



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

## **CERTIFIED SPECIALIST PROGRAM**

### *Policies Governing the Certified Specialist Program*

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# **THE LAW SOCIETY OF UPPER CANADA POLICIES GOVERNING THE CERTIFIED SPECIALIST PROGRAM**

## **PART I: DEFINITIONS**

“Applicant” is a lawyer applying for Certification as a specialist.

“Application” includes the completed a) Application form, b) Standards and c) any required supplementary documents.

“Board” is the Certified Specialist Board.

“Certification Staff” are employees of the Law Society assigned by the Chief Executive Officer the responsibility of supporting the work of the Board.

“Certification” means Certification as a specialist.

“Certified Specialist or specialist” is a lawyer member of the Law Society of Upper Canada who is certified by the Board as having met the Standards for Certification in a designated area of practice.

“Consent to Disclosure” is a written authorization provided by an Applicant for Certification and by a Certified Specialist to the Lawyers’ Professional Indemnity Company authorizing disclosure of their claims history to the Law Society for the purpose of determining their compliance with the program’s professional Standards.

“Law Society or Society” is the Law Society of Upper Canada.

“Policies” are these Policies Governing the Certified Specialist Program of the Law Society of Upper Canada.

“Practice Concentration” is the required percentage of a lawyer’s practice devoted to a specialty area as defined in the Standards.

“Professional Development Report” is a report outlining the professional development undertakings of every new Applicant.

“Professional Development & Competence Committee, Committee or PD&C Committee” is a standing committee of Convocation, responsible for competence matters.

“Recent Experience” means practising law in a specialty area for at least five years before the day on which the member applies for certification as follows: i) Two years in Ontario immediately before the day on which the lawyer applies for certification; ii) Three other years in one or more common law jurisdictions.

“Standards” are Standards for Certification established for each specialty area.

“Substantial Involvement” is the combination of the Practice Concentration and experience requirements in the standards for each specialty area.

## **PART II: GENERAL**

### **1. Purpose**

The Certified Specialist Program recognizes lawyers who have met established Standards of experience and knowledge requirements in designated areas of law, and have maintained exemplary Standards of professional practice.

The program aims to promote the public interest and enhance lawyer competence by facilitating the development of specialty expertise in a given area.

### **2. Equal Opportunity**

The Certified Specialist Program encourages participation from all qualified Applicants without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

### **3. Areas of Practice**

Bankruptcy and Insolvency Law  
Civil Litigation  
Citizenship and Immigration Law (Immigration/Refugee Protection)  
Construction Law  
Corporate and Commercial Law  
Criminal Law  
Environmental Law  
Estates and Trusts Law  
Family Law  
Health Law  
Intellectual Property Law (Trademark/ Patent/Copyright)  
Labour Law  
Municipal Law (Local Government/Land Use Planning and Development)  
Real Estate Law  
Workplace Safety and Insurance Law

### **4. Limit on Number of Certifications**

A lawyer may be certified as a specialist in a maximum of two areas of practice.

### **5. Individual Attainment**

Certification can be held by individuals, and cannot be attributed to the law firm or office of which the specialist may be a member.

### **6. Voluntary Participation**

No lawyer of the Law Society is required to be certified as a Specialist in order to practise in the area of law covered by that specialty.

## **PART III: CERTIFIED SPECIALIST BOARD**

### **9. Appointment**

The Board is appointed by the Committee to oversee and regulate the Certified Specialist Program.

### **10. Composition**

The Board is comprised of between eight and twelve members, including the Chair: two benchers who are not lay benchers, one lay bencher and a minimum of five Certified Specialists who are not benchers.

### **11. Term**

A lawyer appointed to the Board holds office for a term not exceeding three years and is eligible for reappointment.

The Chair holds office for a term not exceeding three years and is eligible for reappointment.

### **12. Function of the Board**

The function of the Board is to:

- establish Standards for the Certification of specialists;
- determine the areas of law in respect of which lawyers may be certified as specialists;
- make rules of practice and procedure with respect to the consideration of Applications for Certification by the Board and all matters related to Certification;
- develop for the Committee's approval Policies relating to the Certification of licensees as specialists;
- recommend to the Committee the amount of fees payable by Applicants for Certification and by Certified Specialists; and
- certify lawyers as specialists.

