



CERTIFIED SPECIALIST PROGRAM

Standards for Certification

Bankruptcy & Insolvency Law

Definition of Bankruptcy and Insolvency Specialty

1. Bankruptcy and Insolvency law is the practice of law dealing with the rights and obligations of debtors, creditors and third parties in insolvency situations.

Designation

2. An applicant who is certified as a specialist in Bankruptcy and Insolvency Law may be identified as a *Certified Specialist (Bankruptcy & Insolvency)*.

Achieving Specialist Certification in Bankruptcy and Insolvency

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 Bankruptcy and Insolvency Law:
 - a) averaged over the 5 years of their recent experience applicants will have devoted a minimum of 30% of their practice concentration to bankruptcy and insolvency 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 Bankruptcy and Insolvency 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 circumstances where applicants have:
 - a) limited their practice in recent years to a particular area of bankruptcy and insolvency 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 bankruptcy and insolvency 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.

Bankruptcy and Insolvency Law Experience

7. The substantial involvement in bankruptcy and insolvency law required to be demonstrated will normally require the applicant to have **actively participated in a total of at least 50 of these functions, tasks and procedures relating to the following three categories**. Participation in more than the required number of functions, tasks and procedures may be required to demonstrate the required depth and breadth of experience and, in exceptional circumstances, the performance of fewer than the required number of functions, tasks and procedures in the prescribed categories may be accepted as full compliance of this requirement. While it is not mandatory, it ordinarily will be expected that the applicant will have demonstrated a broad experience by having performed a reasonable number of the functions listed under each of the three sub-categories.

Bankruptcy and Other Forms of Liquidation

Tasks relating to non-judicial and judicial liquidations pursuant to the *Bankruptcy Act and the Bankruptcy and Insolvency Act* (both hereafter the "Bankruptcy Act"), the *Winding Up Act* or related or similar legislation both in and outside Canada.

- Prior to the commencement of the proceeding, advised on the rights, liabilities and procedures respecting liquidation, the claims that would or would not be released, and the steps that might, should or should not be taken.
For a debtor a director, officer or guarantor of a debtor
- Acted in a voluntary liquidation whether statutory or otherwise.
For a debtor a liquidator
- Acted in an uncontested proceeding for involuntary liquidation.
For a debtor a creditor a trustee or liquidator
- Acted in a contested proceeding for an involuntary liquidation.
For a debtor a creditor a trustee, liquidator or interim receiver
- Acted in an examination by an official receiver.
For a debtor
- Acted in an examination on behalf of a trustee or liquidator.
For a debtor a creditor a trustee or liquidator
- Acted at a meeting of creditors.
For a debtor a creditor a trustee or liquidator
- Acted at a meeting of inspectors.
For a trustee an inspector
- Acted in the administration of an estate including advising with respect to rights, duties, remedies, options, negotiations, representations and other actions or proceedings related thereto.
For a debtor a creditor a trustee, liquidator or interim receiver
- Acted in proceedings relating to a discharge of a debtor.
For a debtor a creditor a trustee or liquidator
- Acted in proceedings relating to the discharge of a trustee, liquidator or interim receiver.
For a debtor a creditor a trustee or liquidator
- Acted on the passing of accounts of a trustee, liquidator or interim receiver or in proceedings attacking the quantum of compensation of a trustee, liquidator or interim receiver.
For a creditor or other party a trustee, liquidator or interim receiver

- Acted in criminal or quasi-criminal proceedings related to or arising out of insolvency.
For a debtor
- Acted in proceedings involving creditors as a class.
For a creditor(s) a trustee or liquidator
- Acted to draft and submit a proof of claim.
For a creditor
- Acted to claim property in the possession of a debtor where liquidation proceedings were commenced and to draft and file a proof of claim for recovery of that property.
For a creditor
- Acted in advising upon the validity of a proof of claim and drafting disallowance of proof of claim.
For a trustee or liquidator
- Acted in a proceeding for the benefit of the estate where the trustee or liquidator has refused or neglected to take the proceeding.
For a creditor or other party a trustee or liquidator
- Acted in an application for or proceeding by trustee or liquidator for the direction of the court in relation to any matter respecting the administration of the estate.
For a creditor or other party a trustee or liquidator
- Acted in a contested fraudulent conveyance proceeding.
For a creditor or other party a trustee or liquidator
- Acted in a contested fraudulent preference proceeding.
For a creditor a trustee or liquidator
- Acted in a proceeding attacking a settlement.
For a recipient of the settled property a trustee
- Acted in a contested reviewable transaction proceeding.
For a creditor or other party a trustee
- Acted in drafting a substantial opinion or memorandum respecting matters related to the administration of the estate in liquidation.
For a creditor a trustee a trustee, liquidator or interim receiver
- Acted in an investigation or inquiry respecting the conduct, dealings, and transactions of a debtor.
For a debtor
- Acted in a claim under wage earner protection legislation.
For a wage earner an employer
- Acted in drafting tender documents.
For a trustee or liquidator
- Acted in proceedings to recover property of an insolvent estate located in Canada.
For a trustee or liquidator
- Acted in proceedings to recover property of an insolvent estate located outside Canada.
For a trustee or liquidator
- Acted in matters respecting priorities and statutory liens.
For a creditor a trustee or liquidator

