as a regulatory offence is placed into the hands of provinces and territories in Canada.

Regulatory offences fall within three categories in Canada. In the Supreme Court of Canada case *R v Sault Ste Marie*, [1978] 2 SCR 1299, regulatory offences encompass those that require a *mens rea* element for prosecution to be successful, strict liability offences where the accused may raise a defence of due diligence, and absolute liability offences where the accused may not exculpate themselves. Existing laws in English-speaking countries that sanction contract cheating operations are either intent offences or strict liability offences.

As illustrated, civil and criminal law may not adequately address the growing issue of contract cheating operations in Canada. Buying and selling supplementary academic materials such as study guides is a lawful activity that should not necessarily be criminalized. Contract cheating operations, however, impose an adverse effect on both students who purchase these materials and the integrity of academic institutions. Provincial or territorial regulatory offences therefore provide the best avenue to sanction contract cheating.



#### **4. The Role of Quality Assurance Bodies**

It is important to emphasize the role that quality assurance (QA) agencies play in Commonwealth jurisdictions where a legislative response to contract cheating has been enacted. QA bodies derive their authority from statute and oversee the quality of education, including higher education. These organizations work closely with government bodies, and have actively supported and initiated efforts to combat contract cheating. QA organisations such as the following are often responsible for lobbying efforts to have legislation enacted:

- International Network for Quality Assurance Agencies in Higher Education (INQAAHE, 2020);
- Quality Assurance Agency (UK) (QAA, 2016, 2020);
- Quality and Qualifications Ireland (2019); and
- Tertiary Education Quality and Standards Agency (Australia) (TEQSA, 2015, 2017; 2020).

The QA bodies mentioned above have taken a pro-active approach to addressing contract cheating, such as providing resources, education, and professional development in the form of conferences, workshops, and webinars, in addition to providing support to develop and enact legislation against contract cheating. In countries where QA bodies have taken a strong stance against contract cheating, there is more awareness about the industry and how it operates, as well as a deeper understanding of the threats posed by the industry to the value of educational credentials and the criminal activities of some companies (e.g., extortion) who operate in this space. In addition, staff and administrators at educational institutions in countries where QA bodies play an active role in academic integrity are often better trained than their counterparts in other countries where QA bodies are less active in ensuring academic integrity is a fundamental aspect quality assurance in education.

In Canada, quality assurance for higher education is overseen at a provincial or regional level, rather than a national one. There is a substantial and important opportunity for quality assurance bodies in Canada to bolster their activities related to emphasizing the importance of academic integrity in general. In addition, QA bodies can take a strong stance against contract cheating on that basis that it poses a threat to the value of educational credentials awarded by institutions.

#### **5. Review of contract cheating laws in English-speaking countries**

Legislation addressing contract cheating operations continues to be enacted across the world. Laws that sanction contract cheating have been enacted in 17 US states. Similar laws have been enacted in commonwealth jurisdictions with QA bodies such as Australia, New Zealand, Ireland, and the UK. Laws have been proposed in countries where English is not the language used in the legislature such as Ukraine, but these laws were not examined for the purpose of this report. An overview of legislation in English-speaking countries is seen in Table 1.

**Table 1**

## Contract Cheating Laws in English-speaking Countries and States

<b>Area</b>	<b>Title</b>	<b>Year Enacted</b>	<b>Jurisdiction</b>	<b>Type</b>	<b>Penalty</b>
Australia	Tertiary Education Quality and Standards Agency Act 2011, ss. 114A, 114B, 114C, 127A, 197A, 197B, 197C	2020 (amendments)	Commonwealth	Strict liability offence; intent required for conviction under s. 114A(1)(a)(b)	Range from fines to 2 years of imprisonment
Ireland	Qualifications and Quality Assurance (Education and Training) Act, s. 43A	2019 (amendments)	Commonwealth	Strict liability offence	Fines of up to €100,000 per offence and/or up to 5 years of imprisonment
New Zealand	New Zealand Education Act (1989), s. 292E	2011 (amendments)	Commonwealth	Offence requiring intent	Fine not exceeding \$10,000.
United Kingdom	Skills and Post-16 Education Bill	To be enacted; bill at its 3 <sup>rd</sup> reading in the House of Lords as of October 2021.	Commonwealth	Strict liability offence	Fine, to be disclosed.
USA - California	<i>Education Code</i> ss. 66400 - 66403	1976	Civil	Offence requiring intent	
USA - Colorado	<i>Revised Statutes</i> ss. 23-4-101 to 23-4-106	1985	Civil	Offence requiring intent	

