



TAB 11

**Report to Convocation
June 23, 2016**

Professional Development & Competence Committee

COMMITTEE MEMBERS

Howard Goldblatt (Chair)
Jeffrey Lem, Vice-Chair
Barbara Murchie (Vice-Chair)
Raj Anand
Fred Bickford
Jack Braithwaite
Robert Burd
Gisèle Chrétien
Dianne Corbiere
Teresa Donnelly
Ross Earnshaw

Joseph Groia
Vern Krishna
Michael Lerner
Marian Lippa
Virginia MacLean
Sandra Nishikawa
Jonathan Rosenthal
Andrew Spurgeon
Joanne St. Lewis
Gerald Swaye
Sid Troister
Jerry Udell
Anne Vespry
Peter Wardle

Purpose of Report: Information

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Jeffrey Lem (Vice-Chair), Raj Anand, Fred Bickford, Jack Braithwaite, Robert Burd, Gisèle Chrétien, Dianne Corbiere, Teresa Donnelly, Ross Earnshaw, Joseph Groia, Vern Krishna, Michael Lerner, Marian Lippa, Sandra Nishikawa, Andrew Spurgeon, Joanne St. Lewis, Sid Troister, Jerry Udell and Anne Vespry participated in the meeting. Bencher Marion Boyd attended part of the meeting. Staff members Priya Bhatia, Diana Miles and Sophia Sperdakos also attended.

INFORMATION

INDIGENOUS LEGAL ISSUES SPECIALTY

Issue for Information

2. Pursuant to By-Law 15 (Certified Specialist Program) the Certified Specialist Board has certain mandated functions, one of which is to determine the areas of law in respect of which licensees may be certified as specialists. It does not require approval from the Committee or Convocation. By-Law 15 can be accessed at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485815>.
3. In May 2013 the Board approved the development of a new certified specialty in Aboriginal Law. Although not required to do so within the By-law, it sought the approval of the PD&C Committee for the proposal as interest in the specialty was widespread. The Law Society had received 59 letters of endorsement from the profession in support of development of the specialty.
4. The development of the standards for the specialty has followed a rigorous process that included research, consultation, development, review and validation. The Board approved the final standards on May 18, 2016, which are provided here at **TAB 11.1.1: Indigenous Legal Issues Specialty Standards**. The Certified Specialist Program Administrative Policies referred to in the Standards are set out at **TAB 11.1.2: CSP Admin. Policies**.
5. The Standards are provided to Convocation for its information.

Key Issues and Considerations

6. Beginning in the spring of 2014, PD&C department team members facilitated a series of working group meetings with 16 subject matter expert practitioners in Indigenous Legal Issues from a variety of geographical areas, client perspectives and practice areas to create, review and validate the Standards. Two working groups met separately to iteratively review, amend and comment on the standards over a two-year period.
7. The focus of the working groups throughout the process has been to ensure the standards set out the requisite knowledge, skills and professional requirements for demonstration of elevated competence in this area of practice, in accordance with the Certified Specialist Program mandate.
8. As part of the final validation of the Standards, in consultation with the Law Society's Equity Initiatives Department, input was sought from the following relevant professional groups and client groups that support provision of legal services in the Indigenous Legal Issues area, many of whom provided assistance and thoughtful comment:

- Canadian Bar Association – Aboriginal Law Section
 - Ontario Bar Association - Aboriginal Law Section
 - Indigenous Bar Association
 - Legal Aid Ontario
 - Chiefs of Ontario
 - Métis Nation of Ontario
 - Ontario Federation of Indigenous Friendship Centres
 - Ontario Native Women’s Association
 - Tungasuvvingat Inuit
9. The input received confirmed that the standards are appropriate and that lawyers who achieve the designation will be well qualified to serve the public and, particularly, to serve the legal needs of Indigenous individuals, communities, nations and Peoples.
10. In developing the specialty area it became clear that the name should reflect the breadth of the practice area. Accordingly, it was determined that the new specialty area is more appropriately named Indigenous Legal Issues. The specialty comprises core requirements and three distinct, but related subspecialties that each has its own set of experience, knowledge and skills requirements. The three subspecialties are: Rights and Governance, Litigation and Advocacy, and Corporate and Commercial.
11. The required skills for all subspecialties include demonstration of the ability to properly articulate the Indigenous perspective and to effectively serve Indigenous clients. To this end, inter-cultural competencies have specifically been integrated into the Standards. Applicants are required to submit a brief statement confirming that they have obtained a significant understanding of Indigenous cultures, perspectives and contexts. They must also submit a reference from an Indigenous Community Member as one of the four references required as part of the application process.
12. The next steps in the process, which are underway, involve implementation, which will include program promotion to make the profession aware of the new area of specialization for the summer of 2016. Once there is an initial pool of certified specialists in Indigenous Legal Issues, the Board will be seeking a new member from that specialty area to ensure appropriate representation at the program governance level.
13. The Certified Specialist Program assists lawyers not yet eligible to become certified to acquire the requisite skills and knowledge to qualify for certification as a specialist in a given practice area. To that end each specialty has,
- a. learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of activity; and
 - b. detailed experience requirements for certification used to assess a lawyer's eligibility for certification.
14. The learning criteria for the Indigenous Legal Issues Specialty are in the process of being developed in accordance with the standards and adult learning best practices.

15. As in the case of all applicants, applicants for certification as a specialist in Indigenous Legal Issues will pay an initial application fee of \$400 plus HST. Currently, the annual program fee is \$375 plus HST, due on January 31 of each year.
16. The Certified Specialist Program is a cost recovery program.

STANDARDS FOR CERTIFICATION Indigenous Legal Issues

Definition of Indigenous Legal Issues Specialty Area

1. The practice of **Indigenous Legal Issues** is that area of law¹ which incorporates Indigenous Laws, jurisdiction, and perspectives and deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples.
2. The subspecialty **Indigenous Legal Issues: Rights and Governance** is the practice of law in **Indigenous Legal Issues** relating to the regulation and management of Indigenous lands, territories, and resources, the development and implementation of Indigenous government or governance structures (internal and external), as well as the interaction of the rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples with Indigenous, federal, and provincial laws and policies that may affect Indigenous rights, interests, and claims.
3. The subspecialty **Indigenous Legal Issues: Litigation and Advocacy** is the practice of law in **Indigenous Legal Issues** before courts, tribunals, or regulatory bodies and in claims processes. This subspecialty includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
4. The subspecialty **Indigenous Legal Issues: Corporate and Commercial** is the practice of law in **Indigenous Legal Issues** in relation to the commercial activities of Indigenous individuals, communities, nations, and Peoples, and their representative organizations or governments, regarding their socio-economic development and business interests.

