



## CERTIFIED SPECIALIST PROGRAM

### Standards for Certification

# Corporate and Commercial Law

### Definition of Corporate and Commercial Law Specialty

1. The practice of corporate and commercial law encompasses the provision of legal advice to and the representation of clients engaged in corporate and commercial activities and includes but is not limited to the creation of business structures, the termination of business existence, the negotiation and formation of contracts, corporate and business reorganizations, mergers and acquisitions, corporate governance, securities, private equity and debt financing, creditor and debtor rights and remedies, leasing, franchising, information technology, non -share corporations, tax related matters, representation before administrative tribunals and the resolution of business disputes including, alternative dispute resolution and support for related litigation.

### Designation

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

### Achieving Specialist Certification in Corporate and Commercial 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 corporate and commercial law:
  - a) averaged over the 5 years of their recent experience applicants will have devoted a minimum of 30% of their practice concentration to corporate and commercial law; and
  - b) during the 5 years of recent experience applicants will have attained broad and varied experience and a mastery of substantive law and procedures in the area, and comply with the Corporate and Commercial 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 corporate and commercial 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, regulations and/or government policy, participating as an active member on boards or tribunals, or on the executive of any organization related to corporate and commercial law or any other experience that the applicant considers 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.

### **Corporate and Commercial Law Experience**

- 7. During the 5 years of their recent experience applicants must have performed at least 120 tasks in at least 8 of the 15 categories enumerated below.
- 8. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their corporate and commercial law experience and include the Standards with the application package, along with any supplementary information required in the Standards.
- 9. It is recognized that the items listed are not of equal complexity and will take that into consideration. Consideration will also be given to the special circumstances of the applicant in accordance with paragraph 5 above when assessing an application. Applicants may also submit details of any tasks that they have performed during the period of recent experience in addition to the tasks listed below.

### **Category 1. Creation of Business Structures**

Advise a client on the difference between a sole proprietorship, a joint venture, a partnership, a limited partnership and a corporation

Advise a client on the jurisdiction of incorporation and extra-provincial licenses

Represent a client in negotiating/drafting a shareholders' agreement

Advise a client on the capital structure for a corporation

Advise a client on the tax consequences of using different business structures

Represent a client in negotiating/drafting a partnership agreement

Represent a client in negotiating/drafting a limited partnership agreement

Advise a client on the considerations involved in selecting corporate and business names

Prepare a stock option plan for a non-offering corporation

Advise a client with respect to alternative compensation arrangements, including deferred profit sharing plans and phantom stock options

Advise a client with respect to the need for an indemnity agreement

Prepare an indemnity agreement

Advise a client with respect to the corporate adoption of a pre-incorporation contract

Advise a client on trademark and/or copyright issues related to a corporate or operating name

### **Category 2. Corporate and Business Reorganizations**

Work with auditors and other advisors (e.g., tax, pension) to develop a reorganization plan

Advise a client on the advantages and disadvantages of a proposed plan and alternatives to a proposed reorganization plan

Prepare a management information circular, proxy, and a notice of meeting for a special meeting of the shareholders to approve the reorganization plan

Negotiate with creditors regarding a reorganization plan

Advise a client with respect to the implications of insolvency and seeking further guidance from another professional that can help with *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, and/or the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, process

Advise a client with respect to the renegotiation of existing leases of real property and/or equipment

Advise a client with respect to any required regulatory approvals necessary to implement a proposed reorganization plan

Review various existing contractual agreements (e.g., franchise and licence agreements) to determine contractual consequences of the proposed reorganization plan

Advise a client with respect to collective agreements and employment agreements with management

Prepare an amalgamation agreement

Prepare articles of reorganization

Advise a client with respect to a plan of arrangements under corporate statutes, including the need for shareholder and court approval

Advise a client with respect to the rights of dissenting shareholders

Advise a client with respect to continuation under the laws of another jurisdiction

Advise a client with respect to importation into Ontario of a corporation incorporated under the laws of another jurisdiction

Advise a client with respect to the personal liability of directors and officers, and the availability of directors' and officers' insurance