### **13. Meetings of the Board**

The Board will meet at the call of the Chair and no less than twice a year.

### **14. Quorum**

Five members of the Board constitute a quorum for the purposes of the transaction of business.

### **15. Annual Report**

Not later than March 31 of each year, the Board will report to the Committee on the affairs of the Board of the immediately preceding year.

### **16. Confidentiality**

A member of the Board will not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under these Policies, exceptions being:

- disclosure required in connection with administration of the *Law Society Act*, the regulations or the by-laws;
- disclosure required of a member of the Board under the Law Society's Rules of Professional Conduct;

- disclosure of information that is a matter of public record; and
- disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

## **PART IV: REQUIREMENTS FOR CERTIFICATION**

### **17. Minimum Years of Practice and Recent Experience**

The Applicant must have engaged in the practice of law for at least seven years before the day on which the lawyer applies for certification as follows: i) two years in Ontario immediately before the day on which the lawyer applies for certification, and ii) at least three other years in one or more common law jurisdictions.

Recent Experience must be in the Applicant's specialty area.

### **18. Substantial Involvement**

The Applicant must demonstrate Substantial Involvement in the subject specialty area in the five years that comprise Applicant's Recent Experience by:

- a) completing the legal experience section of the Application form;
- b) completing the experience section of the applicable Standards; and
- c) including any additional information which may be required in the Standards with his or her Application.

In the event that the Applicant does not entirely meet the experience requirement, the Applicant may apply to the Society for recognition of the Applicant's individual circumstances or the Applicant's related skills. Consideration will be given in circumstances where the Applicant has:

- limited his or her practice in recent years to a particular area of the specialty area or has been involved in matters of extraordinary length and complexity; or
- engaged in advanced course work or performed related activities such as:
  - teaching a course in the specialty area;
  - authoring books or articles for publication;
  - completing post-graduate or other studies in the specialty area;
  - participating in the development and/or presentation of professional development programs related to the specialty area;
  - research;
  - participating in the policy development process;
  - drafting legislation and/or instruments;
  - participating as an active member on boards or tribunals or on the executive of any organization related to the specialty area; or
  - any other experience the Applicant considers relevant to his or her Application.

The Applicant is not required nor permitted to disclose the names of people he or she has represented in order to substantiate a claim to having certain types of experience, unless those names are already in the public domain.

### **19. Multiple Certifications**

Lawyers may apply for certification in more than one specialty area.

Lawyers may rely on the same task or practice experience to demonstrate substantial involvement in each specialty area.

Where a lawyer applies for certification in more than one area, or where a lawyer is certified in one area and subsequently seeks certification in a new area, the Society shall review each of the lawyer's applications.

## **20. Part-Time Practice**

An Applicant in the part-time practice of law in Ontario may be considered for Certification as a specialist providing the Applicant's Substantial Involvement in the specialty area is equivalent to the requirements set out in these Policies and the individual Standards.

## **21. Professional Development**

In the two years immediately preceding the date of application and one additional year within the five years of Recent Experience, the Applicant must attest to the completion of the annual professional development requirements.

The professional development requirements are as follows:

- not less than 50 hours of self-study; and
- not less than 12 hours of relevant professional development, which may consist of viewing or participating in CLE programs or through alternative methods such as, but not limited to:
  - teaching or being guest lecturer on a course in the specialty area;
  - authoring books or articles for publication;
  - completing post-graduate or other studies in the specialty area;
  - participating in the development and/or presentation of professional development programs related to the specialty area; or
  - involvement in the development of policy related to the specialty area.

The Applicant's Professional Development Report must include the following information:

- date of each activity;
- name, topics and/or issues covered by each activity;
- format of each activity;
- name of provider of each activity;
- hours of credit claimed for each activity;
- alternative methods used to comply with the professional development requirement (if applicable); and
- self-study.

## **22. References**

The Applicant must submit the number of required written references from such persons as determined by the Standards. The references must be completed in the form prescribed by the Board.