Definitions

5. For the purposes of these standards,

Cultural Identity refers to those aspects of identity shared by members of a culture that, taken as a set, mark them as distinct from members of other cultures.

¹ These standards do not derogate, abrogate, or interpret Indigenous people's own laws.

Indigenous means all Peoples of Canada as defined in s.35(1) of the *Constitution Act, 1982* as “Aboriginal” and includes those now known as First Nations, Métis, and Inuit Peoples in Canada regardless of status or recognition accorded by provincial or federal governments.

Indigenous Laws means the laws of Indigenous Peoples.

Indigenous people or **Indigenous Peoples** means indigenous individuals, communities, nations, and Peoples as appropriate in the particular context.

Designation

6. An applicant who is certified as a specialist in Indigenous Legal Issues in rights and governance may be identified as ***Certified Specialist (Indigenous Legal Issues: Rights and Governance)***.
7. An applicant who is certified as a specialist in Indigenous Legal Issues in litigation and advocacy may be identified as ***Certified Specialist (Indigenous Legal Issues: Litigation and Advocacy)***.
8. An applicant who is certified as a specialist in Indigenous Legal Issues in corporate and commercial may be identified as ***Certified Specialist (Indigenous Legal Issues: Corporate and Commercial)***.

Requirements for Certification

9. Applicants must comply with the requirements relating to Indigenous perspectives set out in these standards particularly those relating to
 - Knowledge Requirements (e.g., applicants’ knowledge relating to an Indigenous Peoples and knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact)
 - Consideration of Indigenous Perspectives (e.g., consideration of how Indigenous perspectives may assist in matters)
 - Outline, Broad and Varied Experience (e.g., applicants’ recognition and understanding of the Indigenous perspective)
 - Summaries (e.g., how matters undertaken deal with or affect Indigenous rights, interests, or claims), and
 - Reference, Indigenous Community Members (assessment of applicants’ skills and attributes e.g., respect for, curiosity for, and willingness to expand understanding of Indigenous Laws, values, norms, and way of life and willingness to develop inter-cultural relationships).
10. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society’s Certified Specialist Program (“Policies”), particularly those relating to
 - Minimum Years of Practice and Recent Experience

- Substantial Involvement in the Specialty Area
- Professional Development
- References, Indigenous Legal Issues
- Professional Standards, and
- Application Fee.

11. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in the subspecialty area(s) for which application is made:

(a) practice concentration requirements:

- applicants seeking certification in one subspecialty area of Indigenous Legal Issues will have devoted at least 30% of their practice concentration to such area averaged over the five (5) years of the recent experience,
- applicants seeking certification in two subspecialty areas of Indigenous Legal Issues will have devoted at least 60% of their practice concentration to such areas averaged over 5 years of the recent experience, and
- applicants seeking certification in all 3 subspecialty areas of Indigenous Legal Issues will have devoted at least 90% of their practice concentration to such areas averaged over 5 years of the recent experience.

(b) experience requirements: during the 5 years of their recent experience applicants will have attained broad and varied experience and a mastery of substantive law and procedures in the applicable subspecialty area(s) and comply with the experience requirements for the applicable subspecialty area(s) set out below.

12. In the event that applicants do not entirely meet the experience requirements, they may apply to the Society for consideration of their individual circumstances or their related (non-practice) skills. Consideration on a case by case basis will be given in circumstances where applicants have

- (a) limited their practice in recent years to a particular area of Indigenous Legal Issues or have been involved in matters of extraordinary length and complexity, or
- (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards or tribunals or on the executive of any organization related to Indigenous Legal Issues, or any other experience that applicants consider relevant to their application.

Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph 13, include with their application

- (c) a detailed description of their individual circumstances or related (non-practice) skills, and
- (d) references from the institutions or organizations from which their experience is references from peers, samples of writing and/or research, and a complete list of publications.

Practice Description

13. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area(s) for which an application is made.

Knowledge Requirements

14. All applicants shall demonstrate knowledge of the unique cultural, economic, political, social, and historical context of Indigenous Peoples(s) including recognition of an Indigenous world view.

Applicants must also demonstrate an acknowledgement of past governments' assimilation policies towards Indigenous Peoples and the current impact of those policies on Indigenous Peoples.

Finally, applicants must display general knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact in the context of providing legal services.

15. Applicants are asked to place a check mark (✓) next to each of the following and provide the summary required at paragraph 16 to confirm compliance with this requirement.

All applicants will have

- Acquired significant understanding of the culture, the economic, political, social, or historical contexts, and the legal perspectives of at least one Indigenous Peoples including
- the group's world views, values, norms, and way of life
 - the economic, historical, and political context unique to that group, and
 - the collective nature of Indigenous rights

"Significant understanding" is not intended to describe a deep and comprehensive understanding. Rather, the term is intended to describe the knowledge required, but not necessarily sufficient to

- (a) accurately understand, articulate, and convey the Indigenous perspective as manifested in or related to each matter undertaken by a lawyer, and
- (b) act in a manner that respects the cultural identity of all Indigenous people with whom a lawyer has dealings.

- Taken steps to understand the role and impact Indigenous culture exerts on behavior and communication

Summary

16. All applicants shall provide a brief summary of no more than 100 words outlining how they acquired significant understanding of the culture; the economic, political, social or historical contexts; and the legal perspectives of an Indigenous Peoples.

