



CERTIFIED SPECIALIST PROGRAM Standards for Certification **Labour and Employment Law**

Definition of Labour and Employment Law Specialty

1. The practice of Labour and Employment Law deals with all aspects of labour and employment (public and private sectors) including, but not limited to, certification proceedings, collective bargaining, collective agreement administration, labour arbitration, unfair labour practice complaints, strikes and picketing, individual employment contracts, wrongful dismissal, and employment related litigation, the administration of employee benefit plans, workers' compensation, occupational health and safety, employment standards, employment insurance, pay equity, rights of individual employees, rights of unions and union members, employment discrimination, and all matters arising out of applicable labour law or employment law statutes and practice before applicable tribunals, including courts.

Designation

2. An applicant who is certified as a specialist in labour and employment law may be identified as a *Certified Specialist (Labour and Employment Law)*.

Achieving Specialist Certification in Labour and Employment Law

3. 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;
 - Professional Standards; and
 - Application Fee.
4. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in labour and employment law:
 - (a) averaged over the 5 years of their recent experience, applicants will have devoted a minimum of 30% of their practice concentration to labour and employment law; and
 - (b) during the 5 years of recent experience, applicants (i) will have attained broad and varied experience and a mastery of substantive law and procedures in the area and (ii) will have met the experience requirements below.
5. If applicants do not entirely meet the experience requirements, they may apply to the Law Society for consideration of their individual circumstances or their related (non-practice) skills. Consideration will be given in exceptional circumstances where applicants have:
 - (a) limited their practice in recent years to a particular area of labour and employment law 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, 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 labour and employment law, 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 6, 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 drawn, references from peers, samples of writing, and a complete list of publications.
6. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area.

Labour and Employment Law Experience

7. During the 5 years of their recent experience, applicants must have demonstrated the labour and employment law skills listed in either of Parts I or II (or a combination thereof), and in Part III, below. Applicants may demonstrate this by way of 1 of the following 2 routes:
- Route 1:** Applicants must have performed the tasks in at least 5 of the 6 categories listed in Part I, 1 of 3 categories in Part II and in at least 5 of the 10 categories listed in Part III.
- Route 2:** Applicants must have performed the tasks in at least 2 of 6 categories in Part I, 2 of the 3 categories listed in Part II and in at least 7 of the 10 categories listed in Part III.
8. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the **categories** below. The applicants should identify the tasks that they have handled with sufficient frequency to have developed demonstrable expertise with respect to the area. Applicants must submit these Standards with their application package, along with any supplementary information required in the Standards.

Notes:

Where a reference is made in a *given* category to a specific number of matters, each matter must be a separate client matter altogether (not different aspects of the same client matter). Different aspects of the same client matter may be counted under different categories; however, no aspect of a client matter may be counted twice.

The definitions of advise, appear, and act as identified in this document are as follows:

Advise – To provide an opinion.

Appear – To act as lead counsel in a matter that proceeds to a hearing.

Act – To make substantial representations, including by advising or appearing.

PART I

Category 1. Advice, Labour Relations and Collective Bargaining

Advised employers or unions in at least **30 matters** concerning their rights and obligations under Ontario's *Labour Relations Act, 1995* the *Canada Labour Code, 1985* or analogous labour relations-related Ontario and federal statutes concerning labour relations and collective bargaining matters.

Category 2. Lead Counsel, Bargaining Rights and Unfair Labour Practices

Appeared as lead counsel on behalf of employers or unions **in at least 15 matters** concerning:

bargaining rights of a trade union (applications for certification or termination of bargaining rights or successor or related employers);

OR

unfair labour practice proceedings before the Ontario Labour Relations Board, the Canada Industrial Relations Board, or analogous Ontario or federal labour relations tribunals;

OR

the construction industry provisions of Ontario's *Labour Relations Act, 1995* in matters involving jurisdictional disputes, sector determinations, or accreditation.

OR

Acted on behalf of employers or unions **in at least 5 matters** concerning the acquisition or termination of bargaining rights and appeared as lead counsel on behalf of employers or unions **in at least 10 matters** concerning the bargaining rights of a trade union (applications for certification or termination of bargaining rights or successor related employers).

Category 3. Collective Bargaining

Acted as a negotiator on behalf of an employer or a union **during at least 5 sets** of collective bargaining negotiations (include appearances as lead counsel in interest arbitration proceedings).

OR

Acted as an advisor to an employer or union negotiator **during at least 15 sets** of collective bargaining negotiations.

Category 4. Arbitrations

Appeared as lead counsel on behalf of employers or unions **in at least 25** grievance arbitration hearings before arbitrators or arbitration boards.

Category 5. Labour Litigation in the Courts

Appeared as lead counsel to employers or unions **in at least 15 different court proceedings**, comprising judicial review or appeals of decisions of labour relations tribunals or proceedings for injunctions to enjoin unlawful picketing or strike activities or in similar court proceedings raising labour law issues.

Category 6. Advice to Employees in Labour Matters

Appeared as lead counsel on behalf of employees in **at least 25 matters** that pertained to an employee's involvement in labour relations and collective bargaining matters (Category 1), bargaining rights and unfair labour practices (Category 2), arbitrations (Category 4) or labour litigation (Category 5).

