



THE CERTIFICATION OF EDUCATIONAL DIPLOMAS
THE APOSTILLE CONVENTION
And
THE NOTARY PUBLIC

By

Dr Eamonn G Hall

Notary Public

The Faculty of Notaries Public in Ireland

Email: info@ehall.ie:

web: www.ehall.ie:

Tel: 087 322 9480

Introduction

Serious concern has been articulated nationally and internationally about certain fraudulent activities arising out of the certification of education diplomas and education-related certificates by persons such as a notary. Similar serious concern has also been expressed about the implications following on the application of the Apostille to such education-related documents pursuant to *The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* ('the Apostille Convention')¹.

Such is the level of concern that the Permanent Bureau of the Hague Conference on Private International Law published a paper, *The Application of the Apostille to Diplomas including those issued by Diploma Mills* in 2008 (the 2008 Hague Diploma Paper)² in advance of a special commission on, *inter alia*, the practical aspects of the Apostille Convention which was held in February 2009³.

One university authority of Ireland informed me during the process of writing this paper that the relevant department within that university had a file full of bogus or 'fake' degree testamurs or degree 'parchments' falsified by persons seeking various positions of employment. Life is so hectic with the consequence that many employers do not verify the status of qualifications offered by persons but rely on the certification by a notary or other similar certifying authority.

A wide definition of 'education diplomas' may be useful for the purposes of this paper. The term 'diploma' in the 2008 Hague Diploma Paper covers:

'all documents issued by an educational institution. Such documents include, but are not limited to certificates (of attendance and

¹ The Apostille Convention was signed on behalf of Ireland on 29 October 1996, ratified by Ireland on 8 January 1999 and came into force in Ireland on 9 March 1999.

² Hague Conference on Private International Law, 'Preliminary Document No 5 of December 2008'.

³ Hague Conference on Private International Law, 'Conclusions and Recommendations of the Special Commission on the Practical Operation of The Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions', (2-12 February 2009).

achievement), grades, academic reports, diplomas, transcripts, degrees, professional certificates, records, primary, secondary and tertiary qualifications.'⁴

One of the most common requests for the application of the Apostille pursuant to *The Hague Convention of 5 October 1961* relates to documents issued from education-related institutions. As stated, this fact and the evidence of fraud prompted the Permanent Bureau of the Hague Conference on Private International Law in 2008 to review the law and practice on the certification of education diplomas and the application of the Apostille to such documents. [Incidentally, 'Private International Law' sometimes called 'Conflict of Laws' is that part of the law administered between private citizens of different countries.]

An 'Acute' Problem

As stated above, certification of education diplomas by (for example) a notary and the application of the Apostille (pursuant to the Hague Convention of 1961) to such documents present opportunities for fraud if the notary and relevant authorities are not vigilant.

Many notaries certify copy documents as follows:

'I, [N.P.], Notary Public, certify that the within photocopy is a true copy of the original.'

The dangers inherent in such an unqualified certification by the notary will now be considered. Professor Peter Zablud, Chairman of the Board of Governors of the Australian and New Zealand College of Notaries and Director of Notarial Studies at the University of Melbourne put this issue so succinctly:

'One of the seemingly intractable problems bedeviling the world is the level of corruption and malpractice which is creeping into the education sector at large and in particular into the tertiary sector.'⁵

⁴ 'The Application of the Apostille Convention to Diplomas including those issued by Diploma Mills,' Permanent Bureau of The Hague Conference on Private International Law, page 4.

The 'nightmare' scenario (on the notary's part) is that a notary is requested to authenticate or certify that a copy of a testamur/certificate of a university degree (for example that of a medical doctor) - is a true copy of the original. The 'appearer' – who subsequently turns out to be a 'fake' medical doctor obtains a medical appointment on the basis of the certificate of the notary who certified that the copy degree attached to the notarial certificate was a true copy of the original. Unknown to the notary who did not contact the relevant university, the degree of the 'fake' doctor is a forgery. A patient subsequently dies as a result of a medical intervention of the 'fake' doctor and the family of the deceased patient wish to sue the responsible authorities who may have the money to pay for their extraordinary pain and suffering or have insurance for such a likelihood.