Applicants may wish to refer to one or any combination of the following possible learning experiences by which they acquired this knowledge or understanding:

- by socialization, e.g., applicants are members of an Indigenous Peoples by birth, adoption, or marriage
- by formal education or experiences, e.g., applicants have post-secondary education in Indigenous studies
- by professional life experiences, e.g., applicants have had carriage of significant cases where the Indigenous perspective is fundamental to matters undertaken, and
- by personal life experiences, e.g., applicants have lived in Indigenous communities and interacted extensively with community members.

Core Requirements, Applicable to All Subspecialties

17. All applicants must demonstrate that during the 5 years of their recent experience they have complied with core requirements: Legal Experience and Consideration of Indigenous Perspectives.

Legal Experience

17.1 All applicants are asked to confirm their knowledge of and experience with the following tasks.

- Advised clients with respect to Aboriginal and treaty or other rights held by Indigenous Peoples informed by **each** of the following:
- the *Constitution Act*, 1982, s.35,
 - the common law applying and interpreting s.35; and
 - *United Nations Declaration on the Rights of Indigenous Peoples*

and **at least two** of the following (check all applicable):

- Indigenous Law
- self-governance and other policies developed by Indigenous Peoples
- *Indian Act*
- relevant United Nations and Organization of American States Human Rights Instruments, and
- treaties and modern land claim agreements in Canada

- Advised clients on developments in the jurisprudence including international law as it applies to Indigenous Peoples
- Advised clients on the constitutionality of federal and provincial laws as it applies to Indigenous Peoples
- Followed and respected Indigenous protocols while attending and or hosting meetings with Indigenous people
- Taken steps to understand the collective nature of Indigenous rights and implications for individual rights regarding representation
- Taken steps to identify and address communication barriers to ensure the applicant understands information or concepts expressed through Indigenous culture (including language, behaviour, stories, symbols, songs, dance, artifacts, etc.)

Consideration of Indigenous Perspectives

17.2 All applicants shall confirm with a checkmark that for **each matter undertaken**, they have

- Familiarized themselves with
 - the unique cultural and the economic, political, social, and/or historical contexts of the Indigenous individuals, communities, nations, or Peoples involved in that specific matter
 - the Indigenous Laws relevant to that specific matter, and
 - where applicable, the territorial and/or resource base of the Indigenous individuals or Peoples involved in that specific matter
- Informed themselves about the unique and relevant Indigenous history, mandate, membership, or objectives of the Indigenous Peoples involved in that specific matter (to the degree that information is reasonably available to applicants)
- Considered the unique Indigenous Laws, traditional knowledge, and cultural, economic, political, social, and/or historical contexts of Indigenous individuals or Peoples involved in that specific matter **and** how such information may be applicable and of assistance in that specific matter
- Applied that information, knowledge, or understanding to help resolve that specific matter on the merits **and** in a manner that respects both the Indigenous and other cultural identities of individuals involved in that specific matter

Experience Requirements, Indigenous Legal Issues: Rights and Governance

In addition to the complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all the requirements in one of the following: either Indigenous Rights at paragraph 18.1 or Governance at paragraph 18.2.

18. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Rights and Governance during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

18.1 Indigenous Rights Focus

(1) Applicants must complete at least 12 of 22 tasks listed below. Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus.

- Advise or act on matters involving s.35 rights in each of the following
 - civil proceedings, and
 - provincial offences charges
- Advise or act on matters with respect to s.35 rights before each of the following
 - administrative tribunals and legislative bodies
 - courts in applications for judicial review, and
 - courts in appeals with respect to s.35 rights
- Prepare and submit or respond to claims for acceptance in a Specific Claims Entitlement process
- Negotiate and/or act as legal counsel in the treaty land entitlement processes
- Negotiate and/or act as legal counsel in the Specific Claims process or other land claims process
- Advise or act on matters before the Specific Claims Tribunal
- Prepare and submit or respond to claims for acceptance in the Aboriginal rights or title claims processes
- Negotiate and/or act as legal counsel in the Comprehensive Claims process
- Advise and/or assist a client with an Indigenous community ratification process
- Negotiate and/or act as legal counsel in the negotiation of claims of Indigenous groups for or against governments, Crown corporations, boards, or proponents
- Prepare and submit or respond to claims for lands and resources
- Draft settlement agreements in relation to Indigenous claims
- Negotiate or act as legal counsel in negotiations between Indigenous Peoples or entities and industry
- Provide written and oral opinions regarding the duty to consult and accommodate and the infringement of Indigenous or treaty rights
- Make or respond to oral and written submissions to Crown or Crown agencies on impacts to s.35 rights of proposed or existing developments
- Advise clients in the dealings between proponents and Indigenous organizations on impacts to s.35 rights and the law on the duty to consult and accommodate
- Advise on implementation of statutory requirements with respect to Indigenous consultation for proposed developments

- Advise on development and implementation of internal and external Indigenous consultation protocols
- Advise with respect to social science and traditional knowledge assessments including archaeological assessments, oral histories, traditional environmental knowledge, traditional land use, socio-economic impact, etc.
- Provide written and oral legal opinions or responses regarding the honour of the Crown or fiduciary relationship and breach by the Crown
- Assist clients in identifying recognized or asserted Indigenous or treaty rights
- Advise clients on the intersection of Indigenous and treaty rights and laws among Indigenous Peoples or collectives

Outline, Broad and Varied Experience

(2) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus during the 5 years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the applicable area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years. The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

(3) In addition, applicants must provide with their application summaries of three significant matters or proceedings, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (court, tribunal, policy process, etc.)

- Synopsis of outcome
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

18.2 Governance Focus

Applicants are asked to place a check mark (✓) next to the tasks/matters they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus.