Advise a client with respect to an estate freeze

Advise a client with respect to tax-deferred asset and share transfers

### **Category 3. Mergers and Acquisitions**

Advise a client on the structure of a mergers and acquisitions transaction (e.g., shares vs. assets, take-over bids, amalgamations)

Represent a client in negotiating/drafting a confidentiality and non-disclosure agreement with respect to a mergers and acquisitions transaction

Advise a client on the tax implications of a mergers and acquisitions transaction

Represent a client in negotiating/drafting a letter of intent

Advise a client on financing alternatives for the transaction

Perform legal due diligence on an acquired business and/or respond to due diligence issues in connection with a mergers and acquisitions transaction

Advise a client with respect to the requirements for, and/or prepare notifications under, the *Competition Act*, R.S.C., 1985, c. C-34, and the *Investment Canada Act*, R.S.C., 1985, c. 28 (1<sup>st</sup> Supp.)

Represent a client in negotiating/drafting a share purchase agreement

Represent a client in negotiating/drafting an asset purchase agreement

Represent a client in negotiating/drafting a non-competition agreement

Represent a client in negotiating/drafting an employment agreement

Represent a client in negotiating/drafting a consulting agreement

Advise a client with respect to possible compliance requirements and/or the need to deal with assets located in other jurisdictions, and instruct local counsel as required

Advise a client with respect to employment law matters, including severance and notice requirements

Negotiate/prepare a closing agenda and represent a client at closing

Advise a client on regulatory compliance as required

#### **Category 4. Corporate Governance**

Advise a Board of Directors on procedural issues

Advise a Board of Directors and officers on liability and director and officer insurance

Advise a client on a notice of meeting, information circular and proxy for an annual and/or special meeting of shareholders

Prepare a notice of meeting, information circular and proxy for an annual and/or special meeting of shareholders

Prepare a chairman's agenda for a meeting of shareholders

Advise a committee(s) of the Board

Prepare or review draft minutes of a meeting of the directors, shareholders and committees of the Board

Advise a client on corporate governance matters

Advise shareholders on shareholders' rights and remedies

Advise on conflict of interest issues

Advise a client with respect to the requirements to, and/or complete public filings of, changes in corporate officers and directors, and annual returns

#### **Category 5. Securities**

Represent a client in negotiating/drafting an engagement letter

Represent a client in negotiating/drafting a term sheet

Prepare a due diligence requisition list and/or respond to due diligence requisitions

Conduct corporate searches and perform legal due diligence on business to be financed in connection with a securities transaction

Represent a client in negotiating/drafting an underwriting agreement for a public offering

Represent a client in negotiating/drafting an agency agreement for a private placement

Represent a client in drafting a prospectus and obtaining a receipt for the same

Represent a client in negotiating/drafting an offering memorandum

Represent a client in negotiating/drafting a selling group agreement

Represent a client in negotiating/drafting a subscription agreement

Represent a client in negotiating/drafting a broker warrant/compensation option

Represent a client in negotiating/drafting a convertible debenture

- Represent a client in negotiating/drafting a warrant/special warrant certificate
- Represent a client in negotiating/drafting an escrow agreement with respect to a securities transaction
- Represent a client in negotiating/drafting a trust indenture with respect to a securities transaction
- Represent a client in negotiating/drafting a soliciting dealer manager agreement
- Represent a client in negotiating/drafting a lock-up or support agreement
- Prepare an offering circular
- Represent a client in negotiating/drafting a letter of transmittal
- Prepare a material change report
- Prepare, or advise a client with respect to, a legal opinion to be provided on behalf of an underwriter or company counsel
- Represent a client in negotiating/drafting a dealer/manager agreement
- Prepare a shareholder rights' plan
- Prepare an issuer bid circular
- Advise a client on the available securities law exemptions
- Advise a client on insider reporting obligations
- Advise a client on continuous disclosure obligations
- Advise a client on related party transactions
- Prepare an application for an exchange listing
- Prepare a stock option plan for a reporting issuer and obtain the necessary regulatory approvals
- Advise a client on take-over bid requirements
- Advise a client on registration requirements
- Prepare an application for exemption from an Ontario Securities Commission requirement
- Prepare and file forms with the Ontario Securities Commission (e.g., Form 45-501F1)