USA - Connecticut	<i>General Statutes</i> ch. 949b Academic Crimes, ss. 53-392a - e		Civil	Offence requiring intent	Class B misdemeanor— fine not exceeding \$1,000
USA - Florida	Florida Statutes – Miscellaneous Crimes, s. 877.17		Civil	Offence requiring intent	Misdemeanor of the second degree punishable by a definite term of imprisonment not exceeding 60 days
USA - Illinois	Academic Plagiarism Act, P.A. 86-1324		Civil	Offence requiring intent	Civil penalty
USA - Maine	<i>Revised Statutes</i> , s. 705, Criminal simulation	2015 (revision enacted)	Civil	Offence requiring intent	Class E crime— maximum penalty of \$1,000 and/or up to 180 days of jail
USA - Maryland	Maryland Code, s. 26-201		Civil	Offence requiring intent	Misdemeanor – fine up to \$1,000 and/or imprisonment not exceeding 6 months
USA - Massachusetts	<i>Massachusetts General Laws</i> , ch. 50, s. 50, Sale of Research Papers, etc.; taking of examinations for another at educational institutions	1973	Civil	Offence requiring intent	Fine of not more than \$100 and/or imprisonment not more than 6 months

USA - Nevada	<i>Nevada Revised Statutes, s. 207.320</i> Preparation or sale of academic writings	1973	Civil	Offence requiring intent	Misdemeanor—imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and imprisonment
USA - New Jersey	<i>New Jersey Statutes, s. 18A:2-3,</i> Preparation, offering for sale of certain documents, penalty	1999	Civil	Offence requiring intent	Civil penalty of up to \$1,000
USA - New York	<i>New York Consolidated Laws, Education (EDN) Chapter 16, Title 1, Article 5, Part 1, s. 213-b,</i> Unlawful sale of dissertations, theses and term papers	2013	Civil	Offence requiring intent	Class B misdemeanor—a fine not exceeding \$500 and/or imprisonment not exceeding 3 months
USA - North Carolina	<i>North Carolina General Statutes, s. 14-118.2</i> Assisting, etc., in obtaining academic credit by fraudulent means	1994	Civil	Strict liability	Class 2 misdemeanor—up to 60 days of punishment and/or a fine of up to \$1,000

USA - Oregon	<i>Oregon Revised Statutes, s. 165.114</i> Sale of educational assignments	1981	Civil	Offence requiring intent	Class A violation—a fine of not more than \$10,000
USA - Pennsylvania	<i>Pennsylvania Consolidated Statutes, Title 18 Crimes and Offenses, s. 7324</i> Unlawful sale of dissertations, theses and term papers	1973	Civil	Offence requiring intent	Misdemeanor of the third degree—a fine of not less than \$250 nor more than \$5,000, or imprisonment not exceeding 90 days, or both
USA - Texas	<i>Texas Penal Code, s. 32.50</i> Deceptive preparation and marketing of academic product	1997	Civil	Offence requiring intent	Class C misdemeanor—a fine not exceeding \$500
USA - Virginia	<i>Code of Virginia, s. 18.2-505</i> Preparation, etc., of papers to be submitted for academic credit	1974	Civil	Offence requiring intent	
USA - Washington	<i>Revised Code of Washington, s. 28B.10.580, 28B.10.582, 28B.10.584</i> Term papers, theses, dissertations, sale of prohibited	1979	Civil	Offence requiring intent	Civil penalties of not more than \$1,000 for each violation of any provision; where a judgment has been entered and subsequent violation occurs, civil penalties not exceeding \$10,000