(1) Applicants will have advised clients with respect to at least four of the following pieces/ sections of policies, guidelines, and Ontario and Federal legislation that must involve treaty or other rights and interests held by Indigenous Peoples. Check all applicable:

- s.35 of the *Constitution Act, 1982* with respect to self-governance
- First Nations Financial Act*
- First Nations Fiscal Management Act*
- First Nations Land Management Act*
- Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Safe Drinking Water for First Nations Act*
- AANDC Default Prevention and Management Policy
- AANDC Indian Lands Management Manual
- AANDC Environment, Health and Safety Policy – Contaminated Sites Program
- Additions to Reserve Policy
- Band Advisory Services Program Policy
- AANDC Band/Tribal Council/PTO Support Funding Program Policy Funding Policies
- AANDC Specific Claims Policy
- AANDC Comprehensive Land Claims Policy
- AANDC Inherent Rights Policy
- Federal Non-Insured Health Benefits Program
- Canadian Environmental Assessment Act, 2012* (with respect to reserve lands)
- Ontario Environmental Assessment Act*
- Canada Labour Code*
- Personal Information and Protection of Electronic Documents Act*
- Income Tax Act* and CRA interpretations including CRA bulletins regarding HST/GST application to Indians and policy regarding employment income of Indians
- Employment Standards Act, 2000*
- Canadian Human Rights Act*
- Ontario Human Rights Code*

- Privacy Act*
- Not-for-Profit Corporations Act, 2010* (Ontario)
- Métis Nation of Ontario Secretariat, 2015* (Ontario)
- Canada Not-for-Profit Corporations Act*
- Police Services Act*
- Education Act* (Ontario)
- First Nations Control of First Nations Education Act* (proposed) (Canada)
- Species at Risk Act* (Canada)
- Proceedings Against the Crown Act*
- Federal Courts Act*
- Judicial Review Proceedings Act*
- Specific Claims Tribunal Act*
- National Energy Board Act, 1990*
- Ontario Energy Board Act*
- Forestry Act* (Canada)
- Mining Act* (Ontario)
- Boreal Forest Agreement Property Act*
- Far North Act, 2010*
- Other _____

(2) All applicants will have completed at least 18 of the following 33 tasks with respect to governance and or Indigenous and/or treaty rights implications. Check all applicable:

- Advise client with respect to consultation and accommodation rights and responsibilities
- Draft or provide advice relating to by-laws for Indigenous organizations, (e.g., *Indian Act* s.81 or 83 by-laws, and Métis or Inuit organization or collective by-laws)
- Draft or provide advice relating to fiscal management by-laws (e.g., under *First Nations Fiscal Management Act*)
- Draft or provide advice relating to resolutions (e.g., Band council resolution, and Métis or Inuit organization resolutions)
- Advise client with respect to election matters, including appeals or disputes
- Advise client with respect to alcohol prohibition by-laws including community vote
- Advise client with respect to Indigenous laws
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers of Indigenous governments
- Advise client with respect to membership codes, lists, or criteria under the *Indian Act*, self-government agreement, or Métis government
- Advise client with respect to negotiation of funding arrangements with other levels of government
- Advise client with respect to administrative powers and duties of Indigenous governments
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act*, and other relevant legislation (s.87 or s.89)
- Advise client with respect to applicability of provincial law to Indigenous Peoples (e.g., s.88 of the *Indian Act*, s.4.5 of the *Green Energy Act, 2009*)
- Advise client with respect to Indigenous membership entitlement (e.g., registration as an Indian under the *Indian Act*, and as a Métis under a Métis organization)

- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements or other funding arrangements with federal or provincial governments
- Advise client with respect to the creation, amalgamation, or de-amalgamation of a “Band” under the *Indian Act*
- Advise client with respect to an organization of Métis communities
- Draft a community trust for the benefit of the members of an Indigenous community
- Advise client with respect to obligations under a community trust
- Advise client with respect to fiscal difficulties (e.g., AANDC’s Default Prevention and Management Policy)
- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft articles of incorporation/letters patent or advise on incorporation, by-laws for corporations owned/created or controlled by Indigenous governments or communities
- Drafting partnerships, joint venture, or other business entities that are owned/created or controlled by Indigenous governments
- Draft and/or advise on governance policies and procedures for Indigenous governments
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments and federal, provincial, or municipal governments or private companies
- Advise client with respect to devolution of program and services from a federal or provincial government to a local or regional Indigenous government
- Review, prepare, and submit a land claim
- Negotiate treaties, agreements (e.g., self-government agreements), and other constructive arrangements
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints

(3) All applicants will have represented a client(s) in at least 15 different types of matters spread across two of the following four categories: (A) Lands Management Related to Indigenous Peoples, (B) Operational Transactions, (C) Government Services, and (D) Advocacy. Place a check mark (✓) next to all applicable matters.

Category A: Lands Management Related to Indigenous Peoples

Advise or act for clients with respect to

- Additions to reserve policy
- Indian Act* permits or lease processes
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession
- Establishment of an Indian reserve

- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Residency by-law
- Community constitutions
- Harvesting management
- Access to lands
- Resources management
- Customary land management systems

Category B: Operational Transactions

- Draft or negotiate operational or service agreements to which an Indigenous government or organization is a party. Circle the type of agreements drafted or negotiated:
 - Utilities
 - Funding
 - Construction
 - Children and family services agreements
 - Emergency services
 - Employment and training
 - Financing
 - Policing services
 - Purchase of goods and services
 - Housing agreements including CMHC financing/funding for construction or renovation of homes
 - Conservation authority, parks, or protected areas co-management agreements
 - Health
 - Infrastructure including water and road management
 - Research and traditional knowledge/intellectual property
 - Capacity funding agreement
 - Impact benefit agreement
- Draft a legal opinion or report to a client relating to the contents of and obligations of Indigenous governments or organizations under operational or service agreements referred to above
- Advise on drafting documents for transactions involving assets of Indigenous governments or organizations

Category C: Government Services

- Advise on statutory and common law obligations or entitlements of Indigenous governments or organizations concerning any of the following. Circle the type of subject matter advised on:
 - Roads and sidewalks
 - Provision of social services or housing
 - Potable water
 - Water and sewage infrastructure
 - Nuisance discharges/environmental contamination

- Operation of public transportation
- Maintenance of property (parks, community centres, Band Council Office, etc.)
- Provision of education, health, or social services
- Employment and human rights
- Taxation
- Insurance
- Coroner's inquest or public inquiries
- Financial systems and accountability
- Waste disposal
- Dog control
- Other infrastructure
- Other _____

- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services to be supplied to an Indigenous government or organization
- Advise on education agreements and services
- Advise on application and interpretation of privacy legislation to Indigenous governments or organizations
- Advise on fiduciary duties of Indigenous leaders and governments to their members and organizations
- Advise on statutory or common-law conflict of interest obligations
- Prepare policy interpretations
- Advise on the imposition or removal of financial intervention (third party management or co-management)
- Advise on the obligations of Indigenous governments or their related entities in their role of service provider in relation to education, housing, health, social services, public programs administration, or other service
- Advise on capital and land management plans
- Advise on and draft community laws and regulation
- Specify other service(s) if applicable: _____

Category D: Advocacy

Advise clients with respect to

- An application to judicially review the powers of an Indigenous government
- Superior Court, Federal Court, or appellate court proceedings respecting applications for judicial review and appeals with respect to the exercise of powers or decisions by federal or provincial governments in respect of Indigenous, treaty, and other rights
- Proceedings before courts, administrative tribunals or agencies, boards, or commissions regarding the exercise of Indigenous government powers or the provision of services by Indigenous governments
- Court or administrative tribunal proceedings of specific concern to Indigenous governments and organizations. Specify: _____
- Alternative dispute resolution involving Indigenous governments, communities, or organizations
- Labour arbitration or an adjudication under Division XVI of the *Canada Labour Code* or before a human rights tribunal concerning an Indigenous government or organization as employer or service provider
- Human rights arbitrations on behalf of Indigenous governments or organizations

- Commercial arbitrations on behalf of Indigenous governments or organizations
- Public inquiries or public inquests in relation to Indigenous governments or organizations
- Appearing before or advising an Indigenous tribunal, board, or commission

Outline, Broad and Varied Experience

(4) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, governance focus during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in the matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table should include, where applicable

- Type of matter or proceeding
- Name of matter
- Your role in the matter
- Who or type of client represented
- Issues involved in matter
- Approximate dollar amount of transaction or matter if applicable
- Goals/objectives and outcome
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

(5) In addition, applicants must provide with their application summaries of 3 significant matters, each summary no longer than 2 pages, and include the following information (where applicable) to illustrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)

- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

Experience Requirements, Indigenous Legal Issues: Litigation and Advocacy

19. In these Standards for Certification in Indigenous Legal Issues: Litigation and Advocacy, the terms case, claim, and matter refer only to those cases, claims, or matters where the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples are in issue and includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
20. Applicants are asked to confirm their knowledge and experience with each of the tasks listed below by placing a check mark (✓) next to the tasks to demonstrate their experience in Indigenous Legal Issues, Litigation and Advocacy during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.
21. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all of the following requirements. Applicants are asked to confirm their knowledge of and experience with each of the following tasks
- Identify the appropriate parties and any standing issues to bring a matter before a statutory body or court
 - Identify the rights holders and distinguish between individual and collective interests and entitlements
 - Identify the appropriate procedures to bring a matter before a statutory body or court
 - Identify the appropriate causes of action, claim, or remedy in any given case
 - Identify the full range of defences or remedies that are available and appropriate in any given case

- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, laches, minors, parties under disability, and the discoverability principle
- Analyze, research, and develop an appropriate theory to advance or defend a claim or matter
- Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- Assist clients in identifying recognized or asserted Indigenous or treaty rights in the context of actual or potential litigation
- Identify the unique issues in developing and responding to a claim (i.e., evidentiary issues, basis of claim, procedural issues, etc.)

Identify, prepare, and present factual evidence to advance or defend a claim or matter including each of the following types of evidence

- Fact witnesses
 - Oral history
 - Documents, including those in the possession of a third party
 - Archival evidence
 - Demonstrative evidence
 - Identify any other _____
- Identify and assess unique evidentiary issues that arise in collecting and preparing oral history, traditions, values, and teachings for disclosure (e.g., information to be imparted by Elder and community witness, customary law, etc.)
 - Identify appropriate procedures to collect and present oral history, traditions, values, teachings, and customary law. Indicate procedures used:
 - Use of the Indigenous language directly or indirectly through interpreter
 - Observance of cultural protocols
 - Choice of a suitable site
 - Viewing of sites and admission of demonstrative evidence
 - Determine and implement appropriate affirmation or oath
 - Determine and implement in consultation with the Indigenous witness a culturally appropriate protocol to assure the tribunal that the witness will attest to the truth of the witness's testimony
 - Implement special procedures to govern testimony of community witness and oral history evidence at trial, including
 - Decorum and respect to be afforded to the witness in keeping with Indigenous sensibilities for respecting Elders or community witnesses, and
 - Properly addressing how objections may be raised or developing procedures for challenging the admissibility and weight of community witness testimony

- Address the testimonial challenges that arise from the unique history and context of Indigenous Peoples or Indigenous individuals in Canada. Indicate all applicable:
 - Potential intergenerational trauma arising from residential schools, adoption out
 - Cultural differences
 - Language and communication
 - Other_____

- Develop alternative measures to allow for Elder testimony in a matter. Indicate measures used:
 - Video conference
 - Videotape
 - Affidavit
 - Testifying as a panel
 - Individual accompanying Elder during appearances at the hearing
 - Tribunal traveling to hear testimony at alternative site

- Identify, prepare, and present the necessary opinion evidence of experts to advance or defend a claim or matter. Identify range of experience with presenting opinion evidence of experts by indicating all applicable:
 - Archeologist
 - Anthropologist
 - Historical geographer
 - Historian
 - Surveyor
 - Economist
 - Land appraiser
 - Engineer
 - Oral history expert
 - Ethno-historian
 - Linguists
 - Genealogist
 - Other_____

- Conduct discovery

- Conduct cross-examination in advance of the hearing or trial
 - On affidavits
 - Of non-party witnesses including experts on Indigenous rights

- Advise clients with respect to the full range of alternative dispute resolution options appropriate to the matter

- Advocate effectively on behalf of clients in settlement procedures/processes. Indicate all applicable:
 - Negotiations
 - Mediations
 - Pre-trials and/or pre-hearings
 - Settlement conferences

- Advocate effectively on behalf of clients. Indicate all applicable:
 - On motions
 - On applications
 - At trial
 - At hearings
 - On appeals
 - Before tribunals
 - Before regulatory bodies

- Advise clients with respect to the appropriate procedure to present matters of leave to appeal and judicial review

- Effectively prepare, examine, and cross-examine expert witnesses in regard to a trial or hearing

- Prepare costs submissions

- Provide opportunities for parties, counsel, and tribunal member(s) in advancing or understanding Indigenous perspectives including but not limited to Indigenous ceremonies, protocols, and processes by which information is imparted to others

- Provide opportunities for Indigenous communities to learn about or understand the court process and procedures in advance of the hearing

Outline, Broad and Varied Experience

22. Applicants must provide with their application a complete outline (in table format) of their Indigenous Legal Issues: Litigation and Advocacy experience as counsel during the five years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

Please do not include mediations and simple procedural motions under the *Rules of Civil Procedure*.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to outline their experience during the last ten years.

