Chapter 17
The Distinctive Nature of Academic Integrity in Graduate Legal Education

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Abstract This chapter examines the distinctive nature of academic integrity in graduate legal education in Canada, a nature rooted in the fact that almost all graduate students in law have practiced law. I consider the general acceptance of the unattributed copying of others' writing within the legal profession and the judiciary, contrasting that tolerance—even approval—with the unsympathetic reception given the same practices in the academy. I then turn to graduate legal education in common law Canada and the diversity among graduate students in law, including significant differences in their undergraduate legal education. Then, because many of the graduate students who have practiced outside Canada want to be admitted to practice law in Canada, I look at the impact that academic misconduct may have on their ability to be admitted to practice. In order to do so, I review all published Canadian court and tribunal admission decisions that considered academic misconduct committed while in law school. Lastly, in light of unique challenges of graduate legal education, I offer some suggestions for preventing academic misconduct and facilitating students' engagement with their own scholarship.

Keywords Graduate legal education · Academic integrity · Legal education · Bar admission · Good character

This chapter examines distinctive aspects of academic integrity in common law graduate legal education in Canada. I consider why and how educating graduate students in law about the norms of intellectual honesty should respond to this context.

Almost all graduate students in law have been admitted to the bar and have practiced law, some for many years. The unattributed copying of others' work is tolerated and even approved of within the legal profession and judiciary (Corbin & Carter, 2007). The contrast in positions between the practising and the academic branches of the profession—described as a "chasm" by Yarbrough (1996, p. 678)—makes it

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more challenging to bring home the serious nature of academic dishonesty in post-secondary education. The "copying is okay" attitude new graduate students bring with them from practice needs to be explicitly addressed. In addition, many graduate students in Canadian law schools are international students. In the context of law, this means that not only might English be an additional language for them, but they may come from jurisdictions with legal systems very different from Canada's common law system, with very different expectations about how law students ought to behave. Finally, many foreign-trained graduate students wish to be admitted to practice law in Canada, and must therefore meet law society fitness standards which require self-disclosure of academic misconduct. Once disclosed, an applicant bears the burden of proving their good character, and a public hearing into their suitability for the practice of law may be required. The perceived consequences of academic misconduct may therefore be greater for foreign-trained graduate students in law than they are for other students, due to the possible adverse impact on their desired careers.

I have taught or co-taught the compulsory graduate student course in our Master of Laws (LLM) program for all but five years since 1994. Since the program was expanded in 2007, that course has been a half-year graduate seminar on legal research and methodology taught to the ten to twenty new thesis-based (academic) and course-based (professional) LLM students admitted each year. The new seminar has always included instruction, practice, and evaluation on academic integrity. It has not always been successful at preventing instances of academic misconduct in the seminar itself or in other graduate courses. As a result, I have continued to revise the course, looking for the best way to reach this very diverse group of students.

In this chapter, I first consider the position of judges and practicing lawyers on unattributed copying in the profession because these are the professional norms that almost all graduate students in law bring with them to the academy, whether they are trained in Canada or not. Next, I look at Canadian common law graduate legal education and the diversity among graduate students in law, including significant differences in their undergraduate legal education. These parts of this chapter have been informed by the literature considering the teaching of legal research and writing to foreign-trained LLM students and the literature on plagiarism in legal practice. Both bodies of literature are primarily American and thus not entirely applicable to the Canadian context. Then, because many of the foreign-trained graduate students want to practice law in Canada, I consider the impact that academic misconduct may have on their ability to be admitted to practice here. In order to do so, I reviewed all published Canadian court and tribunal admission decisions that considered academic misconduct committed while in law school. Finally, in light of these distinctive aspects of graduate legal education, I offer some suggestions for preventing academic misconduct and facilitating students' engagement with their own scholarship.

Unattributed Copying in the Legal Profession

The common law legal system in which Canadian lawyers outside of Quebec practice is based on the doctrine of *stare decisis* (to stand on decided cases), which requires courts to consider and follow precedents set by higher courts on the basis that like cases should be treated alike.