The individual selected as a reference must be a lawyer licensed by the Law Society that has direct knowledge of the Applicant's work in the specialty area in the five years of Recent Experience and can attest to the Applicant's competent performance of the tasks which the Applicant has selected in the Experience section of the Standards to demonstrate his or her experience in the specialty area.

None of the following is eligible to act as a reference:

- a person whose license is in abeyance under subsection 31 (1) of the *Law Society Act*;
- a partner, an associate, a co-worker, an employer or an employee of the Applicant;
- an individual who is counsel to the Applicant, to the Applicant's employer or to the Applicant's firm or company;
- a third party neutral;
- a relative of the Applicant;
- a member of the Certified Specialist Board;
- a bencher; or
- an employee of the Law Society.

The statement of reference and its contents is a confidential document, and will be made available for review only to members of the Board and Certification Staff.

The individual providing a reference will not disclose the contents of the reference to the Applicant.

### **23. Professional Standards**

During the five year period immediately preceding the date of the Application and in any jurisdiction in which the Applicant is authorized to practice, the Applicant:

- is not subject and has no record of any order made by a tribunal of a governing body of the legal profession in any jurisdiction;
- has and has had no terms, conditions, limitations or restrictions imposed to practise law in any jurisdiction;
- is not the subject of a review of his or her practice for the purpose of determining if he or she is meeting Standards of professional competence;
- has had no serious claims or substantial number of claims made against him or her in a professional capacity or in respect of his or her practice.

Despite these conditions, if the Applicant is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the Applicant is authorized to practise law, the Board may determine that granting Certification to the Applicant would not be contrary to the public interest.

An Applicant who is licensed to practise in other jurisdiction(s) will provide a certificate of standing from the governing body of the legal profession in each of those jurisdictions that has been issued no more than three months immediately prior to the date of the Application.

The Applicant may request a copy of his or her professional Standards record at any time during the Application process.

### **24. Application Fee**

Each Application for Certification must be accompanied by an Application fee.

The Application fee is non-refundable and may not be applied to subsequent Applications.

### **25. Application for Certification and Accompanying Documents**

In order to be considered complete, the Application package must include the following:

- completed Application for Certification form;
- Standards for Certification of which the Experience section has been completed by the Applicant
- case analyses or other documents which may be required in the applicable Standards;
- description of the Applicant's practice in relation to the specialty area;
- Professional Development Report;
- references from eligible referees;
- certificate of standing from other jurisdiction(s), if applicable;
- LawPRO report on the Applicant's claims history in the 5 year period immediately preceding the date of Application and the Consent to Disclosure form used to request the report; and
- Application fee

An Application which is incomplete will not be processed. The Applicant will have one year within which to complete the Application and may be required to update all or part of the Application in order to have it considered by the Society. If the Application form remains incomplete beyond that period, it will be considered withdrawn by the Applicant and no further action will be taken.

Applicants must submit all additional information required by the Society to complete its assessment within one (1) year of the date of request. If this information has not been received within this period, the Application will be considered withdrawn by the Applicant and no further action will be taken.

#### **26. Applications from Members of the Board or Professional Development and Competence Committee**

Applications for Certification from members of the Board or the Committee are subject to the same requirements as any other Applicant and the same conflict of interest rules set out in these Policies.

#### **27. Parental Leave**

An Applicant who has been on parental leave at any time during the seven (7) years immediately preceding his or her Application may use the year prior to that period in order to meet the Substantial Involvement requirements outlined in the Standards.

### **PART V: CONSIDERATION BY THE SOCIETY**

#### **28. Society Action on an Application**

The Society will consider the totality of an Applicant's experience, skills, knowledge and professional development and confirm that they comply with the applicable Standards.

The Applicant may be required to supplement the information in the Application and/or provide additional references to facilitate assessment of his or her eligibility for Certification.

#### **29. Notice**

If the Society intends to recommend to the Board that the Applicant not be certified as a specialist, before making the recommendation the Society will give the Applicant 30 days in order to:

- withdraw their Application; or

- submit additional information to the Society for assessment.