The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

Summaries

23. In addition applicants must provide with their application summaries of 3 significant matters or proceedings, which may or may not be trials under paragraph 22, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Litigation and Advocacy. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)
- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples,
or
Explanation of how the Indigenous perspective was used or incorporated in the proceeding to help resolve the matter both on the merits and in a manner that respected Indigenous and other cultural identities of each individual involved in or associated with the matter.

Experience Requirements, Indigenous Legal Issues: Corporate and Commercial

24. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Corporate and Commercial and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

25. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed at least 30 of the following 90 tasks from at least two of the following three categories: (1) Advice & Opinions, (2) Agreements Arising from Crown Engagement Obligations, and (3) Transactional Agreements and Financing.

26. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their experience in the subspecialty.

27. It is recognized that the items listed are not necessarily of equal complexity and that facts will be taken into consideration in the assessment of the application. Consideration will also be given to the special circumstances of the applicant in accordance with paragraph 12 above when assessing an application. Applicants may also submit details of any tasks not listed below that they have performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues: Corporate and Commercial.

Category 1: Opinions, Advice, and Drafting

Provide advice, opinions, or draft instruments with respect to

- Exercise of powers conferred on band council(s) under the *Indian Act*, including the legal binding authority and representational authority to bind collective interests
- Exercise of rights of Indigenous governing bodies
- Additions to reserve policy
- Indian Act* permits or licences
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession or other customary grants
- Creation of an Indian reserve
- Land use planning and development of reserve land
- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Access rights and requirements for enforcing security or other obligations on reserve lands
- Draft or provide advice relating to *Indian Act* s.81 or s.83 by-laws
- Draft or provide advice relating to by-laws under the *First Nations Fiscal Management Act*
- Draft or provide advice relating to Band council resolutions
- Advise client with respect to Indigenous laws and/or inherent rights
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers
- Advise client with respect to negotiation of funding arrangements
- Advise client with respect to administrative powers and duties of Indigenous governing bodies
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act* (s.87 or s.89) and other relevant legislation
- Advise client with respect to applicability of provincial law to Indigenous Peoples (s.88 of *Indian Act*)
- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements with federal or provincial governments
- Draft/negotiate/provide advice regarding a community trust agreement for the benefit of Indigenous Peoples
- Advise client with respect to obligations under an existing community trust

- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft or advise on articles of incorporation/letters patent and by-laws etc.
- Draft and/or advise on governance policies and procedures
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments or organizations and federal, provincial, or municipal governments or private companies or other private entities
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints
- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services

Category 2: Protocols and Agreements Arising from Crown Obligations

- Participate in negotiations to formalize relationships and enter into an engagement agreement to address the rights of Indigenous Peoples
- Draft, negotiate or advise on participation, capacity funding, engagement, impact benefit, license agreements such as the following:
 - initial engagement agreements or protocols to facilitate engagement between Indigenous and non-Indigenous parties
 - engagement agreements, resource revenue sharing agreements, or other similar agreements
 - term sheets, memorandums of understanding, or other documents that describe the intentions of parties in negotiations leading to engagement agreements or other similar agreements
- Advise clients in the dealings between proponents and Indigenous Peoples on impacts to constitutional rights and the law on the duty to consult and accommodate in the context of engagement agreements
- Prepare Indigenous or community based engagement protocols
- Review and consider reports generated by environmental and technical experts
- Retain and review reports generated by financial experts to advise on the negotiation of the compensation payments
- Review reports generated by external consultants and advise on the negotiation of the business opportunities and employment opportunities
- Retain and review reports generated by anthropologists, archaeologists, or other consultants
- Retain and review reports generated by Elders in order to determine impacts of potential undertakings
- Advise on the implementation of agreements
- Conduct internal meetings with members of the negotiation committee for one or more Indigenous groups
- Advise, develop, or implement community-or statutory-based ratification processes
- Review initial project descriptions and related documentation provided by a proponent to one or more Indigenous communities

- Advise and represent clients on the rights of Indigenous Peoples in respect of a proposed project and act for the client in initial meetings with a proponent
- Review, interpret, and advise on the legislative/regulatory processes governing a proposed project and the rights of Indigenous Peoples in respect thereof
- Make submissions directly to a proponent or government (federal or provincial) concerning the impact of a proposed project in the mining/quarrying, energy, oil and gas, electricity, or public infrastructure sectors with respect to the rights of one or more Indigenous Peoples
- Draft letters to the authority responsible for overseeing the legislative/regulatory process for a proposed project and submit applications for standing of Indigenous Peoples to appear before such authority in respect of the same
- Identify and retain environmental, cultural, and financial experts to determine the scale of impacts to one or more Indigenous Peoples of a proposed project and advise client(s) accordingly

Category 3 - Transactions and Financing

- Advise on alternative business structures and the tax consequences of using different business structures
- Draft/negotiate a partnership, limited partnership, or joint venture agreement
- Draft/negotiate a shareholder's agreement or subscription agreement
- Represent a client incorporating a corporation including preparation of by-laws and organizational resolutions
- Advise a client with respect to the nature and purpose of a non-share capital corporation including incorporating and organizing a non-share capital corporation
- Advise board of directors on procedural issues such as liability, conflicts of interest, and director and officer insurances etc.
- Organize an annual or special general meeting of shareholders
- Draft/negotiate project development agreements, including at least one of the following. Identify all applicable:
 - Interim funding agreements (respecting funding during negotiations)
 - Implementation agreement (reflecting relationship generally)
 - Construction management agreement (respecting construction phase)
 - Operations management agreement (respecting operations and maintenance phase)
 - Traditional ecological knowledge licence
 - Intellectual property agreement
 - Other: _____
- Draft/negotiate contract tendering, requests for information, requests for qualifications, requests for proposals or other procurement issues
- Act in the following transactional matters. Identify all applicable:
 - Sale
 - Purchase
 - Lease
 - Debt financing matter
 - Construction services agreement
 - Project management agreement
 - Operations management agreement
 - Architectural services agreement
 - Other: _____