Judges have law clerks and legal counsel who research and write memorandum and draft judgments for them, and they may adopt the written work of the lawyers who appear before them. The Supreme Court of Canada recently pronounced on the practice of unattributed copying by judges in *Cojocaru v BC Women's Hospital & Health Centre* (2013; see also Roussy, 2015). The trial judgment in that case copied 321 of a total of 368 paragraphs from the plaintiffs' written arguments. The court concluded that the wholesale word-for-word copying was not enough to overcome a strong presumption of judicial integrity and impartiality, stating:

> Judicial writing is highly derivative and copying a party's submissions without attribution is a widely accepted practice. The considerations that require attribution in academic, artistic and scientific spheres do not apply to reasons for judgment. The judge is not expected to be original. (*Cojocaru v BC Women's Hospital & Health Centre,* 2013, para. 65)

In addition, in legal practice, appropriation of a lawyer's work by a judge is seen as a "compliment of the highest order to counsel" (Wakeling, 2018, p. 848; see also Richmond, 2013; Roussy, 2015).

Although the judiciary's acceptance of unattributed copying has been made explicit, students are more likely to encounter similar, unarticulated practices in the legal profession. While undergraduate students may be exposed to these norms through summer work at law firms, those norms are more ingrained in graduate students who have usually practiced for a number of years.

Practising lawyers spend a great deal of their time and effort researching the law and writing a variety of documents such as memorandums, legal opinion letters, statements of claim, submissions to courts, and contracts. They often begin with work previously drafted by someone else. Also, much of what is written in legal practice is written collaboratively (Bast & Samuels, 2008; Hanson & Anderson, 2015). Lawyers have associates, articling students and paralegals who do research, write memorandum and draft documents. In the end, the written work is often the product of many people. As a result, scholars such as Corbin and Carter describe unattributed copying in legal practice as "systemic" and even "inherent" (2007, p. 60).

The norms surrounding unattributed copying in legal practice may appear to be similar to those concerning ghostwriting in politics, where speech writers are seldom acknowledged, or in government or corporate bureaucracies where work done by junior employees is signed by more senior officials (Martin, 1994). For example, the reinforcement of power and hierarchy in government and corporations is a feature shared by the legal setting (Martin, 1994). However, in legal practice, originality in writing is neither required, common, nor much valued; consistency and predictability

are prized (Bast & Samuels, 2008; Richmond, 2013; Simon, 2019). Requiring originality would make lawyers' work more expensive and also create uncertainty and more legal disputes (Carter, 2019; Yarbrough, 1996).

This legal practice context is the context almost all graduate law students have become accustomed to before beginning graduate education. As several law professors have pointed out, it must be confusing to law students, and particularly international students from non-common law-based legal systems, to be required to rely on precedents and use the court's words as authoritative, and also to be told that they cannot copy without proper attribution (Simon, 2019; Thomas et al., 2017).

Graduate Students in Law

Canadian graduate legal education is typically absent from discussions about legal education (Jukier & Glover, 2014), although *Law and Learning*, the 1983 Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law was an exception. Graduate education in law has also very rarely been the sole focus of scholarly inquiry (Anand, 2004). Nothing has changed since Anand wrote more than fifteen years ago, and their inquiry into the graduate legal education in Canada's common law faculties remains the only published work focused on the topic. None of this work mentions academic integrity as an issue. Looking at the literature outside Canada, few studies in the small body of scholarship looking at teaching foreign graduate students in law discuss academic integrity, with the work of Spanbauer (2007) being an exception in the American context.

Admission to a graduate program in law requires an undergraduate professional degree in law, formerly the Bachelor of Laws (LLB) and now the Juris Doctor (JD). Law degrees in common law Canada are post graduate degrees, in the sense that they must follow at least two years in another degree program. Very few JD students are admitted without at least one degree.

There are three general types of Canadian graduate students in law (Anand, 2004; see also Spanbauer, 2007). First, there are the practicing Canadian lawyers trained in the common law who are looking to develop specialized knowledge in particular practice areas. The second group are the foreign-trained lawyers who want a Canadian legal education. They may want a Canadian degree in order to enhance their practice back home, but they may also treat an LLM as a pathway to practice here, even though an LLM does not make its holders eligible for admission to the bar in Canada. The third and comparatively much smaller group are students who want an academic career.