The concerns of the member states of the Hague Conference on Private International Law also relate to the manner in which fraudulent qualifications are being used to manipulate migration systems to obtain a visa gaining entry to a country unlawfully and the circumvention of migration control in general by potential terrorists using false qualifications.

In the foregoing circumstances, the present writer submits that a serious responsibility is being placed on the notary or other certifying authority - such as a solicitor or commissioner for oaths - and that such a notary or other certifying authority must not only take, but be seen to take, all relevant precautions to ensure that he or she has taken all reasonable steps – in the circumstances of an instant case – to verify the status of the document being certified.

International Recognition of Education Diplomas

International law – in the form of conventions – provides for the recognition of education diplomas of one country in another. These conventions include the *UNESCO Convention of 21 December 1979 on the Recognition of Studies*,

⁵ Peter Zablud, 'The Operation of the Apostille Convention – Now and into the Future', A Position Paper for the Australian and New Zealand College of Notaries (2009). Professor Zablud referred to Jacques Hallack and Muriel Poisson, 'Corrupt Schools, Corrupt Universities: What Can be Done?' 2007 International Institute for Educational Planning.

Diplomas and Degrees concerning Higher Education in the States belonging in the Europe Region; the Council of Europe and UNESCO Convention of 11 April 1997 on the Recognition of Qualifications concerning Higher Education in the European Region and the UNESCO International Convention of 17 December 1976 on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean.

The Constitution of Ireland (Article 29.3) provides that Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other states. However, Article 29.6 of the Constitution of Ireland provides:

'No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.'

Ireland has not ratified the conventions above on the recognition of diplomas and degrees.

Concept and relevance of 'Public' versus 'Private' Education Documents

At the heart of the Apostille Convention (and the issue of the authenticity of education diplomas) is the concept of what constitutes a 'public' document and what may be described a 'mere' private document.

Article 1 of the Apostille Convention reads as follows:

'The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

(a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a

public prosecutor, a clerk of a court or a process-server ("*huissier de justice*");

(b) administrative documents;

(c) notarial acts;

(d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentication of signatures.'

The Department of Foreign Affairs in its 2008 response to a questionnaire issued by the Permanent Bureau of the Hague Conference on Private International Law⁶ relating to the application of the Apostille stated that the Department (as the Competent Authority of Ireland) only

'authenticates documents referring to qualifications or awards ... if institutions make those awards within the National Framework of Qualifications established by the National Qualifications Authority of Ireland. A copy of a degree must first be notarised in advance of the Competent Authority placing an Apostille stamp on the document.'⁷

Education diplomas and degrees that are not considered 'public documents' under the law of the state of origin may not be 'apostilled'. However, when a notary certifies that the diploma or degree or other educational qualification is a true copy of the original – the certification by the notary in itself is a 'public' document and as such, the notary's certification may (in general) be 'apostilled'.

The Apostille does not, in theory, look behind the notary's certification but as the educational diploma or other related document and the notary's certification are bound together or are on the one page, this situation may and does lead persons to conclude that the relevant educational document has been 'apostilled'.

⁶ Response of Ireland to Questionnaire relating to the Hague Convention of 5 October 1961 abolishing the Requirement of Legalisation for Foreign Public Documents (Prel. Doc. No 3 of August 2008); Hague Conference on Private International Law.

⁷ Above, page 14.

A Solution for the Notary

A notary colleague in London confirmed to me recently in relation to certification of degrees from a UK University (where persons were applying to teach English overseas – a common situation among graduates of various disciplines in the present recession) that the notary had discovered two 'fake' degrees. That notary stated the only 'safe' approach for the notary was to obtain verification directly from the university or other educational institution.

Many universities will refuse to give details of a person's degree to a third party (such as a notary) without the consent of the graduate. This is because of data protection legislation. Some universities, conscious of this problem offer a solution to both graduate and the potential employer. The University of Limerick (Ireland) has, since September 2005, issued and verified qualifications online through a secure electronic document system. The system enables students and graduates of the university to access their education-related documents via a secure website hosted at the University of Limerick. The student or the graduate of the University registers and agrees online as follows:

'I want to access my documents so that I can send them to employers and other interested parties electronically.'