- Structure a private equity financing transaction
- Draft/negotiate a confidentiality and non-disclosure agreement
- Draft/negotiate a letter of intent
- Draft/negotiate a share purchase agreement
- Draft/negotiate an asset purchase agreement
- Draft/negotiate an amalgamation agreement
- Draft/negotiate a consulting agreement
- Draft/negotiate an employment agreement
- Draft/negotiate employee non-disclosure, non-solicitation, and non-competition agreements
- Prepare a due diligence requisition list and/or respond to due diligence issues
- Prepare/negotiate closing agenda and represent a client at closing
- Review and advise on various governmental programs available to communities to facilitate purchase of ownership stake in a proposed project
- Negotiate with governmental authorities (or provide advice regarding such negotiations) on provision of a loan guarantee or other instrument to reduce the borrowing costs of an Indigenous community to purchase an ownership stake in a proposed project
- Draft/negotiate a loan/financing matter (could include commitment letter, trust indenture, share pledge, letter of credit, real property mortgage, leasehold mortgage, promissory note or guarantees)
- Obtain appropriate resolutions detailing informed approval in respect of at least one of the following. Identify all applicable:
 - Financing structure of the project and loans to Indigenous community-owned corporate entities
 - Unforeseen events, insurance, contingency planning, and exposure to liability of any Indigenous community-owned assets
 - Level of control of one or more Indigenous communities in project decisions and matters requiring unanimous consent
 - Pledging security
 - Identification of authorized representative
 - Tax treatment of project distributions
 - Anticipated returns from the project to one or more Indigenous Peoples
 - Make presentations to the membership of one or more Indigenous Peoples describing the project and the involvement of such communities in the project
 - Community consultation and ratification
 - Evolving requirements related to accountability and reporting on revenues
- Advise a client with respect to *Securities Act* matters
- Advise on priorities among landlord, mortgagee, and secured and unsecured creditors
- Advise on asset realization under the *Personal Property Security Act*
- Advise on a mortgage enforcement matter
- Advise on the bankruptcy process and procedures or the *Companies' Creditors Arrangement Act*
- Draft/negotiate a head lease or land lease, offer to lease or sublease, licence or permit pursuant to the *Indian Act* or other legislation or land codes pertaining to Indigenous lands
- Draft/negotiate an agreement to acquire or lease lands pursuant to the *Indian Act* or other legislation or land codes pertaining to First Nations lands
- Advise on the structure of a mergers and acquisitions transaction (e.g., shares v. assets, take-over bids, and amalgamations)

- Conduct negotiations and settlement discussions with or on behalf of a proponent and/or government in respect of a proposed resource development project
- Draft or provide advice regarding agreements related to resource development, such as exploration agreements or similar early and late stage project agreements
- Additional tasks not listed above performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues, Corporate and Commercial:
(please describe)

Outline, Broad and Varied Experience

28. Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Corporate and Commercial during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table must include:

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Issues involved in matter
- Approximate dollar amount of transaction or matter, and
- Goals/Objectives and outcome.

Summaries

29. In addition, applicants must provide with their application summaries of three significant transactions, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Corporate and Commercial. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter (transaction, agreement, legal opinion, or advice)
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Synopsis of outcome
- Description of any insights and perspectives the applicant gained from his or her involvement in each of these matters, and

- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

Professional Development

30. Applicants must attest to the completion of the professional development requirements. The requirements are

(a) not less than 50 hours of self-study in the two years immediately preceding the date of application and any other year within the 5 years of recent experience (a total of 150 hours), and

(b) not less than 12 hours of relevant professional development in the two years immediately preceding the date of application and any other year within the 5 years of recent experience.

The 12 hour professional development requirement may be met through participation at CLE programs or through alternative methods such as, but not limited to

(c) teaching or being a guest lecturer on a course in the specialty area

(d) writing and editing of published books or articles relating to the specialty area

(e) graduate or post-graduate studies in the specialty area

(f) involvement in the development and/or presentation of professional development programs related to the specialty area, and

(g) involvement in the development of policy related to the specialty area.

References

31. Applicants must submit four Statements of Reference. Three references must be from lawyers eligible to practise law in Ontario who have direct knowledge of the applicant's work in the specialty area in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under the subspecialty applied for.

32. A fourth reference, Statement of Reference, Indigenous Community Member, must be from a member of an Indigenous community who may also be a lawyer eligible to practise law in Ontario and who can both assess and attest to the applicant's respect for and understanding of Indigenous perspectives: a chief, band councillor, band administrator, regional and/or national chief and leader, Indigenous Elder, Indigenous community leader, Clanmother, or Indigenous academic.

33. Applicants must provide to the referees a copy of the completed Standards to let them know which subspecialty, categories, and/or tasks applicants have selected to demonstrate their experience along with the applicable Statement of Reference. Applicants should not include as a reference judges, partners, associates, co-workers, employers, employees, relatives,

3rd party neutrals, members of the Certified Specialist Board, benchers, or employees of the Law Society.

34. The four Statements of Reference must be submitted with the application to the Law Society in confidential envelopes that have been sealed, signed, and dated by the referees. Envelopes that have been opened or appear to have been tampered with will not be accepted.

