

## CERTIFIED SPECIALIST PROGRAM

### Standards for Certification

# Criminal Law

### Definition of Criminal Law Specialty

1. Criminal law is the practice of law dealing with the prosecution, defence (“Trial Advocacy”) and appeals (“Appellate Advocacy”) of criminal law, quasi criminal or related matters before all levels of courts and other forums.

### Designation

2. An applicant who is certified as a specialist in criminal law may be identified as a *Certified Specialist (Criminal Law)*.

### Achieving Specialist Certification in Criminal 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 criminal law:
  - (a) averaged over the 5 years of their recent experience applicants will have devoted a minimum of 30% of their practice concentration to criminal law; and
  - (b) during the 5 years of their recent experience applicants will have attained broad and varied experience and a mastery of substantive law, practices and procedures in the area, and comply with the Criminal Law Experience requirements set out below.
5. 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 will be given in exceptional circumstances where applicants have:
  - (a) limited their practice in recent years to a particular area of criminal 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, 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 criminal 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/or research, 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.

## Criminal Law Experience

7. During the 5 years of their recent experience applicants must have performed the tasks set out below as follows:

Route 1: Applicants whose criminal law practice is primarily in trial advocacy must have performed tasks listed in Part I.

Route 2: Applicants whose criminal law practice is primarily in appellate advocacy must have performed tasks listed in Part II.

Route 3: Applicants whose criminal law practice combines trial and appellate advocacy must have performed a combination of tasks listed in Part I and Part II.

8. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their criminal law experience and include the Standards with their application package, along with any supplementary information required in the Standards.
9. It is recognized that in some areas of the province certain matters are more prevalent than others.

## Part I: Criminal Trial Advocacy Experience

### (a) Types of Offences:

The applicant has prosecuted or defended matters in at least 10 of the following categories of offences:

Controlled Drugs and Substances:

- trafficking, possession for the purposes
- importing, manufacturing

Sexual offences:

- involving children, including sexual interference/invitation to sexual touching, luring, procuring
- involving adults
- making/distributing/making available child pornography

Motor vehicle offences:

- Criminal negligence/dangerous driving causing death/bodily harm/fail to remain involving death/bodily harm

Homicides and attempts:

- First degree murder
- Second degree murder
- Manslaughter
- attempted murder

Robbery, extortion

Property offences

Theft, fraud, possession over \$5000

Breach of trust

Secret commissions

Forgery/uttering

Firearms offences

- sale/import/export firearm
- discharge/use of firearm during commission of indictable offence

Offences related to the administration of justice

- perjury, obstruct justice

Offences pursuant to the *Youth Criminal Justice Act* in which the Crown applied for:

- An adult sentence (s.64)
- An intensive rehabilitative custody and supervision order (s.42(7))

aggravated assault, criminal harassment, forcible confinement, kidnapping

Offences relating to proceeds of crime  
Arson, mischief endangering life  
Criminal organization offences  
Human trafficking offences  
Conspiracy to commit an indictable offence  
Tax evasion and Customs Offences  
Other, e.g. disorderly houses, gaming and betting offences, invasion of privacy

**(b) Complex Trial Issues:**

The Applicant has been involved in 20 trials in which one or more of the following issues have been raised:

Not criminally responsible by reason of mental disorder/diminished capacity to form intent;  
Vetrovec warning  
Co-conspirator's exception to hearsay rule  
Commission evidence/evidence by video-link  
Severance of counts  
Severance of accused  
Challenge for cause  
Change of venue  
Stay of proceedings for abuse of process  
Informer privilege  
Application for mistrial/recusal  
Jury taking view of scene  
"Mr. Big" investigation  
Entrapment  
Mistaken belief as to age/consent  
Fitness to stand trial

**(c) Contested Trials and Preliminary Hearings:**

The applicant has conducted at least 100 contested trials or contested preliminary hearings, of which a minimum of 20 trials were conducted in the Superior Court of Justice.

Trials conducted before judge and jury	(length of trials)
Trials conducted before judge only	(length of trials)

If the applicant does not meet the minimum numerical requirement for contested trials, the applicant must provide, on a separate sheet, a detailed description of the circumstances that justify the exemption.

**(d) Complex Sentencing Issues:**

The applicant has experience in dealing with the following:

Dangerous offender  
Long-term offender  
Gladue reports  
Psychiatric assessments for purpose of sentence  
Risk assessments/psychological testing/phallometric testing  
FASD/ADHD diagnoses

**(e) Bail**

The applicant has conducted at least 20 Superior Court bail hearings or bail reviews

**(f) Evidentiary Issues: Applications, Voir Dires and Expert Evidence**

The applicant has conducted at least 25 trials involving applications, voir dires or expert evidence on one or more of the following issues:

Similar fact

Statement:

Voluntariness

Charter ss.7, 10

Hearsay:

Pursuant to K.G. B.