Laws enacted in the United States penalize individuals and companies that advertise and offer contract cheating services. Persons who purchase and submit materials are also targeted. Some states, such as New Jersey, differentiate between contract cheating services and academic tutoring services in their legislation. In general, most states have adopted an approach requiring some form of knowledge or intent for conviction to occur. The state must show that the offender must have known or had reasonable knowledge that the materials they supplied would be used for the purpose of academic misconduct. Penalties, if convicted, range from fines to short periods of imprisonment.

An example of the intent requirement is seen in provisions in California's *Education Code*. Enacted in 1976, California's provisions target persons who offer contract cheating services where it should be reasonably known that the material would be submitted by another person for academic credit. Only North Carolina's contract cheating laws adopt a strict liability approach where there does not appear to be a requirement for knowledge or intent associated with the provision of contract cheating materials.

Commonwealth jurisdictions take a similar approach in their legislation that sanctions contract cheating. Providing or advertising academic cheating services on a commercial basis is now a criminal offence in Australia due to amendments to the *Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)* that were passed in 2020. The objective of the legislation is to "protect and enhance the academic integrity of courses provided by higher education providers by prohibiting academic cheating services." Providing or offering to provide contract cheating services is a strict liability offence, and advertising contract cheating services is likewise prohibited. The offender may be Australian or an "alien". The Tertiary Education Quality Standards Agency (TEQSA) also receives legislative authority to proactively prevent access to online cheating services.

Australia's thorough approach to prohibiting contract cheating is reflective of increased awareness of students accessing contract cheating services. Previous studies estimated that 2% of Australian university students engaged in contract cheating. This number has grown; a 2021 study found that 7.9% of surveyed Australian post-secondary students utilized ghost writing services (see Curtis et al., 2021). Australia's legislation was not without criticism (see Steel, 2019), and understanding the details and nuances of legislation from a variety of perspectives may be helpful for other jurisdictions considering developing similar approaches.

Australia reported its first successful sanction of a contract cheating company by law in October 2021. In July 2021, TEQSA sought an injunction under s. 127A of the *TEQSA Act* requiring carriage service providers (known as Internet service providers in Canada) to block access to a contract cheating company's website (see TEQSA, 2021). In *Tertiary Education Quality and Standards Agency v Telstra Corporation Ltd*, [2021] FCA 1202, the Australian Federal Court accepted evidence from the TEQSA that the website 'assignmenthelp4you.com' advertised academic cheating services pursuant to s. 5 of the *TEQSA Act*, and targeted their services to university students in Australia.

The activities of the contract cheating company outlined in the judgment is of interest. In June 2021, a lawyer for the Australian Government Solicitor sent an e-mail to the company informing them of their possible contravention of provisions in the *TEQSA Act*. No response from the company was received, and a follow-up e-mail was sent in early July. The URL 'assignmenthelp4you.com' became inaccessible and allegedly for sale on the same day that the second e-mail was sent. The TEQSA investigated further and found a new website, 'assignmenthelp2u.com', that exhibited similarities to 'assignmenthelp4you.com'. Evidence established that the two websites were linked. In considering whether one or both websites should be blocked, the Court accepted submissions from TEQSA at paragraph 37 that it is reasonable to infer that the company would recommence operations from their first domain should their second be the subject of a court-ordered block. The Court held that both domains were sufficiently linked to justify blocking both.