The employer or party seeking the verification can be copied in on the electronic verification from the university. There is no fee for this service at the time of writing. However, there are charges for exact copies of the 'parchment', testamur or degree.

The National University of Ireland charges for certain authentication services.

The notary or other certifying authority (such as a solicitor) may not be in a position to contact the university of educational institution as it may be located outside the jurisdiction and language may be a problem.

One solution is for the notary or other certifying authority to take sworn evidence or a statutory declaration from the appearer (who seeks to have copies of education-related documents certified as being true copies of originals) and to record this fact in the relevant certificate. Such a Notarial Certificate may read as follows:

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN that I, [N.P.]

of.....

Commissioned for life by the Chief Justice and President of the Supreme Court of Ireland, CERTIFY as follows:

[A.B.] of [address] duly identified to me by production of Passport of bearing No.....

appeared before me this day and testified before me that the copy document attached to this Notarial Certificate was a true copy of an original.

IN FAITH AND TESTIMONY I have set my hand and seal this day of 20XX

Signature and Seal of Notary Public

In the context of educational qualifications, the Notaries Society of England and Wales in its formal publication, *Precedents*, advises that there are particular concerns about the certification of copies of qualification certifications. The Notaries Society suggests that an appearer should be requested to make a suitable formal statutory declaration before the notary confirming the status of the qualifications certificates. Further, the *Precedents* provide the notary should state in his/her Notarial Certificate whether he or she has directly checked the existence of the institution and the reliability of the certificates produced to him or her. Finally there is the warning:

'Those who rely on these [qualifications] certificates are making decisions on the basis that the qualifications are genuine and may reasonably suppose the notary to be authenticating this.'

The Notaries Society provides a specific precedent for the notary which the present writer has re-fashioned as follows:

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN that I, [N.P.]
of.....

Commissioned for life by the Chief Justice and President of the Supreme Court
of Ireland, CERTIFY as follows:

[A.B.] of
duly identified to me by production of Passport of bearing
No.....

appeared before me this day and testified before me that the copy
document attached to this Notarial Certificate is a true copy of an original.

I have not verified that the document is genuine but the copy attached is a
true copy of the document so produced to me.

IN FAITH AND TESTIMONY I have set my hand and seal this day of 20XX

Signature and Seal of Notary Public

The present writer is aware that some states, particularly Australia, require a
specific form of certification. One such stipulated format is:

'I [NP], Notary Public, certify I have sighted the original and that this is a
true copy of the said original.'

Such a form of certification must be signed by the notary, dated with address
and telephone contact details.

In relation to the above Australian requirement, there is no possibility of any 'qualifying' statement by the certifying authority – such as a notary – to limit what may be described as the 'absoluteness' of the notary's certificate. In such a circumstance, the notary should, for his or her own protection, obtain sworn evidence in the form of a pre-prepared form of affidavit or statutory declaration that the appearer testified or declared solemnly before the notary that the copy documents presented to the notary were in fact true copies of genuine originals.

Conclusion

Great care should be taken to ensure there is some 'qualification' of the absolute formula used by many:'

'I [N.P.] Notary Public, certify the within photocopy is a true copy of an original.'

At a minimum, the notary should consider obtaining sworn evidence from the appearer who comes before the notary (requesting that copy educational qualifications be certified) that the documents are genuine. At least the notary will be seen to have demonstrated some diligence in the matter.

A 'minimal' 'qualification' or modification in the notary's or other certifier's certificate should be that the notary or other certifier is certifying only that the documents are true copies of documents 'AS PRODUCED' to him or her as in:

'I [N.P]. Notary Public, certify the within photocopy is a true copy of an original as produced to me.'

Better still would be the following certification:

'I [N.P], Notary Public, certify the within photocopy is a true copy of a document produced to me and represented under oath to me to be the original.'

Here, the notary above is not certifying that the copy document is, for example, evidence of a genuine degree from AB University, but the notary is

merely stating that the copy document is a true copy of the document as presented to the notary and represented by the appearer to be the original.

End

Dr Eamonn G Hall

April 2013