It is the foreign-trained lawyers that I focus on in this part because their training often creates unique challenges in law as compared to many other areas of graduate education. In other disciplines, the focus may be on international students for whom English is an additional language (EAL). However, in law, it is the type of legal system from which graduate students received their undergraduate law degree that

holds the most significance. Canadians often attend law school in England, the United States, and Australia and, less frequently, international students may obtain their undergraduate law degrees from Canadian law schools. In either case, it is where their legal training took place that is most significant, and not their citizenship.

As already noted, foreign-trained graduate students in law have usually been admitted to practice. The students in any cohort may have been trained in diverse jurisdictions, some with very different legal systems. Both teaching and learning can be much more difficult when students come from different legal traditions (Schukoske, 2011). The best-known classification, put forward by comparativist René David in their 1964 book, *Les grands systèmes de droit contemporain*, divided the world's legal systems into three large families based on legal techniques and concepts, worldview, and ideology: Romano-Germanic laws, Common Law, and Socialist Law (Pargendler, 2012). However, such traditional classifications cannot quickly convey why these differences matter to graduate students' training. Ugo Mattei's taxonomy, which is based on the role of the law as a tool of social organization with its patterns of social incentives and constraints, is more useful for this purpose (1997).

Mattei classifies the world's legal systems into three families: the rule of professional law, the rule of political law, and the rule of traditional law. The rule of professional law encompasses the western legal traditions, with the common law and civil law considered subdivisions. In the rule of professional law, the legitimacy of law has a technical nature, rather than a religious or political one: "the legal arena is clearly distinguishable from the political arena, and the legal process is largely secularized" (Mattei, 1997, p. 23). Jurisdictions within this family include the common law systems of Canada, United States, England, and Oceania, as well as the civil law systems of western Europe, the Scandinavian legal systems, and some "mixed" or hybrid systems such as those found in Quebec (Mattei, 1997, p. 36).

In contrast, in the rule of political law systems, the political and legal processes are not separate, and the idea of limiting political power by formal law is entirely inconsistent with how rules are made in these jurisdictions, especially when it comes to clashes between individual rights and government (Mattei, 1997, pp. 27–28). There is political involvement with the judiciary, high levels of police coercion and what the western legal tradition would call corruption, very little legal literature, limited publication of judicial opinions, and few legally-trained individuals (Mattei, 1997, p. 30). Russia epitomizes the rule of political law family, which also includes the majority of David's Socialist Law family, the less developed countries of Africa and Latin America where Islamic law is not strong, and Cuba (Mattei, 1997, p. 30).

As for the third family of legal systems, the rule of traditional law includes both Far Eastern systems (China and Japan) and Islamic systems where the source of legitimacy is supernatural (Mattei, 1997, p. 40). This legal tradition is characterized by a smaller role for lawyers compared to trusted individuals such as religious authorities, a focus on family groups and not individuals, the continued relevance of diversified local customs, a strongly hierarchical society, an emphasis on gender roles, and a social order based on duties rather than rights, among other distinguishing features (Mattei, 1997, p. 39).

Writing as a graduate student clearly requires acculturation into the relevant legal system (Newton, 2018), which is a formidable task. Foreign-trained graduate students are faced with very different understandings of what law is and what it is for, as well as more mundane differences in approaches to cases and statutes, interpretive methods, and ways of acting when resolving legal disputes (Picker, Lixinski & Fitzsimmons, 2016). The idea that writing about law as a Canadian common law graduate student requires analysis and critique, in addition to description, can be unfamiliar and even intimidating for students educated in jurisdictions where the state cannot safely be critiqued.