## **Category 6. Debt Financing**

- Represent a client in negotiating/drafting a commitment letter regarding a loan/financing or a loan/financing agreement
- Prepare a due diligence requisition list and/or respond to due diligence requisitions in connection with a debt financing transaction
- Represent a client in negotiating/drafting a demand debenture agreement
- Represent a client in negotiating/drafting a trust indenture
- Represent a client in negotiating/drafting a debenture pledge agreement
- Represent a client in negotiating/drafting a subordination and postponement agreement
- Represent a client in negotiating/drafting a guarantee and postponement of claim
- Represent a client in negotiating/drafting a landlord consent and agreement
- Represent a client in the preparation and registration of a real property mortgage
- Represent a client in negotiating/drafting a security agreement

Represent a client in negotiating/drafting an inter-creditor and/or priority agreement

Represent a client in negotiating/drafting a release and reconveyance

### **Category 7. Private Equity Financing**

Represent a client in structuring a private equity financing transaction

Represent a client in negotiating/drafting a confidentiality and non-disclosure agreement for a proposed private equity financing transaction

Represent a client in negotiating/drafting a letter of intent in a private equity financing transaction

Conduct corporate searches and perform legal due diligence with respect to a borrower and/or respond to due diligence issues in a private equity financing transaction

Represent a client in negotiating/drafting a subscription agreement

Represent a client in negotiating/drafting share terms

Represent a client in negotiating/drafting an employment agreement

Represent a client in negotiating/drafting employee non-disclosure, non-solicitation and non-competition agreements

Advise a client with respect to the implications of financing under the *Securities Act*, R.S.O. 1990, c. S.5

### **Category 8. Creditor and Debtor Rights and Remedies**

Advise a client on the enforcement of judgments

Advise a client with respect to fraudulent conveyances or fraudulent preferences

Advise a client on asset protection alternatives

Advise a client on asset realization under the *Personal Property Security Act*, R.S.O. 1990, c. P.10

Advise a client on mortgage/security enforcement in regard to real property

Advise a client on workouts and other liquidation processes on a consensual basis with a secured lender

Represent a client in negotiating/drafting a forbearance agreement

### **Category 9. Leasing**

Represent a client in negotiating/drafting an offer to lease

Represent a client in negotiating/drafting a commercial lease

Represent a client in negotiating/drafting an assignment of lease

Represent a client in negotiating/drafting a renewal of lease

Advise a client on priorities between a landlord, a mortgagee, secured creditors and unsecured creditors

Represent a client in negotiating/drafting a sublease agreement

Represent a landlord or a tenant following the bankruptcy or insolvency of the tenant

Advise a landlord on remedies for breach of a lease

Advise a tenant on remedies for breach of a lease

Prepare the termination of lease documents

Advise a tenant on the advisability of, and/or register, a notice of lease and other related lease documents

Advise a client on the tax implications of a lease

Advise a client on the real estate law implications of a lease transaction (e.g., zoning)

### **Category 10. Franchising**

Advise a client on the creation of a disclosure statement

Prepare a franchise agreement

Prepare a master franchise agreement

Prepare a license agreement

Represent a proposed franchisee entering into a franchise agreement

Represent a client on the completion of a purchase and/or sale of a franchise

Represent a client in a franchise dispute

### **Category 11. Representation before Administrative Tribunals**

Represent a client in negotiations with respect to a matter under consideration by, or the subject of, an application to an administrative tribunal

Prepare a notice or document required to place a matter before a tribunal (e.g., notice of application, notice of appeal)

Prepare a response to documents filed by an opposing party (e.g., Reply)

Obtain discovery of documents

Prepare an application to obtain information pursuant to the applicable freedom of information legislation and rules

