



## CERTIFIED SPECIALIST PROGRAM Standards for Certification **Environmental Law**

### **Definition of Environmental Law Specialty**

1. Environmental Law is that branch of the practice of law pertaining to the civil, criminal, quasi-criminal, administrative and constitutional framework for the protection, restoration, conservation and management of the environment.

### **Designation**

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

### **Achieving Specialist Certification in Environmental Law**

3. Applicants must comply with the requirements for certification set out in 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 environmental law:
  - (a) averaged over the 5 years of their recent experience applicants will have devoted a minimum of 30% of their practice concentration to environmental 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 Environmental 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 environmental 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 environmental 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 of the nature of their practice in relation to the specialty area.

## **Environmental Law Experience**

7. During the 5 years of their recent experience applicants must have performed tasks in at least 2 of the 4 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 environmental law experience and include the Standards with their application package, along with any supplementary information required in the Standards.

### **Category 1: Environmental Litigation**

The applicant has acted as litigation counsel, mediator or arbitrator in at least 150 court days of proceedings during which time environmental issues were the primary focus,

in criminal or quasi-criminal proceedings at trial or the hearing of an appeal, including pre-trials, pre-trial or interim motions or applications, alternative dispute resolution proceedings in all relevant levels of court,

*AND/OR*

in civil actions including applications for judicial review at trial or hearing of an appeal, including discoveries, pre-trials, pretrial or interim motions or applications, settlement negotiations, alternative dispute resolution proceedings or acting as a mediator or arbitrator in connection with the proceedings in all relevant levels of court,

*AND/OR*

in quasi-judicial hearings or administrative tribunals hearings including administrative monetary penalty proceedings, pre-hearings, interim motions or applications, hearings for interim stays and stays, settlement negotiations, alternative dispute resolution proceedings or acting as a mediator or arbitrator in connection with the proceedings before all or some of, but not limited to:

- Environmental Review Tribunal
- Joint Boards under the *Consolidated Hearings Act*
- Ontario Municipal Board
- Ontario Environmental Assessment Board
- National Energy Board
- Ontario Energy Board
- Ontario Minister of the Environment
- Lieutenant Governor in Council
- Hearing Officer under *Niagara Escarpment Planning and Development Act (NEPTA)*
- Commissions of Inquiry under the *Public Inquiry Act*
- Panel reviews under the *Canadian Environmental Assessment Act*

### **Category 2: Environmental Transactions (Solicitor Work)**

The applicant has acted as environmental counsel in relation to at least 20 significant business or commercial transactions in which environmental considerations were of primary or substantial importance.

For the purposes of this standard of certification acting as “environmental counsel” means advising and negotiating including drafting or reviewing of documentation in respect of transactions within the practice area of environmental law.

The applicant's experience in significant transactions must include acting as counsel in respect of some or all, but not limited to the following transactions:

- Environmental remediation agreements
- Environmental audits
- Environmental approvals and orders
- Real estate and business transactions involving potentially contaminated property, businesses that may require environmental approvals from one or more level of government, or measures for environmental protection or management
- Emissions trading

### **Category 3: Environmental Opinions or Advice**

The applicant has given at least 200 substantial oral or written legal opinions or advice in respect of litigation, transactions or environmental management regarding the application, interpretation of, or compliance with environmental law.

The applicant should have had experience in dealing with some or all, but not limited to the following issues:

- Governmental notice and reporting issues
- Quantification, remediation or allocation of risk in connection with contaminated properties
- Environmental health and safety matters
- Management of regulatory investigations
- Due diligence matters
- Confidentiality
- Administrative Monetary Penalties

### **Category 4: Substantial Contribution, Development of Environmental Law**

The applicant has made a substantial contribution to the development of Environmental Law through a combination of all or some of the following:

- Drafted environmental legislation and instruments
- Researched, published, taught Environmental Law at an accredited post-secondary institution
- Achieved graduate degrees or other academic qualifications in the area of Environmental Law
- Drafted decisions as a member of a relevant tribunal, and
- Given speeches, presented conference papers and other presentations at continuing education programs in excess of the minimum professional development requirements for certification

### **Professional Development**

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

- e) programs related to the specialty area;
- f) 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 Environmental Law Experience. Applicants must provide to the referees a copy of the completed Standards to let them know which categories they have selected to demonstrate their experience.
12. Applicants should not include as reference: judges, partners, associates, co-workers, employers, counsel to their firm, employees, relatives, 3<sup>rd</sup> party neutrals (i.e. persons, such as adjudicators, arbitrators, mediators, or any statutory decision maker, whose knowledge of the applicant's practice is derived solely from the applicant's appearance before the person while acting as an impartial decision maker), members of the Certified Specialist Board, benchers or employees of the Law Society.
13. The Statements of Reference must be submitted directly to the Law Society Certified Specialist Program via email to: [certspec@lso.on.ca](mailto:certspec@lso.on.ca) (*preferred method*), or via mail to: 130 Queen St W., Toronto ON, M5H 2N6

## Application Assessment

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

Last Revised: December 4, 2018