Of course, like many other international graduate students, those in law may be also be EAL students. Thus, for graduate students in law, the lack of language proficiency can raise many of the same issues that it does for other EAL graduate students, such as misconceptions about borrowing ideas, collaboration, and citation rules (Ahman et al., 2012; see also Palmer et al., 2019; Pecorari, 2010). However, Canadian common law requires a highly technical vocabulary, in part because its English was sourced in the law the French brought to England by the Norman invasion a thousand years ago, and its use of Latin comes from the dominant role of the early church and canon law in feudal England (Picker, Lixinski & Fitzsimmons, 2016). The common law's vocabulary is a stumbling block for students new to law even if English is their first language and this type of vocabulary is an additional barrier for EAL students, particularly if they were educated in the law of a different legal family which does not use the same or similar concepts.

As a result of these various differences, many Canadian law schools offer special graduate degrees for non-common law trained students. In some law schools, such as the University of British Columbia, students without common law degrees are funneled into special graduate programs designed exclusively for them (Anand, 2004). Elsewhere, as at the University of Calgary, students educated in very different legal systems are not admitted directly to the thesis-based program, but instead must begin in the course-based program and achieve success there before being able to transfer into a thesis-based program. Many Canadian law schools also offer special courses for non-common law-trained students, which introduce the common law method and focus on the differences between civil law and common law pedagogy and concepts (Anand, 2004).

However, it seems clear that graduate students in law also require explicit introduction to the principles and philosophy behind many western academic conventions (Handa & Power, 2005). The impact of transitioning from legal practice in what might have been a very different legal system to a university culture requires explicit academic skills orientation and instruction.

Good Character Requirements for Admission to Legal Practice

In my experience, a large percentage of foreign-trained graduate students in law do aspire to admission to practice in a Canadian jurisdiction. However, a graduate law degree is, at best, a round-about way to reach this goal; it is the undergraduate law degree that is required for admission to practice, supplemented by the Canadian undergraduate law courses that the National Committee on Accreditation requires applicants to successfully complete in order to receive a Certificate of Qualification (Federation of Law Societies of Canada, n.d.). Graduate students cannot enroll in those JD courses unless the law school has a special program for foreign-trained lawyers.

Two Australian professors have each argued that foreign-trained graduate law students may have extrinsic motivating factors to engage in academic dishonesty, such as obtaining a licence to practice law (Katkins, 2018; Saltmarsh, 2004). In other words, the fear is that the LLM degree may simply be a means to an end and, if an LLM is only a credential, then students may be motivated to take shortcuts (Katkins, 2018). This argument is a part of a larger controversy about credentialization in post-secondary education (Collins, 2019; Macdonald & McMorrow, 2013–2014) and a part of the scholarship on the role of motivation in academic dishonesty (Awdry & Sarre, 2013; Burke & Sanney, 2018; Moss et al., 2018).

But it is the fear that a finding of academic dishonesty might jeopardize the goal of some foreign-trained lawyers to be admitted to practice in Canada that is the focus of this part. How realistic are graduate law students' fears about the impact of academic dishonesty on their legal careers? It has been argued that the consequences for a law student of breaching the rules of academic integrity are unique because a breach may have long-term consequences for their reputation and their future in law (James & Mahmud, 2014). Law schools are also thought to apply academic integrity rules more strictly than other faculties (James, 2016), perhaps because many in the legal profession see plagiarism and cheating as "a serious breach of trust which is inconsistent with the values of the legal profession, particularly integrity, candour and honesty" (*Zhang v Law Society of Upper Canada,* 2015, para. 29).

The purpose of allowing academic misconduct to figure in admission decisions depends on a belief that an individual who is prepared to cheat in one institutional context is lacking in what some call "moral fibre" and will likely be inclined to do so in another (Corbin & Carter, 2007; Thomas, 2013). Legal academics who have studied the issue in Canada, Australia, and the United States have noted that there is no evidence of a correlation between past disclosed misconduct as a student and future conduct as a lawyer (Rhode, 1985; Thomas, 2013; Woolley, 2007). However, studies in other disciplines such as business, nursing and engineering do at least suggest there is a correlation, if not a causal link, between academic misconduct and workplace dishonesty, even if concerns about methodological flaws have been raised about these studies (Furutan, 2018; Harding et al., 2004; Hilbert, 1985; LaDuke, 2013; Miron, 2021; Nonis & Swift, 2001).

