

CERTIFIED SPECIALIST PROGRAM

Standards for Certification

Estates and Trusts Law

Definition of Estates and Trusts Law Specialty

1. The practice of estates and trusts law is the practice of law dealing with:
 - a) assisting clients to plan for incapacity and the succession of their assets, having regard for their express wishes, the nature and magnitude of their assets, the circumstances and needs of beneficiaries, the tax effects of death, and all statutes and rules of law governing these matters;
 - b) preparing the documents required to give effect to such plans - especially wills, powers of attorney and *inter vivos* trust instruments;
 - c) advising and assisting attorneys and trustees in the execution of their duties, and beneficiaries and claimants against estates and trusts of their rights;
 - d) administering estates and trusts; and
 - e) acting as counsel, or instructing counsel, in litigious matters on behalf of trustees, attorneys, beneficiaries, and claimants against estates and trusts.

Designation

2. An applicant who is certified as a specialist in estates and trusts law may be identified as a *Certified Specialist (Estates and Trusts Law)*.

Achieving Specialist Certification in Estates and Trusts 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 estates and trusts law:
 - a) averaged over the 5 years of their recent experience applicants will have devoted a minimum of 30% of their practice concentration to estates and trusts; 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 Estates and Trusts Law Experience requirements 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 estates and trusts 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 estates and trusts 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.

Estates and Trusts Law Experience

7. During the 5 years of their recent experience applicants must have:
 - a) performed tasks in at least 2 of categories 1, 2 and 3, or
 - b) acquired estates and trusts related experience as outlined in category 4.
8. Applicants are asked to place a check mark (✓) next to the categories they are selecting to demonstrate their estates and trusts law experience and include the Standards with their application package, along with their case studies, documents and any other supplemental information required in the Standards.
9. All accompanying documents must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

Category 1. Estate and Trust Planning

Mandatory requirements

- Preparation of wills
- Preparation of powers of attorney
- Development of estate plans
- Familiarity with trusts
- Familiarity with Canadian income tax legislation as it relates to estates and trusts

Case Study

Applicants must submit a case study illustrating an actual estate planning situation of above average complexity in their practice.

A case study for this purpose will consist of a summary by the applicant of the factual background and objectives of the estate plan, together with copies of the actual document or documents created to carry out the plan. The summary should not exceed 2 pages.

Some of these situations may include but are not limited to:

- severely and/or permanently incapacitated beneficiary
- adult child with creditor problems
- aged parent or dependent sibling needing support or protection
- children of a previous marriage and a new spouse

- child who works in a business and other children outside the business
- assets in foreign jurisdictions
- non-liquid assets - interests in business and real estate
- testator has substantial assets and successful adult children with children of their own
- testator's estate includes substantial shares in private company
- effective use of insurance products in estate plans including insurance trusts
- joint ownership issues

Category 2. Estate and Trust Administration [applicants will select (a) and/or (b)]

Knowledge of the tasks of the estate administration process and the ability to complete those administrative tasks when requested to do so by the estate trustee, including:

Mandatory requirements

- preparation of detailed inventory of assets and/or a plan of administration
- determining whether or not to obtain a court grant of administration
- realization and gathering of assets
- advising respecting tax compliance
- accounting and effecting distribution to beneficiaries
- passing of accounts

Case study

Applicants must submit a case study illustrating actual estate administration situations of above average complexity in their practice.

A case study for this purpose will consist of a summary by the applicant of the factual background or complexity relating to the administration together with copies of essential documents, which may include correspondence, memoranda, accounts and the like to deal therewith. The summary should not exceed 2 pages.

