

Submission: Supporting Continuation of the Certified Specialist Program and Ongoing LSO Oversight

To: Law Society of Ontario
From: Ontario Bar Association
Date: August 25, 2023



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BAR ASSOCIATION
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Executive Summary

The Ontario Bar Association (OBA) appreciates the opportunity to make this submission in response to the Law Society of Ontario's (LSO) Consultation on the Certified Specialist Program (CSP). For the reasons more fully set out below, the OBA supports the continuation and enhancement of the CSP, and supports it remaining under the jurisdiction of the LSO.

The Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with approximately 16,000 members practicing in every area of the law in every region of the province. Our members practice on the frontlines of the justice system providing services to people and businesses, and include senior and junior lawyers, from managing partners to new calls and students, current certified specialists and non-specialists and areas where there may be interest in creating new specializations.

Each year, through the work of our 40 practise sections, the OBA provides updates and education on every area of the law to a combined audience of 20,000 lawyers, and provides advice to legislators, the Law Society, and other key decision-makers to ensure the justice sector works effectively and efficiently, and to support access to high quality legal services for Ontarians. In preparing this submission, the OBA sought input from a critical cross-section of the bar, including lawyers from every area of practice included in the CSP, and from members of sections whose practice areas are not covered by the CSP.

Comments

Should the Law Society Keep or Eliminate the CSP?

The LSO should keep the CSP. In response to the LSO's 2021 Report from the Competence Task Force on Renewing the LSO's Continuing Competence Framework, the OBA expressed its continued support for the CSP, and stated:

Certified Specialist Program Certified Specialist Designations are an important indicator to both the public and the legal profession that those who hold them are recognized as having achieved a high standard of expertise in a particular field. This both allows lawyers to promote their expertise and assists the public (as well as other practitioners) in identifying a lawyer who is best placed to address specific legal issues. The OBA has advocated for the expansion of the Certified Specialist program to additional practice areas in recent years, including into the areas of Taxation Law (which was added to the program) and Privacy Law (which is currently under consideration), and supports its continuation.



The OBA reiterates its continued support for the continuation of a CSP at the LSO and continues to advocate for its expansion into other areas of practice. The CSP is vital to the objectives of an effective, proportionate, and balanced regulatory framework that addresses career-long competence in a manner that protects the public interest and is responsive to the public's legal needs.

Our members expressed overwhelming support to maintain and expand the CSP. And as the LSO notes in the consultation document, *“those that have committed the time and effort to become certified value being recognized in their field and the ability to distinguish themselves from others in their practice area.”* The fact that 2% of practicing lawyers in Ontario are designated as Certified Specialists by the LSO¹ does not suggest that the CSP is not valuable; rather, it suggests that not everyone can qualify for the designation, and that more lawyers should be made aware of it and encouraged to strive to achieve this level of excellence and expertise.

According to a survey done by the Toronto Lawyers' Association which was done by the association during the LSO's 2021 consultations, question 31 revealed that **more than 65%** of respondents indicated that the CSP should be kept or enhanced, with less than 35% indicating that it should be eliminated,² and 10% were not even aware of the program's existence. A separate survey done by the LSO showed that approximately half of the lawyers who responded said that the program should be kept or modified.

¹ Consultation document page 2: “As of 2020, 784 lawyers were designated as Certified Specialists, representing approximately 2% of practising lawyers. The relatively low percentage of lawyers designated as specialists has been consistent for several years.”

² The survey was attached to the TLA's submission to the LSO in 2021.



It is notable that the detractors appear to not have the CS designation themselves and *may* feel that they are at a disadvantage. Instead of lowering the bar and eliminating the CSP, the LSO should consider maintaining, expanding, and updating the program and encourage more lawyers to strive to achieve this level of excellence.

The CSP Enhances Protection of the Public Seeking a Specialized Lawyer

The CSP is an important and reliable indication to members of the public in that the very body that protects the public has verified the lawyer's stated expertise. When a member of the public seeks legal advice, it is often during a time of vulnerability or major life events that require professional assistance. Poor service, or a lack of necessary expertise, can have devastating consequences on their lives.

Unlike other designations, the CS communicates an assurance by the regulator of the profession that the lawyer is not only competent but has significant experience and meets higher standards of excellence within the area(s) of specialization. It serves as an additional protection for the public, in that it is entirely merit based, with clearly articulated standards that must be met, maintained, and verified by an organization without a commercial or political interest in conveying the designation.

The CS designation promotes access to justice across all regions by providing the public with information about practitioners, including those at small to mid-sized firms in Toronto, the GTA and beyond.

Other designations may be less clear in terms of what the lawyer accomplished and, for the most part, do not speak to a level of specialization in a particular area of practise. For example, the Ontario government recently restored the practise of awarding the King's Counsel (KC) designation which, "*is given to lawyers who have demonstrated a commitment to the pursuit of legal excellence in service to the Crown, the public and their communities.*"³ The designation does not convey any information to the public about the lawyer's area of expertise, years of experience, or record with the LSO. It does not specify whether the KC was awarded for legal excellence, or whether it was based on public service, and cannot be relied on as an indicator of whether the lawyer is an expert in the area of law that is relevant to the member of the public seeking legal advice.

This CS designation can be particularly helpful in areas of the law that require experience and expertise, such as immigration and refugee law, tax or intellectual property or corporate and commercial law.

³ [Ontario Reinstates King's Counsel Designation](#), Ontario Ministry of the Attorney General Media Release, June 30, 2023



Members of the public, including business owners, should be able to readily identify a specialized lawyer, verified by the regulator. As noted above, the consequences can be serious.

It also plays an important role in Equity, Diversity and Inclusion from the perspective of members the public and of the legal profession. The CS provides valuable information to members of equity seeking communities in identifying and distinguishing a lawyer's expertise from a verified source. And from the perspective of legal professionals, the CS creates opportunities for greater equality.

In these ways, the CSP plays an important role in fulfilling the LSO's mandate of regulating the legal profession in the public interest. Without the program, the public would lose an important, independent, and objective way to find the help they need, leaving them to rely solely upon how members of the legal profession describe their own services and abilities.

Should Individuals with the designation be legacied?

The OBA recommends consideration be given to the significant impact and potential prejudice removal of the designation will cause to current Certified Specialists, and what the elimination of the CSP conveys to the public: about the lawyers with the CS designation (*Has the lawyer done something to lose the designation? Should I be worried about the legal services I am getting?*), and what it says more broadly about the LSO itself, and its position on encouraging and supporting higher standards of excellence, (*Why is the LSO lowering its standards? Who can I turn to if I am looking for a lawyer who is a verified expert, does the LSO not have this information? Will it review and verify claims of expertise by lawyers on an individual basis?*).

Additional comments: The CSP should remain with the LSO

The OBA specifically supports the continuation of the CSP being under the auspices of the LSO. As the licensing body of all Ontario lawyers, the LSO does not have a commercial interest in certifying specialists: it has an interest in encouraging, supporting and rewarding lawyers who have done the work to meet higher standards. The CS designation cannot be "bought" by attending a commercialized program. And it is not so broad that it does not communicate specialization in a particular field – as is the case with the KC designation.

The fact that it is the LSO that must certify that the lawyer meets the rigorous requirements is what gives the CSP meaning and the needed credibility to protect the public. The LSO's mandate lends itself to ensuring the integrity and purpose of the CSP, which is to identify lawyers who are and continue to be true specialists in each practice area.

The OBA would be pleased to work with the LSO in the interests of supporting and encouraging lawyers to strive for excellence, over and above what is required of all lawyers. We strongly support the continuation of the CSP.