Pursuant to principled exception

Other exceptions

s. 715.2, 715.2

Expert evidence:

Forensic science (e.g. biology, toxicology, fingerprint, ballistics)

Forensic medicine (e.g. pathology, pediatrics, emergency, neurology)

Psychiatry/psychology

Accident reconstruction/forensic engineering

Other (please specify)

The applicant has conducted at least 25 Charter applications with experience in at least 6 of the following:

Disclosure

Search and seizure:

Warrantless search

Search with warrant

Facial challenge to validity of warrant

Dawson/Garafoli

Investigation, detention or arrest issues:

s.9 - arbitrary detention

s.10(a) information as to reason for arrest/detention

s.10(b) right to counsel

s.11(b) delay

s. 7 abuse of process

s.13- privilege against self-incrimination

challenge to mandatory minimum sentence

challenge to constitutional validity of legislation

The applicant has conducted at least 3 of the following categories of applications:

Extraordinary remedies (e.g. certiorari, prohibition)

s.278 third party records

Wiretap:

Facial validity of authorization

Garafoli

S. 276.1 Criminal Code

Extradition

**(g) Other Trial Advocacy Experience (Optional): Experience in other forums will be considered by the Society in assessing the applicant's substantial involvement in criminal law.**

The applicant has represented clients in the following (indicate number of occasions on which applicant has appeared):

Summary Convictions Appeals Court

Ontario Court of Appeal

Supreme Court of Canada

Ontario Review Board (ORB)

Coroner Inquests

Public Inquiries  
Federal or Provincial Parole Board  
Criminal Injuries Compensation Board  
Professional discipline tribunal  
Provincial Offences Court:

- *Highway Traffic Act* - careless driving involving death/serious injury;
- *Environmental Protection Act*;
- *Occupational Health and Safety Act*
- *Retail Sales Tax Act*

**(h) Reported Decisions**

Include citations for reported decisions in which applicant appeared as trial counsel

**(i) Case Descriptions**

Briefly describe on a separate sheet 5 contested trials involving issues of substantial complexity in which applicant appeared as lead counsel.

**Part II: Criminal Appellate Advocacy Experience**

**(a) Appeals**

Over the duration of the applicant's criminal law practice the applicant has conducted at least 25 contested appeals, at least 15 of which related to acquittal or conviction.

Over the 5 years of recent experience the applicant has conducted at least 15 indictable appeals or appeals to the Court of Appeal on summary conviction matters.

Of the 15 indictable appeals or appeals to the Court of Appeal on summary conviction matters, at least 10 related to conviction or acquittal.

Of the 15 indictable appeals or appeals to the Court of Appeal on summary conviction matters, identify the number of appeals in which:

- applicant appeared for the appellant
- applicant appeared for the respondent
- the appeals were with respect to sentencing only

**(b) Applications for Bail Pending Appeal**

The applicant has conducted at least 25 bail pending appeal applications in indictable or summary conviction appeals.

**(c) Supreme Court of Canada**

The applicant has brought at least 5 applications for leave to appeal to the Supreme Court of Canada.

The applicant has appeared before the Supreme Court of Canada. Indicate the number of appearances:

Briefly describe the nature of proceeding or provide the relevant citation.

**(d) Case Descriptions**

Briefly describe on a separate sheet 5 contested cases where the applicant acted as lead counsel and in which there were issues of substantial complexity.

**(e) Other Appellate Advocacy Experience:**

Summary Conviction Appeals:

- the applicant appeared for the appellant (indicate number)
- the applicant has appeared for the respondent
- the appeal was against sentence only

Other Applications and Hearings: Indicate below what experience the applicant has had conducting any of the following matters:

- Judicial reviews in administrative or quasi-criminal matters
- Appeals to the Ontario Court of Appeal in section 469 bail matters (murder)
- Appeals in extradition or related proceedings
- Appeals from Ontario Review Board decisions
- Other, please indicate.

**Professional Development**

10. Applicants must attest to the completion of not less than 50 hours of self-study. The 50 hour professional development requirement may be met through methods such as, but not limited to:
- (a) teaching or being guest lecturer on a course in the specialty area;
  - (b) writing and editing of published books or articles relating to the specialty area;
  - (c) graduate or post-graduate studies in the specialty area;
  - (d) involvement in the development and/or presentation of professional development programs related to the specialty area;
  - (e) involvement in the development of policy related to the specialty area.
  - (f) Provide particulars of involvement in activities listed in 10(c)-(g) above.

**References**

11. 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 Criminal Law Experience. Applicants must provide to the referees a copy of the completed Standards to let them know which categories they have selected to demonstrate their experience.
12. Applicants should not include as reference: judges, partners, associates, co-workers, employers, employees, relatives, 3<sup>rd</sup> party neutrals, members of the Certified Specialist Board, benchers or employees of the Law Society.
13. The Statements of Reference must be submitted directly to the Law Society Certified Specialist Program via email to: [certspec@lso.ca](mailto:certspec@lso.ca) (*preferred method*), or via mail to: 130 Queen St W., Toronto ON, M5H 2N6.

**Application Assessment**

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