Application Assessment

35. The Society will consider the totality of an applicant's practice in the relevant specialty area(s), the applicant's Professional Development Report, and references.
36. Applicants should not assume that completion of all of the enumerated practice concentration and experience requirements will automatically entitle them to certification as a specialist.
37. Applicants may be required to provide additional information to the Society to facilitate the assessment process.
38. The Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

Lawyer Referee, Assessment Grid, includes <u>all</u> Items (lawyer and community member items)					
	Highest Rating	Very Good	Average	Poor	Unknown
Ability to understand and consider the priorities, objectives, and perspectives of Indigenous individuals, communities, nations, or Peoples					
Ability to identify the rights holder					
Preparation (including document preparation)					
Resourcefulness					
Knowledge of substantive issues in the specialty					
Knowledge of procedure in the specialty					
Effectiveness of advocacy (court presentations, negotiations etc. as applicable)					
Consideration for the interests of clients					
Reputation in the legal community for ability to handle a specialty matter					
Reputation in the Indigenous community for ethical conduct					

Indigenous Community Member Referee, Assessment Grid, Includes only these items			
	Agree	Disagree	Unknown
The applicant demonstrates knowledge of and respect for Indigenous Laws			
The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous Laws			
The applicant demonstrates respect for Indigenous views, values, norms, and way of life			
The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous views, values, norms, and way of life			
The applicant demonstrates willingness to initiate and develop relationships between members of Indigenous and non-Indigenous communities, nations, or Peoples			



CERTIFIED SPECIALIST PROGRAM

Policies Governing the Certified Specialist Program

December 13, 2010

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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.

Abeance 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.

Abeance 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 Abeance

Following Automatic Abeance

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 Abeance

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 Abeance

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.

INFORMATION**APPOINTMENTS TO CERTIFIED SPECIALIST BOARD.****Issue for Information**

17. Pursuant to By-law 15 (Certified Specialist Program) the PD&C Committee (the “Committee”) appoints the members of the Certified Specialist Board (the “Board”). Convocation does not approve those appointments, but is advised of them for information. By-Law 15 can be accessed at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485815>.
18. There are currently vacancies on the Board. On June 9, 2016, the Committee considered and approved the four candidates that the Board recommended for appointment. They are as follows: David J. Bannon, May Cheng, Douglas Downey and Donna Shier.
19. The candidates’ biographies are set out at paragraph 27.
20. Following the Committee meeting the candidates were advised of their appointments.

Rationale

21. By-law 15 establishes the Board, whose members the PD&C Committee appoints. The Board is to consist of not fewer than eight and not more than 12 persons as follows:
 - Two benchers who are certified specialists
 - One lay bencher
 - Not fewer than five and not more than nine persons who are certified specialists who are not benchers.
22. At least two new certified specialists were required to meet the minimum appointees in this category under the By-law. The Board recommended to the Committee the appointment of four certified specialists to provide a broader coverage of specialty areas and practitioner expertise.

Key Considerations

23. As a result of the 2015 bencher election, a number of the members of the Board were elected to Convocation, leaving the current composition of the Board as follows:
 - Two benchers who are certified specialists.
 - One lay bencher,
 - Three certified specialists who are not benchers.

24. To fill the vacancies, the Law Society placed a notice in the Ontario Reports inviting applications for the Board and setting out the requisite qualifications. A copy of the notice is set out at **TAB 11.2.1: OR Notice**.
25. Seven applications were received, many of which were from highly qualified certified specialists. A working group of the Board consisting of the Chair, Janet Leiper, and two Certified Specialist Board members, Kathryn D'Artois and David Shelley, reviewed all the applications and recommended four candidates to the Board, which approved them for recommendation to the Committee.
26. In making its recommendations the Board was satisfied that the certified specialists it recommended met the qualifications, had excellent references and would make an important contribution to the Board's expertise and fulfilment of its mandate.
27. The Committee approved the following Certified Specialists for appointment to the Board:

David J. Bannon, C.S., Labour Law

Called to the Bar in 1994

Certified Specialist since 2007

Prior Board and Committee experience

Frequent speaker in specialty area, extensive experience

Teacher and mentor

May Cheng, C.S., Intellectual Property Law

Called to the Bar in 1993

Certified Specialist since 2005

Prior Board and Committee experience, including at the Law Society on the Equity

Advisory Group (EAG) and Retention of Women in Private Practice

Frequent speaker and author

Douglas Downey, C.S., Real Estate Law

Called to the Bar in 1999

Certified Specialist since 2006

Prior Board and Committee Experience including with the Law Society and the Ontario Bar Association (OBA)

Mentor in current Law Society mentoring program

Frequent presenter and award winner

Donna Shier, C.S., Environmental Law

Called to the Bar 1978

Certified Specialist since 1996

Prior Board and Committee experience, including with the Law Society

Author and frequent speaker

Award winning environmental lawyer

Post-secondary law teacher



Invitation to Apply for Appointment to the Law Society's Certified Specialist Board

The Law Society of Upper Canada is inviting applications from Certified Specialists for appointment to the Certified Specialist Board (CSB), which oversees and regulates the Certified Specialist Program.

Pursuant to By-Law 15, the CSB establishes standards for the certification of specialists, determines the areas of law in respect of which lawyers may be certified as specialists, makes rules of practice and procedures with respect to the consideration of applications for certification and all matters related to certification, develops policies relating to the certification of lawyers as specialists for the Professional Development & Competence Committee's approval, recommends to the Committee the amount of fees payable by the applicants for certification and by certified specialists, and certifies lawyers as specialists.

The CSB meets monthly in person or by teleconference and holds *ad hoc* meetings when working on special projects. Members serve three-year terms. All appointments are served on a volunteer basis. The qualifications and experience sought for appointments to the CSB are as follows:

- Entitled to practise law in Ontario with a minimum of five years as a certified specialist in any of the following areas of specialization: Bankruptcy and Insolvency, Citizenship and Immigration, Construction, Corporate and Commercial, Environmental, Health, Intellectual Property, Real Estate, or Workplace Safety and Insurance;
- Familiarity with practice-area issues through involvement in the legal community; and
- Experience in program governance through board or committee involvement.

To apply for an appointment to the CSB, please send a letter of interest, a *curriculum vitae*, and two (2) letters of reference by February 15, 2016, to:
Certified Specialist Program, The Law Society of Upper Canada
130 Queen Street West, Toronto, ON M5H 2N6
E-mail: certspec@lsuc.on.ca

The Law Society of Upper Canada welcomes applications from persons representing the diversity of the legal profession and community.