How and what to assess in making admission decisions is determined by each provincial or territorial law society, but each does require some version of "good character." Good character means something like "suitability" for practice, with suitability including "respect for the rule of law and the administration of justice, honesty, governability, and financial responsibility" (Federation of Law Societies of Canada, 2012, para. 24). All Canadian jurisdictions use one or more of the following criteria: suitability for practice, good character, good reputation or repute, fit to practise, or fit and proper person (e.g., *Legal Profession Act*, 1998).

All law societies require applicants to self-report conduct that might indicate a lack of good character, including academic misconduct (Woolley, 2007). They also accept third-party reports, but there is no information on whether Canadian law schools frequently or ever report to law societies when they find their students guilty of academic misconduct. There is at least one law school that appears to make it a practice to require law students to report themselves to the law society if they are found guilty of academic misconduct; see *Law Society of Ontario v Nsamba* (2020). The limited evidence suggests only that it is likely that law schools, as well as instructors, differ on whether and when they report (Thomas, 2013).

If there is an issue of an applicant's character, the law society will investigate and, if the issue is significant enough, there will be a hearing. The process model is thus a hybrid type, with features of both a traditional adversarial hearing and an investigative model (Zachariah & Morin, 2021). Once character is an issue, it is up to the applicant to prove that they are of good character at the time of the hearing (*Zoraik v Law Society of Ontario*, 2019).

As Woolley (2007, 2013) noted in her reviews of all published good character decisions up to 2012, until 2006 all law societies except Ontario's kept their hearings into good character closed to the public and their decisions unpublished. Today, all law societies except that of the Yukon make their decisions publicly available on CanLII, a web-based database maintained by the non-profit organization managed by the Federation of Law Societies of Canada with the goal of making Canadian law accessible for free.

In assessing the impact of misconduct on admission to practice, I was only interested in decisions that considered applicants' academic dishonesty while in university. For that purpose, I searched all CanLII law society databases for "academic integrity" or "academic honesty" or "academic misconduct" or "academic dishonesty" or "plagiarism" or "cheat". In order to locate appeals to the courts from refusals to admit that were not published, I repeated that search in "all courts and tribunals" for each province, adding "law society" ("barristers' society" in Nova Scotia; "barreau du Quebec" or "chamber of notaries of Quebec" in Quebec) to the search terms. "Academic integrity" and "plagiarism" turned up the most relevant cases, and searches using "cheat" revealed enough cases that had nothing to do with academic integrity to satisfy me that I had cast the net wide enough. I then repeated the searches in the commercial Lexis Advance Quicklaw database, and located three new cases.

No admission decisions considering applicants' academic misconduct in university were located in eight of the ten provinces nor in any of the territories. The only relevant decisions were from British Columbia and Ontario. There were a

larger number of admission cases about plagiarism and unauthorized collaboration that occurred in the bar admission courses run by the law societies in Alberta, Saskatchewan, and Manitoba, as well as in British Columbia and Ontario. Ironically–sadly–most of the plagiarism occurred in the ethics evaluations (for example, *Law Society of Alberta v. Cattermole,* 2008; *Sahota v The Law Society of Manitoba*, 2018). While the consequences of cheating in bar admission ethics courses may be interesting, they are beyond the scope of this paper.

The twelve admission decisions that considered the academic misconduct of applicants for admission to the bar are summarized in the table below, which includes the factors the tribunals and courts considered most relevant to their decisions. None of the cases concern graduate students in a Canadian law school, although one was about a foreign-trained lawyer (*Olowolafe v Law Society of Ontario* (2019)). In all but two cases, the applicant's misconduct had occurred while they were in taking their law degree (*Olowolafe v Law Society of Ontario*, 2019; *Seifi v Law Society of Ontario*, 2019).