### **30. Confidentiality**

All information relating to an Application including the contents of the Application form, statements of reference, files, reports, investigations, findings and recommendations is confidential and will not be disclosed to anyone, including the Applicant. The Applicant may be informed as to the status of his or her Application at any time and may receive a composite summary of assessment upon request.

## **PART VI: CONSIDERATION BY BOARD**

### **31. Board Decision on an Application**

The Board shall consider every Application for Certification.

If the Society recommends to the Board that the Applicant be certified as a specialist, the Board may,

- certify the Applicant as a specialist if,
  - the Board is satisfied that the Applicant meets the professional Standards requirements for Certification; and
    - the Board is satisfied that the Applicant is not the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law; or
    - it would not be contrary to the public interest to certify the Applicant as a specialist.

If the Society recommends to the Board that the Applicant not be certified as a specialist, the Board may,

- certify the Applicant as a specialist if:
  - the Board is satisfied that the Applicant meets the professional Standards requirements for Certification; and
    - the Board is satisfied that the Applicant is not the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law; or
    - it would not be contrary to the public interest to certify the Applicant as a specialist; or
- not certify the Applicant as a specialist if,
  - the Board is not satisfied that the Applicant meets the professional Standards requirements for Certification; or
    - the Board is satisfied that the conduct, capacity or competence proceeding against the Applicant in any jurisdiction in which the Applicant is authorized to practise law is present; or
    - it would be contrary to the public interest to certify the Applicant as a specialist.

### **32. Notice**

If the Board does not certify the Applicant as a specialist, the Board will notify the Applicant in writing of its decision.

### **33. Decision final**

The decision of the Board on an Application is final.

### **34. Issuance of Certificate**

Certification begins on the date it was approved by the Board.

The Board will issue to an Applicant certified as a specialist a certificate of specialty stating the area of law in which the Applicant has been certified as a specialist.

### **35. Directory of Specialists**

The names of Certified Specialists will be included in the Directory of Specialists published by the Law Society.

### **36. Continuation of Certification**

A lawyer certified as a specialist will continue to be certified as a specialist so long as the lawyer continues to meet the requirements of the program, namely that the lawyer:

- has maintained Substantial Involvement in the specialty area;
- complies with the professional development requirements;
- complies with the professional Standards requirements in any jurisdiction in which the lawyer is authorized to practise law and the lawyer:
  - is not the subject and has no record of any order made against the lawyer by a tribunal of the governing body of the legal profession;
  - has and has had no terms, conditions, limitations or restrictions imposed on the lawyer's authorization to practise law;
  - is not the subject of a review of the lawyer's practice for the purpose of determining if the lawyer is meeting Standards of professional competence;
  - has had no serious claims or substantial number of claims made against the lawyer in the licensee's professional capacity or in respect of the lawyer's practice; and
  - complies with the annual reporting requirement attesting to the above and remits the annual fee.

## **PART VIII: CERTIFIED SPECIALISTS**

### **37. Specialist Designation**

A Certified Specialist may use the following designations: Certified Specialist (area of law in which certified as specialist) or "Spécialiste agréé(e) (domaine de droit)" and/or C.S. immediately after the lawyers' name in accordance with Rules 3.03(1)(g) and 3.05(2) and the respective commentary of the Law Society's Rules of Professional Conduct. Variations of the designation will not be permitted.

A lawyer who is not a Certified Specialist will not use any designation from which a person might reasonably conclude that the licensee is a Certified Specialist.

### **38. Annual Fee**

Every year a Certified Specialist will pay to the Society an annual fee in the amount determined by Convocation, including any applicable taxes.

The payment of the annual fee is due on January 31 of each year.

Lawyers that fail to submit the annual fee within 30 days of this deadline will be deemed not in compliance with By-Law 15.

The annual fee of a lawyer certified as specialist after January 1 will be prorated for the year in which the lawyer became a specialist and will be due on the day on which the lawyer became certified as a specialist. This fee is payable within 30 days of the date of receipt. Lawyers who fail to submit the annual fee within 30 days of this deadline will be deemed not in compliance with By-Law 15.

### **39. Annual Report**

A Certified Specialist must submit a report to the Certification Staff by January 31 of each year in respect of the Certified Specialist's compliance with these Policies during the immediately preceding year.