PART II

Category 1. Employment Litigation in Courts

Appeared as lead counsel for employees or employers **in at least 15 matters** in actions, applications, judicial reviews, or appeals related to (i) wrongful dismissal, (ii) restrictive covenants, (iii) post-employment actions by former employees, (iv) employee rights under employment statutes, (v) actions against or by officers, or (vi) disputes involving employees who are shareholders.

Category 2. Employment Standards

Appeared as lead counsel **in at least 15 hearings** before an employment standards officer appointed under Ontario's *Employment Standards Act, 2000* or in an appeal from the decision of an employment standards officer to the Ontario Labour Relations Board.

Category 3. Drafting, Employment Policies and Practices

Drafted for employers **at least 15 different types of employment-related** contracts, policies and practices (e.g., employee handbook, dress code, social media policy, standard employment contracts, policy prohibiting harassment and discrimination, anti-nepotism policy).

Part III

Category 1. Advice, Employment Standards

Advised employers, unions or employees in at least **30 matters** concerning their rights and obligations under Ontario's *Employment Standards Act, 2000* or analogous employment-related Ontario and federal statutes concerning employment relationships and standards.

Category 2. Occupational Health and Safety

Advised employers, unions, or employees **in at least 10 matters** concerning their rights and obligations under the *Occupational Health and Safety Act, 1990* or the *Canada Labour Code, 1985*.

OR

Appeared as lead counsel on behalf of employers **in at least 5 matters** under the *Occupational Health and Safety Act, 1990* or the *Canada Labour Code, 1985*.

Category 3. Pay Equity

Advised employers, unions, or employees **in at least 5 matters** concerning their rights and obligations under, or in relation to the *Pay Equity Act, 1990* or equivalent legislation.

OR

Appeared as lead counsel **in at least 3 hearing** before the Pay Equity Hearings Tribunal, or an equivalent tribunal, or in proceedings under, or in relation to *Pay Equity Act, 1990* or equivalent legislation.

Category 4. Human Rights Applications

Advised employers, unions, or employees **in at least 20 matters** concerning their rights and obligations under Ontario's *Human Rights Code, 1990* or the *Canadian Human Rights Act, 1985*.

OR

Appeared as lead counsel **in at least 5 hearings** before a human rights tribunal established pursuant to Ontario's *Human Rights Code, 1990* or the *Canadian Human Rights Act, 1985*.

Category 5. Workplace Safety and Insurance

Advised employers, unions, or employees **in at least 15 matters** concerning their rights and obligations under the *Workplace Safety and Insurance Act, 1997* or equivalent legislation.

OR

Appeared as lead counsel **in at least 3 hearings** before a Workplace Safety and Insurance Appeals Tribunal.

Category 6. Employee Benefits Cases

Advised employers, employees, unions, or trust funds **in at least 5 matters** concerning their rights and obligations under the federal *Pension Benefits Standards Act, 1985* or Ontario's *Pension Benefits Act, 1990*, the federal *Employment Insurance Act, 1996* or other employee benefits-related Ontario or federal statutes.

Category 7. Workplace Investigations

Advised employers, unions, or employees **in at least 10 matters** concerning their rights and obligations in regards to workplace investigations.

OR

Conducted **at least 10** workplace investigations as a third party neutral investigator.

Category 8. Professional Discipline

Advised licensees **in at least 10 employment-related matters** concerning their rights and obligations pursuant to legislation governing self-regulating professions.

OR

Appeared as lead counsel in at least **3 hearings** before a tribunal of a regulatory body governing self-regulating professions.

Category 9. Adjudication and Mediation

Acted **in at least 25 matters** either as a sole arbitrator or member of a board of arbitration appointed under a collective agreement, or as an adjudicator on a federal or Ontario administrative tribunal with jurisdiction over labour and employment matters, or the governance of professions, or as a mediator in wrongful dismissal disputes.

Category 10. Other Labour/Employment Related Proceedings

Advised employers, employees, or unions of their rights and obligations under other employment or labour related legislation, with sufficient frequency to have developed demonstrable expertise in that legislation. Please specify:

References

9. Applicants must submit 4 references from legal practitioners 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 Labour and Employment Law Experience. At least one of these references should be from opposing counsel. **Applicants must provide to the referees a copy of the completed Standards to let them know which categories in the Standards they have selected to demonstrate their experience.**
10. Applicants should not include as a referee: judges, partners, associates, co-workers, employers, employees, relatives, 3rd party neutrals, members of the Certified Specialist Board, benchers, or employees of the Law Society.
11. The Statements of Reference must be submitted directly to the Law Society Certified Specialist Program via email to: certspec@lso.on.ca (*preferred method*), or via mail to: 130 Queen St W., Toronto ON, M5H 2N6

Application Assessment

12. The Society will consider the totality of an applicant's practice in labour and employment law, the applicant's professional development report, and references.
13. 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.
14. Applicants may be required to provide additional information to the Law Society facilitate the assessment process.
15. The Law Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.