- Acted in advising on the Canadian law of liquidation or drafting a substantial opinion or memorandum respecting the same.
For a foreign representative or party
- Acted in advising on foreign laws of liquidation or drafting a substantial opinion or memorandum respecting the same.
For a Canadian trustee or liquidator
- Acted in proceedings as an expert witness and giving evidence respecting Canadian or foreign law respecting liquidations.
For any party
- Acted in proceedings to disclaim a lease.
For a landlord a trustee or liquidator
- Acted in proceedings to assign a lease which is the property of an estate.
For a trustee or liquidator a landlord
- Acted in respect of matters under the *Employment Standards Act* relating to an insolvent estate.
For a wage earner a trustee or liquidator
- Acted in respect of matters under the *Income Tax Act* relating to an insolvent estate.
For a trustee or liquidator
- Acted in proceedings in which the court was asked to review, rescind or vary an order made by it, or on an appeal from an order of judgement or in any other judicial proceeding not included in any of the other categories of bankruptcy or insolvency proceedings herein listed.
For a creditor or other party a trustee or liquidator
- Acted in a proceeding not listed herein and commenced by trustee or liquidator against a guarantor, officer or director of a debtor or other party.
For a guarantor, officer or director of a debtor a trustee or liquidator another party

Proposals and Other Forms of Reorganization

Tasks relating to Part III of the *Bankruptcy Act* and the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, the *Winding Up Act*, Business Corporation Acts and *Farm Debt Review Act*, related and similar legislation or in non-judicial workouts whether performed within or without Canada:

- Acted in negotiating, formulating or implementing a non-judicial workout.
For a debtor a creditor
- Acted in negotiating, formulating or implementing a proposal under Part III of the *Bankruptcy and Insolvency Act*.
For a debtor a creditor a trustee
- Acted in negotiating, formulating or implementing a plan under the *Companies' Creditors Arrangement Act*.
For a debtor a creditor
- Acted in negotiating, formulating or implementing a plan under a *Business Corporations Act*.
For a debtor a creditor
- Acted in proceedings under the *Farm Debt Review Act*.
For a debtor a creditor
- Acted in negotiating, formulating or implementing a plan under other Canadian or foreign legislation.
For a debtor a creditor

- Acted in the appointment of a judicial receiver either interim or otherwise.
For a debtor a creditor
- Acted in the appointment of a monitor either judicially or contractually.
For a debtor a creditor
- Acted in negotiating a standstill agreement contractually.
For a debtor a creditor
- Acted in proceedings to obtain a stay of proceedings or in proceedings related thereto.
For a debtor a creditor
- Acted in ancillary or concurrent proceedings within or without Canada.
For a debtor a creditor a trustee
- Acted in other reorganization proceedings within or without Canada.
For a debtor a creditor a trustee
- Acted in proceedings under the Bulk Sales Act.
For a debtor a creditor a purchaser
- Acted in drafting a substantial memorandum of law or opinion respecting reorganizations.
For a debtor a creditor or other person.

Creditors' Rights and Remedies

Tasks arising outside the context of the *Bankruptcy Act*, the *Bankruptcy and Insolvency Act* and the *Winding Up Act* or related or similar legislation, normally arising in circumstances which include the insolvency of the debtor, and involving the rights of creditors and debtors:

- Acted in the contractual appointment of a receiver.
For a debtor a creditor
- Acted in proceedings for the judicial appointment of a receiver.
For a debtor a creditor
- Acted in Mareva injunction or similar proceedings.
For a debtor a creditor
- Acted in mortgage enforcement proceedings.
For a debtor a creditor
- Acted in proceedings under the *Personal Property Security Act*.
For a debtor a creditor
- Acted in proceedings under the *Bank Act*.
For a debtor a creditor
- Acted in the enforcement by a landlord of his right of distress or forfeiture of lease or in the assignment of a lease.
For a tenant a landlord
- Acted in *Construction Lien Act* proceedings.
For a debtor a creditor a mortgagee or other party
- Acted in an action against a guarantor of insolvent debtor.
For a creditor a guarantor

- Acted in drafting a substantial memorandum of law or opinion relating to creditors' rights and remedies generally.
For a debtor a creditor
- Acted in proceedings to enforce any other rights and remedies of a creditor against an insolvent debtor.
For a debtor a creditor
- Acted in proceedings relating to the actions of a receiver.
For a debtor a creditor

Professional Development

8. Applicants must attest to the completion of the professional development requirements.

The requirements are:

- a) not less than 50 hours of self-study; and
- b) not less than 12 hours of relevant professional development, in the two years immediately preceding the date of application date and any other year within the five 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 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;
- g) involvement in the development of policy related to the specialty area.

References

9. Applicants must submit 4 references from legal practitioners eligible to practise law in Ontario and one licensed trustee in bankruptcy, 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 Bankruptcy and Insolvency Experience above.
10. Applicants should not include as 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.
11. The Statements of Reference must be submitted with the application to the Law Society in confidential envelopes which have been sealed, signed and dated by the referees. Envelopes which have been opened or appear to have been tampered with will not be accepted.

Application Assessment

12. The Society will consider the totality of an applicant's practice in the specialty area, 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 Society to facilitate the assessment process.
15. The Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

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