The first thing to note is how few cases have been reported. Only nine applicants were involved in these twelve decisions over the past twenty years. Clearly there were other relevant decisions that were not made publicly available; for example, the *Olowolafe v Law Society of Ontario* (2019) case notes that the applicant was denied admission to the bar in Alberta in 2016 but that decision is not available. The small number might be explained, in part, by the fact that law societies' internal review processes remain secret. We do not know why some applications that raise issues of good character proceed to a hearing and others do not. Woolley's research into good character hearings in general revealed that only 24 of the 575 Ontario applications that raised issues of good character went to hearings between 2006 and 2012 (Woolley, 2013). We also do not know how many applications were withdrawn once an investigation began or a hearing was scheduled but we do know some were (*Olowolafe v Law Society of Ontario,* 2019).

The number of cases is far too few to be the basis of much more than speculation. Nevertheless, it seems safe to say that graduate law students' fears about the impact of academic dishonesty on their legal careers are overblown. It appears to take a great deal of misconduct for admission to the bar to be denied or even delayed. If the results of the hearings in Table 17.1 seem lenient, Wooley (2013) also noted that between 2006 and 2012, only six applicants in all of Canada were denied admission to the bar on the basis of character. It also seems safe to say that genuine remorse and the passage of time appear to be the two most important positive factors, as illustrated by *Preyra v Law Society of Upper Canada* (2000) and *Preyra v Law Society of Upper Canada* (2003), as well as *Olowolafe v Law Society of Ontario* (2019).

Despite the small number of cases and smaller number of refusals of admission, plagiarism and other forms of academic misconduct can nevertheless impede or at least delay admission to practice because of the good character requirement (Latourette, 2010). Costs of the hearing may be awarded against applicants who are just starting their careers and who may still have large amounts of student loan debt. Hearings are increasingly made public, with the decision and reasons for decision

Table 17.1 Bar Admission hearings considering applicants' academic misconduct at university

Decision	Misconduct	Factors	Result
Preyra v Law Society of Upper Canada (2000)	Falsified 11 grades on JD transcripts and sent them to potential employers	Psychological expert evidence not supportive; lied about misconduct to employer, lawyer, family for 4 years; still lying 1 year before hearing	Refused admission But see Preyra 2003
Law Society of Upper Canada v D'Souza (2002)	Falsified JD transcripts and sent them to potential employers	Lied about why falsified; failed to admit misconduct	Refused admission
Preyra v Law Society of Upper Canada (2003)	Falsified JD transcripts; lied about that misconduct to employer, lawyer, family	Psychologist and employer evidence supportive; no dishonest behaviour in previous 4 years	Reapplication successful; granted admission
Law Society of Upper Canada v Burgess (2006)	Committed plagiarism while a 4th year undergraduate; accused of academic misconduct while a JD student	Lied about the type and extent of plagiarism to minimize it until law society investigated in 2005; blamed others; no psychological evidence; lying too recent to conclude of good character	Refused admission
Law Society of Upper Canada v Smith (2008)	While a law student, researched and wrote at least 5 papers that they sold to another student, and continued to write and sell papers after graduation; the misconduct was not discovered until after admission to the bar	Misconduct was for profit and made thousands of dollars; it was deliberate and extended over a period of years; but lawyer cooperated during investigation, was sanctioned by the law school (a note of the misconduct on their transcript for 5 years), accepted responsibility, and was remorseful	Reprimanded; granted admission

(continued)

Table 17.1 (continued)

Decision	Misconduct	Factors	Result
Mohan v Law Society of British Columbia (2013); overturning Law Society of British Columbia v Applicant 5 (2013); overturning Law Society of British Columbia v Applicant 5 (2012)	Cheated on math exam as an undergraduate (one year suspension); plagiarized an essay while a law student (18 month suspension); accused of plagiarizing significant portions of undergraduate honours thesis that was obtained in response to the law society's freedom of information request	Denied cheating on math exam for 9 years; failed to disclose exam cheating and suspension on application for admission; blamed math TA; credibility an issue re whether the plagiarized thesis was the one submitted for credit in question; but most recent incident was in 2002, more than 10 years prior to hearing; at hearing took full responsibility	Admitted by the initial hearing panel; denied admission by the review board; decision in favour of admission restored by the Court of Appeal
Zhang v Law Society of Upper Canada (2015)	Plagiarized papers in 6 courses in 3rd year of law school (suspended one year)	Admitted plagiarism when confronted; from China and lost support when Canadian mentor died; completed her 3rd year at same university; remorseful; strong support network; showed insight; law society did not oppose application	Granted admission
Seifi v Law Society of Ontario (2019)	Guilty of 2 instances of academic misconduct (cheating on exams) and 2 of assault before law school, while an undergraduate	Failed to disclose 2nd instance of academic misconduct, for which blamed professor and took 9 years to admit; plagiarized their good character essay in application for admission from a reported case; psychiatric evidence supportive; remorseful; last incident was 10 years before	Determined was of good character; directed a further hearing to decide if a conditional licence was appropriate