Australia's approach of domain name system (or DNS) blocking addresses jurisdictional issues where contract cheating companies operate outside of Australia. Direct action, as noted in paragraph 42 of the judgment, would be difficult or impossible as the above domain names were operated by persons located in India. DNS blocking allows Australian officials to address contract cheating issues by preventing access to websites without the need to take direct action. The Court holds at paragraph 45 that the order for DNS blocking is made in the public interest as, according to the *TEQSA Act*, a graduate of a university who engages in contract cheating poses a risk to public confidence and safety as they may lack the required skills and knowledge they were to obtain during their studies.

With similar laws enacted in Australia, Ireland, and New Zealand, at the time of this report the United Kingdom is close to enacting legislation of their own. As of October 2021, the *Skills and Post-16 Education Bill* is set to enter its 3<sup>rd</sup> reading in the House of Lords. The bill, similar to its commonwealth counterparts, will criminalize the provision or advertising of contract cheating services (Department for Education, 2021).

As the issue of contract cheating grows, countries across the world continue to enact laws that sanction commercial operations that undermine the integrity of post-secondary education. The need for these laws is supported by Australia's recent conviction. A proactive approach to addressing the issue of contract cheating in Canada at the provincial level would assist in maintaining the integrity of higher education and protect vulnerable student bodies against the companies that target them.

## **6. Discussion and Recommendations**

In closing, we offer a number of recommendations to further address contract cheating in Canada:

### **6.1 Institutional Policy and Reporting Recommendations**

We recommend that post-secondary institutions make a concerted effort to explicitly identify contract cheating in academic misconduct policy and procedure documents. Following on that, tracking and reporting contract cheating behaviours will provide a somewhat more accurate understanding of the current situation. It should be noted that even when systems are in place to track, monitor, and report contract cheating, not all instances of this type of misconduct are identified or reported (see Curtis et al., 2021). However, that should not deter post-secondary institutions from pro-actively addressing contract cheating in policy, procedures, and annual reports.

### **6.2 Recommendations for Executive Leaders in Higher Education**

In countries that take a strong stand against contract cheating, executive level leaders of educational institutions (e.g., presidents and provosts) actively work with government and QA bodies on a consistent basis over time. Based on existing evidence, it is unlikely that a single institution, or even a single province, can be successful in combatting contract cheating alone. In addition to the policy recommendations we have made that could be enacted by individual institutions, it is essential that post-secondary leaders collaborate not only with one another, but also with government and quality assurance bodies to take decisive action to ensure that commercial academic cheating companies are prohibited in Canada.

### **6.3 Recommendations for Research**

Empirical research on contract cheating in Canada has been limited. Much of what we know about contract cheating comes from other countries such as Australia and the UK where research has been funded and supported by post-secondary institutions government agencies (see for example: Bretag et al., 2019a, 2019b; Ellis et al., 2019; Harper et al., 2019; Lancaster & Cotarlan, 2021).

Not surprisingly, in countries where contract cheating research has been funded and conducted, a strong evidence base exists that supported the development and enactment of legislation. To that end, we recommend that institutions, government ministries, and funding agencies support research relating to contract cheating in Canada through research funding. In particular, funding that supports multi-institutional collaborative research across multiple provinces and territories would be ideal.



#### 6.4 Recommendations for Quality Assurance Bodies

It is crucial for quality assurance bodies to take an even more active role in upholding the integrity of credentials that are awarded. At a high level, this involves actively working to combat contract cheating in our educational institutions. In more practical terms, this includes ensuring that academic integrity is included in considerations for program approval and renewal, as well as in degree qualification standards and other types of credential standards.

In Canada, collaborative efforts between QA bodies across jurisdictions would be helpful for the purposes of sharing information and developing educational and advocacy materials, similar to those produced by QA bodies in other countries. Developing consistent approaches to how QA bodies across Canada take action against contract cheating would help to present a more unified stance against academic cheating companies that would send a clear message that commercial entities whose business is focused on helping students cheat are not welcome anywhere in Canada.