Some of these situations may include but are not limited to:

- grants of administration in non-typical situations (intestacy; no executor named; successive grant; grant during litigation, etc.)
- dealing with disaffected or hostile beneficiaries or beneficiaries represented by counsel
- dealing with non-liquid assets
- insolvent or quasi-insolvent estates
- quantifying executor's compensation
- non-standard tax issues such as allocations between tax-deferred entities (spouse and spousal trust) and other beneficiaries; use of Section 164(6) provisions; filing "rights or things" return
- estates with quantitatively large and diverse holdings and/or multiple beneficiaries
- quantifying liabilities, establishing reserves and making interim distributions

Advising beneficiaries, estate trustees and claimants against the estate

Mandatory requirements

- providing opinions on matters of interpretation

- advising respecting possible claims of dependants or spouses
- acting for beneficiaries in monitoring the performance and reviewing accounts of trustees
- developing agreements among beneficiaries, and between beneficiaries and the estate

Case study

Applicants must submit a case study illustrating an actual example of an advisory situation of above average complexity in their practice.

A case study for this purpose will consist of a summary by the applicant of the factual background and advice provided, together with copies of any actual resulting documentation (with confidential information omitted). The summary should not exceed 2 pages.

Some of these situations may include but are not limited to:

- Preparation of an opinion on a complex or novel area of estates and trusts law (e.g. interpretation of an instrument; interpretation of Part II of the Succession Law Reform Act; specialized income tax or corporate or business law advice respecting an estate or a trust which achieves a significant benefit)
- Reviewing a set of trustee's accounts that are beyond average complexity, advising the client regarding those accounts and dealing with the party adverse in interest
- Furnishing advice on a situation involving a potential application involving
 - support under Part V of the *Succession Law Reform Act*
 - matters under the *Family Law Act* arising on death, or
 - a constructive and/or resulting trust issue
- that is beyond average complexity or novel, dealing with the party adverse in interest
- and preparing the documentation to effect settlement prior to formal litigation.
- Furnishing advice on a matter involving a variation of trust or application of the rule in *Saunders v. Vautier*, dealing with the party adverse in interest and drafting the documentation to effect settlement prior to formal litigation

Category 3. Estate and Trust Litigation

Specialized experience in contentious estate matters in a majority of the following proceedings:

- dependant support applications
- will challenges
- trustees= litigation issues (e.g. removal of trustees, compensation)
- consent and capacity issues
- s. 44 and s. 45 and other commercial claims by and against the estate
- solicitor's negligence
- interpretation and construction issues
- inter vivos gifts and joint accounts
- mediation of estate disputes
- representing charitable interests
- variation of trusts
- contested passing of accounts
- insurance litigation

- spousal equalization claim on death
- power of attorney/guardianship litigation
- constructive trust, unjust enrichment, resulting trust and quantum meruit claims
- fiduciary litigation
- insolvency issues
- pension litigation

Applicants shall provide 5 summaries of proceedings which are of above-average complexity. Each summary shall be no longer than 3 pages. Each summary shall include one document of above-average complexity originally drafted by the Applicant, and shall also include the following information to illustrate their experience:

- issues involved in the matter
- complexity of the matter
- who represented
- type of proceeding (application, claim, motion, etc.)
- synopsis of how the 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 or tribunal
- 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

Category 4. Related Experience

Applicants may not meet the requirements of Categories 1, 2 (a or b) and 3, but are nevertheless recognized leaders in the profession who have demonstrated their **estate and trust experience** in at least two of the following:

- related practice areas such as personal and corporate taxation, charities
- teaching estates and trusts
- writing
- the trust industry
- the insurance industry
- government, boards or tribunals
- development and/or presentation of professional development programs
- research - government or private

Applicants must submit a summary of their experience, including references from the institutions from which their experience is drawn, references from peers, samples of writing and/or research, and a complete list of publications.

Case studies are not a mandatory requirement for Category 4 applications. However, applicants are encouraged to submit a case study which demonstrates the senior level at which the applicant functions and the connection to the estates and trust specialty categories 1 through 3.

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 Estates and Trusts 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.

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.

12. 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

13. The Society will consider the totality of an applicant's practice in estates and trusts law, the applicant's Professional Development Report and references.
14. 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.
15. Applicants may be required to provide additional information to the Society facilitate the assessment process.
16. The Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

Content last revised: November 27, 2007