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Table 17.1 (continued)

Decision	Misconduct	Factors	Result
Olowolafe v Law Society of Ontario (2019)	Committed plagiarism in 2006, 2008 (suspended 12 months) and 2011 (suspended 3 years) while an undergraduate in Canada; studied at UK law school while suspended and graduated with a UK law degree in 2012; subsequently plagiarized while completing a philosophy degree	Failed to disclose misconduct when first applied; blamed others initially; denied admission in Alberta in 2016; but last plagiarism was in 2011; remorseful; rehabilitated; supportive network	Granted admission
Law Society of Ontario v Nsamba (2020)	Two separate charges of academic misconduct, the first involving plagiarism and cheating on a 2nd year law school exam, and then 4 instances of plagiarism on 4 papers in 3 courses in 3rd year, for which they failed the 3 courses, repeated 3rd year, apologized, and reported all matters to the law society	Misconduct continued after first disciplined, but while under extreme stress (orphaned refugee with dyslexia and little education supporting extended family in Uganda while in law school) and lacking a support system; initially blamed others; but now remorseful; strong supportive evidence; well-developed support network; contributing to profession and society	Granted admission, but under condition that they have a mentor for their first 2 years of practice

being made publicly available. While academic misconduct may not stop a foreign-trained graduate student from being admitted to legal practice in Canada, it still has consequences that can damage reputations and delay legal careers.

Should academic misconduct in university reverberate with negative consequences for years after graduation? It has been argued that, because of the conflict between what law students learn about plagiarism at university and what they will experience about unattributed copying during their legal practice, it is unfair for students to be held accountable on admission to practice for the much stricter rules of academic misconduct (Bast & Samuels, 2008; Wyburn, 2009). Along with those who have studied this issue in more depth (Rhode, 1985; Thomas, 2013; Woolley, 2007, 2013), I believe the answer to this question depends in part on whether there is

any correlation between past academic misconduct and an individual's future conduct as a lawyer. The Federation of Law Societies of Canada seems convinced that a causal link must exist and unconcerned about whether there is any evidence to support that belief. However, as I have already noted, there is no available evidence of such a correlation in law. In addition, a law school is not simply a training school for the profession; it is also part of a university and shares the values of the academy as much as those of the profession. The divide between "town and gown" on plagiarism is only one of the many tensions between legal academics and legal practitioners that must be navigated. I see nothing unfair in holding law students to the academic standards of post-secondary education, even if they are held to different standards once they are no longer students. It is but one small example of the pluralism in Canadian legal norms and regulations that those in the profession deal with constantly.

Conclusions

The fear of punishment for committing plagiarism, not only within the academy but also within a profession that they may hope to join, seems likely to cause alienation and hamper the development of graduate students' voice and authority (Halasek, 2011; Pecorari, 2010). Emphasis on acquiring a credential and seeing a graduate degree simply as a means to an end can also make it difficult to engage some students. The factors that make graduate students in law unique means that prevention cannot be the only goal when teaching them about academic integrity. It is also necessary to try to engender and facilitate a genuine interest and excitement about their opportunity to conduct in-depth research on a subject that holds meaning in their life.