The annual report must be in a form provided by Certification Staff and include:

- a declaration attesting to the specialist's completion of the annual professional development requirements;
- a Consent to Disclosure; and
- a certificate of standing from other jurisdiction(s), if applicable.

Specialists who fail to submit a report to Certification Staff within 30 days of this deadline will be deemed not in compliance with the By-Law.

### **40. Proof of Compliance**

A Certified Specialist will, upon the request of the Society, provide proof to the satisfaction of the staff and by no later than the day specified by the staff, of his or her compliance with these Policies.

In the event a specialist fails to provide proof to the Society by the specified day, the specialist will be deemed not to be in compliance with these Policies.

### **41. Exemptions for extenuating or exceptional circumstances**

A certified specialist may apply to the Board for relief from strict compliance with the professional development requirement on the basis of extenuating or exceptional circumstances.

Where the Board determines that extenuating or exceptional circumstances exist, the Board may exempt the certified specialist from compliance with some or all of the professional development requirement for a maximum of three consecutive years.

### **42. Notice to Society**

A Certified Specialist will notify the Society immediately if the Certified Specialist is not in compliance with these Policies.

### **43. Certificate of Specialty in Abeyance**

Abeyance Automatic

A specialist's Certification is automatically in abeyance while:

- the specialist's license is in abeyance under subsection 31(1) of the Law Society Act:

- the specialist has terms, conditions, limitations or restrictions imposed on the specialist's authorization to practice law in any jurisdiction in which the specialist is authorized to practice law;
- the specialist is, in any jurisdiction in which the specialist is authorized to practice law, the subject of a review of the specialist's practice for the purpose of determining if the specialist is meeting Standards of professional competence; or
- the specialist has serious claims or a substantial number of claims made against the specialist in the specialist's professional capacity or in respect of the specialist's practice in any jurisdiction in which the specialist is authorized to practise law.

#### Abeyance at Board's Discretion

The Board may place a Certified Specialist's Certification in abeyance if the specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the specialist is authorized to practice law and to not do so would be contrary to the public interest.

#### Abeyance Mandatory

The Board will place a Certified Specialist's Certification in abeyance if the specialist applies to the Board to have the Certification placed in abeyance.

### **44. Restoration of Certificate of Specialty Following Abeyance**

#### Following Automatic Abeyance

If the conditions for automatic abeyance are no longer present and the specialist's Certification has not been revoked under these Policies the specialist's Certification will be restored upon notice to the Certification Staff of the change in conditions.

#### Following Discretionary Abeyance

If the conditions for discretionary abeyance are no longer present and the specialist's Certification has not been revoked under these Policies, on the Application of the specialist the Board may restore the specialist's Certification if to do so would not be contrary to the public interest.

#### Following Mandatory Abeyance

If the Board placed a specialist's Certification in abeyance at the request of the specialist and the specialist's Certification has not been revoked under these Policies, on the Application of the specialist the Board will restore the specialist's Certification if:

- none of the conditions for automatic abeyance are present; and
- the conditions for discretionary abeyance are not present, and if they are, the Board is satisfied that it would not be contrary to the public interest to restore the specialist's Certification.

### **45. Revocation of Certificate of Specialty**

A Certified Specialist's Certification is automatically revoked when the specialist:

- ceases to practice law in Ontario;

- ceases to meet the Substantial Involvement requirement of the specialty area;
- is the subject of any order made against the specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
- fails to pay an annual fee or submit an annual report;
- fails to meet the professional development requirements of the subject specialty area; or
- the specialist's Certification has been in abeyance for more than twelve months.

A lawyer whose Certification was revoked may apply for Certification at any time by submitting a new Application.

#### **46. Surrender of Certification**

A Certified Specialist who wishes to surrender his or her Certification will submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board will approve the request.

A lawyer ceases to be certified as a specialist immediately after the Board approves the lawyer's request to surrender his or her Certification. The lawyer's name will be removed from the Directory of Specialists and the lawyer must cease to use the designation in accordance with these Policies and the Rules of Professional Conduct. A lawyer who surrenders his/her certificate may apply for Certification at any time by submitting a new application.