

CERTIFIED SPECIALIST 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.

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)**.

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

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
 - 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

- 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

- a detailed description of their individual circumstances or related (non-practice) skills, and
- 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 check the box 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

- accurately understand, articulate, and convey the Indigenous perspective as manifested in or related to each matter undertaken by a lawyer, and
- 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 by checking each box 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 checking the box 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 check the box 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 check the box 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. Check all applicable types of 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. Indicate 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. Indicate 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 checking the box 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 checking the box 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 check the box 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 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).

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, third party neutrals, members of the Certified Specialist Board, benchers, or employees of the Law Society.
34. The four Statements of Reference forms must be submitted to the Law Society in one of the following formats:
 - written hard copy in a sealed envelope – mailed directly to the Law Society's Certified Specialist Program;
 - written hard copy in a sealed envelope, with the signature of the referee along the seal – included in the application package sent by the applicant; or
 - emailed directly to the Certified Specialist Program (certspec@lso.ca) by the referee – provided that nobody else copied on the email

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.