Burke and Sanney (2018) describe the components of the fraud triangle—a predictive instrument used by the accounting profession to explain what causes an individual to commit occupational fraud—as translated into the post-secondary education context. Those factors included financial, social, or academic pressure about grades without resorting to academic dishonesty; opportunities to cheat; and rationalization about the acceptability of taking advantage of those opportunities. They argue that eliminating or lessening one or more of those components can change the extent to which students may be tempted to engage in academic misconduct. For example, focusing on actual learning, rather than grades, can mitigate the pressure created by other demands on time or family. They also recommend safe spaces to learn from mistakes, exercises that provide formative feedback, and group work. In terms of eliminating or lessening opportunities, Burke and Sanney's recommendations include assignments requiring individual analysis, drafts, or the design of a unique project. As for rationalizations, they suggest the institution create an aggressively enforced zero-tolerance policy which the students are reminded of repeatedly. This conceptualization and these suggestions make sense in the context of graduate students in law.

Fostering an extrinsic interest in a particular legal area has been identified by others as one way to lessen extrinsic motivating factors such as the desire for permanent

residence status or a licence to practise law (Katkins, 2018). Helping students to focus on actual learning and to feel excitement for their research projects is a lengthy process because, in my experience, it requires developing a relationship of trust between instructor and student. This requires many in-class discussions and practice work, and out-of-class collaboration with the student about the choice of topics for their theses or papers. I also believe that repeated explicit statements about the instructor's goals for the course and its students—goals of engendering excitement about their research opportunities and preventing plagiarism—are helpful as long as they are genuine. Both my own experience and the research indicates that students do better when they feel their instructor is on their side and wants them to succeed in a meaningful way (Christensen Hughes & McCabe, 2006, pp. 56–57).

In-class discussions about readings on academic integrity and in-class practice exercises—both individual and group work—are good ways to teach why academic integrity is valued, as well as practical skills. A comprehensive approach to teaching the accepted use of sources within law should include the hands-on learning of the skills of text comprehension, note taking, summarizing, and quoting, as well as paraphrasing and citation (Pecorari & Petric, 2014; Vance, 2009). Other research on helping EAL students succeed indicates that the more students identify as scholars with competence in a particular subject matter, the less likely they are to repeat the language of their sources (Pecorari, 2010). By working together in class and providing each other with formative feedback, students can learn to trust each other and can develop into a supportive cohort. It takes time to create numerous formative exercises that are appropriate to students' educational backgrounds and language skills. However, the reward lies in not simply preventing misconduct—which is a significant reward for both instructor and students—but even more so in facilitating an enjoyable group experience.

Requiring students to produce a short piece of analytical writing during one of their first classes can give the instructor a good indicator of the student's linguistic and analytical abilities. This allows prompt referral to an institution's writing and language support services (Picker, Lixinski & Fitzsimmons, 2016).

The last suggestion by Burke and Sanney (2018)—the institutional creation of an aggressively enforced zero-tolerance policy which the students are repeatedly reminded about—may seem harsh. However, the harshness is primarily at the institutional level and, if the instructor is successful, never reaches the students. Law graduate students, as practicing lawyers, are also accustomed to working and studying in an environment of statutes, regulations, by-laws and other rules that are enforceable and enforced.

The tension between legal academia and the legal profession has motivated suggestions specific to law undergraduate students. An academic misconduct policy that differentiates plagiarism standards for law students from standards for legal practitioners has been put forward as a way to educate law students about the need for attribution while they are students (LeClerq, 1999). Others have suggested there should be a code of conduct for law students that is focused on conduct relevant to professionalism (Baron & Corbin, 2012). Tanovich (2009) has argued that all Canadian law schools should have a code of conduct which resembles the rules of

professional responsibility and which is separate and distinct from their university's academic regulations. One of the reasons invoked for their recommendation was the Law Society of Upper Canada v Smith (2008) case involving the law student who was found to have committed academic misconduct by selling papers that he had ghost-written (Tanovich, 2009, p. 78). Other similar suggestions include promoting academic integrity as emergent professional integrity among law students (James & Mahmud, 2014). If any of these types of suggestions are implemented for undergraduate students in law, care should be taken to consider the unique backgrounds and needs of graduate students.

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