#### 6.5 Recommendations for Legislation

Given the complexities and accessibility issues associated with civil litigation, provincially enacted legislation or amendments to existing legislation provide the best solution to sanction the contract cheating industry. Regulatory legislation that prohibits contract cheating operations would aid post-secondary institutions in maintaining the integrity and quality of the credits and degrees offered. Students as recipients of high quality educational experiences and as targeted consumers would also be protected by anti-contract cheating legislation.

Existing legislation may provide for avenues in which contract cheating companies may be formally sanctioned. In Alberta, the *Consumer Protection Act*, RSA 2000, c C-26.3 (“CPA”) was enacted to protect consumers from unfair practices. Provisions in the act address transactions in which a company has taken advantage of a consumer’s inability to understand the transaction; where exaggerations as to material fact or information that would reasonably be expected to affect the decision of a consumer have been made; where suppliers ought to know that the consumer is unable to receive any reasonable benefit from the goods or services offered; and where a representation is made that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact. All of the above provisions arguably apply to contract cheating services. Transactions are often misleading with companies drawing in students with the promise of higher grades and custom materials. Coercive threats made post-contract to reveal the identity of students who purchase materials to their institutions also falls within the scope of obligations that are different from the fact.

There are challenges to utilizing the CPA alone to target contract cheating service providers. The CPA stipulates that the Director of Fair Trading may commence action against a company if it is in the public interest to do so. The volume of contract cheating service providers may be difficult to address through

the CPA, and jurisdiction issues may arise if companies do not operate out of Alberta. Furthermore, the CPA applies where the consumer is a resident of Alberta pursuant to s. 5(a) of the statute. A resident is not defined by the *Interpretation Act*, RSA 2000, c I-8, so it remains to be seen if international students who are temporarily studying in Alberta would be protected by the Act. As with civil law, action against contract cheating companies under the *Consumer Protection Act* has its limitations.

An amendment to the *Post-Secondary Learning Act*, a regulation under this Act, or entirely new legislation may therefore be the best possible solution to target the issue of contract cheating. Regulatory legislation, as noted in *Wholesale Travel*, would address the adverse effects brought by contract cheating companies engaging in seemingly legal commercial operations. As emphasized by QA agencies in the aforementioned commonwealth jurisdictions, legislation that makes it an offence for contract cheating companies to operate or advertise their services protects public interest by maintaining the integrity of credentials awarded by universities. Enactment of a strict liability offence removes the need to prove intent associated with operating or advertising contract cheating services.

## 6.6 Limitations

Our work is limited to English-speaking jurisdictions and may not include efforts underway in countries where other languages are spoken. We recognize that research and advocacy work related to contract cheating is developing quickly and although we have made every effort to provide the most up-to-date information, our efforts may not have been exhaustive. Finally, we wish to reiterate that this report is not intended as legal advice.

## 7. Conclusions

The contract cheating landscape is evolving quickly. In 2021 alone, the UK has passed legislation to ban essay mills (UK Department of Education, 2021; UK Parliament, 2021), Australia's Federal Court issued an order to block contract cheating websites (Costin, 2021; Federal Court of Australia, 2021; TEQSA, 2021), and Ireland's National Academic Integrity Network (NAIN) launched its national principles and lexicon of common terms related to academic integrity and contract cheating (QQI, 2021). Countries around the world actively engaged in ongoing efforts to ensure academic integrity across the educational sector through large-scale education, legislation, and legal action.

It would be naïve to think that legislation by itself will solve contract cheating. We recommend legislation as part of a broad and multi-faceted approach to block predatory academic cheating companies from corrupting the educational process. This must be complemented with strong institutional policies, ongoing education, and systems at the institutional, provincial / regional, national and even international levels to address these and other threats to the integrity of education.

Having said that, it is clear that at this point Canada lags behind other countries with regards to contract cheating in terms of research, policy, and legislative action. Therefore, we conclude with a call to action for Canadian higher education institutions, quality assurance agencies, and government bodies to collaboratively mobilize to proactively take action against the contract cheating industry to uphold academic integrity and the value of the credentials awarded by our institutions.

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