Advise a client with respect to the *Charter of Rights* implications of a matter that is the subject of an administrative tribunal proceeding

Advise a client with respect to obtaining reports from experts as required

Prepare witnesses for a hearing

Represent a client at a hearing

Prepare an argument for delivery at a hearing

Prepare a reply for delivery at a hearing

Advise a client with respect to appealing a decision of a tribunal

### **Category 12. Resolution of Disputes**

Advise a client with respect to the identification and clarification of the precise matter in dispute

Advise a client with respect to the various approaches to dispute resolution that are open to the client in the circumstances (e.g., arbitration, mediation, litigation), including factors such as time required and anticipated costs

Advise a client with respect to the selection of mediator

Advise a client with respect to the appointment of a sole arbitrator or members of Board of Arbitration

Prepare a client for mediation or arbitration

Advise a client with respect to obtaining reports from experts as required

Represent a client at mediation or arbitration

Advise a client with respect to an appeal of a decision of a mediator or arbitrator

### **Category 13. Information Technology**

Represent a client in negotiating/drafting a license agreement or sublicense agreement

Represent a client in negotiating/drafting software supply sales agreements

Represent a client in negotiating/drafting hardware supply sales agreements

Advise a client regarding, and/or facilitate, the filing of registrations with the Canadian Intellectual Property Office

Represent a client in negotiating/drafting system acquisition agreements

Represent a client in negotiating/drafting source code escrow agreements

Represent a client in negotiating/drafting software development agreements

Represent a client in negotiating/drafting maintenance and support agreements

Represent a client in negotiating/drafting outsourcing agreements

Represent a client in negotiating/drafting distribution agreements

Represent a client in negotiating/drafting an assignment of source code or other intellectual property

Represent a client in transferring or assigning a software licence

### **Category 14. Termination of Corporate Existence**

Advise a client on the process for, and consequences of, terminating corporate existence, including the required steps and necessary third-party/government authorizations

Prepare a notice for a special meeting of shareholders to authorize the termination of corporate existence

Prepare a special resolution of shareholders authorizing the disposition of property and filing of the articles of dissolution

Prepare a statement of intent to dissolve

Prepare articles of dissolution

Arrange for the transfer of property of shareholders who cannot be located to the Public Guardian and Trustee

Prepare an order for dissolution of a corporation

Prepare a special resolution of shareholders authorizing voluntary liquidation and dissolution

Prepare a notice to the creditors of winding-up or liquidation

Prepare a notice of motion for a court order appointing a liquidator

Prepare a winding-up order

Prepare a court order authorizing liquidation and appointing a liquidator

Prepare a notice of motion and order summoning a shareholders' meeting

Prepare a petition of a creditor under the *Winding-Up and Restructuring Act*, R.S.C., 1985, c. W-11, with a supporting affidavit



- Prepare an order of reference on winding-up
- Prepare an order appointing a permanent liquidator
- Prepare the minutes of a meeting of creditors
- Prepare a report of the chair of the meeting of the creditors to the court
- Prepare a final report of a master on winding-up
- Prepare an order discharging a liquidator

### **Category 15. Non-Share Capital Corporations**

- Advise a client with respect to the nature and purpose of a non-share capital corporation
- Advise a client with respect to an application for letters patent, including drafting objects and special provisions
- Advise a client on the implications of charitable and non-charitable statuses
- Advise a client regarding, and prepare related materials to obtain, the approval of the Public Guardian and Trustee
- Advise a client regarding, and/or prepare an application for, charitable status under the *Income Tax Act*, R.S.C., 1985, c. 1 (5<sup>th</sup> Supp.)
- Advise a Board on the special obligations of governance of a non-share capital corporation
- Advise a Board and administration with respect to the technical requirements of obtaining directors' and officers' insurance for directors and officers of a charitable corporation

### **Professional Development**

10. 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**

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 Corporate and Commercial Law Experience. Applicants must provide to the referees a copy of the Standards and let them know which categories in the Standards 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 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**

14. The Society will consider the totality of an applicant's practice in corporate and commercial law, 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 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.

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