Convocation adds CPD requirement to certified specialist program, will expand program to paralegals

LSO competence task force recommended axing the program in 2021

Atrisha Lewis, Megan Shortreed, Sergio Karas

BY Aidan Macnab / 30 Nov 2023 / Share

At Convocation Thursday, Law Society of Ontario benchers opted to maintain the certified specialist program while adjusting some of its components.

The motion was carried in a 29-20 vote. It had three elements. Convocation will revise the recommendation of the competence task force proposing the certified specialist program's wind up and continue to administer the program. Beginning in 2025, Convocation will require certified specialists to complete 10 hours of continuing professional development annually in their specialty area in addition to the 12 hours required for all practising lawyers. Convocation will also direct the professional development and competence committee "to explore opportunities for the enhancement of the Certified Specialist Program" and expand the program to paralegals "as a first priority."

In her remarks to Convocation, Atrisha Lewis, chair of the professional development and competence committee, noted that access to justice and equity were raised in the committee's consultation by those in favour of continuing the program. Eighty-five percent of the consultation's respondents favoured continuing the program.

"I draw your attention, in particular, to the Refugee Lawyers Association's submissions that spoke to the fact that the certified specialist designation is the only reliable published source for the public to discern who has expertise in immigration and refugee law.

"The South Asian Bar Association indicated that the program allows lawyers from equity-seeking groups to obtain credentials to assist in establishing credibility and receiving respectable treatment from the public and the profession," said Lewis. "And FACL, the Federation of Asian Canadian Lawyers, also indicated that the certified specialist designation has the ability to play an important role in promoting and enhancing equity, diversity and inclusion within the profession."

She added that the law society will review all public-facing information about the certified specialist program to better inform the public about it. Lewis is a partner in McCarthy Tétrault's litigation group in Toronto.

Bencher Megan Shortreed, who is senior counsel at Paliare Roland Rosenberg Rothstein LLP, was not in favour of maintaining the program, which she told Convocation was also the unanimous conclusion of the law society's competence task force that assessed the program in 2021. She added that two other law society reviews of the program – in 2001 and 2007 – concluded it was a "failed program." Since 2007, the program's uptake has fallen by half, she said.

As for the consultation's feedback that the program is a mechanism for racialized lawyers and women to establish themselves in the profession, "the facts are the opposite," said Shortreed. "Racialized members of the profession and women take up the program in significantly lower percentages than they represent in the profession as a whole.

"The real question is public protection," she said. While any number of her fellow benchers had cultivated a specialty over their years in practice, said Shortreed, the law society places a stamp of approval on the certified specialists.

"In my respectful submission, because that stamp of approval is not based on trustworthy and reliable measures of skill, we are misleading the public when we certified some of these specialists, who take the time to do the self-study and send in some reference letters, as compared to others who do not take the time and pay the fee to do that."

Shortreed also disputed the rationale in the committee's report that because 85 percent of those consulted favoured continuing the program, the committee recommends doing so.

"That is an improper analysis for this board. The proper analysis is: Does it enhance competency for the public, and does it adequately protect the public? It's my personal view that it does not."

In 2021, the law society established a competence task force to comprehensively review law society policies and programs that apply to lawyer competence. As part of the task force's consultation, it asked licensees and members of the public whether the certified specialist program should be modified, kept the same, or eliminated. According to the Professional Development and Competence Committee (PDCC) Report, around half of the respondents said the program should be axed.

At Convocation in May 2022, the task force submitted its final report, which concluded that the program "did not meet the principles of an effective competence regime" because there had been limited uptake, it did not "assure or improve" competence, and it contained no "ongoing evaluative component." The task force recommended eliminating the program, except for the Indigenous legal issues specialization, and existing certified specialists should be grandparented, with the task force split over whether they should retain the designation for five years or until they finished practising.

Convocation voted to amend the task force's recommendations to eliminate the designation's grandparenting, discontinuing the designation by the end of 2022.

A few months later, at September's Convocation, benchers voted to suspend the winding up of the program pending further consideration. The PDCC had until the end of 2023 to make a recommendation. The PDCC underwent a consultation asking whether to keep or eliminate the program, whether to grandparent existing specialists, and for any other comments. The law society received 453 submissions, which the PDCC said was an "unprecedented response compared to previous consultations."

There were several common concerns among the submissions in favour of keeping the program, said the PDCC report. These included concerns that the designation provided a trustworthy and reliable measure of a lawyer's skill amid an ocean of advertising and non-authoritative and unhelpful awards, titles, credentials, and reviews. Respondents noted that members of the public have difficulty finding a lawyer with the appropriate expertise. The Ontario Bar Association and the Federation of Ontario Law Associations both submitted that the program promotes access to justice, particularly in northern or rural areas, by assisting people in finding experienced lawyers. Some respondents also said they used the program to make referrals.

The Federation of Asian Canadian Lawyers submitted that the program helps lawyers from underrepresented groups receive more equitable treatment from the public and profession by allowing them to distinguish themselves with "objective standards administered by the provincial regulator."

Respondents in favour of eliminating the designation said many exceptionally competent lawyers are not specialists, so the program creates a misconception that those with specialization are more suited to a particular legal task. Other respondents argued the program was merely a marketing tool and that the law society should not be involved in marketing aside from enforcing advertising rules. Some respondents noted that because the law has become so much more complex since the program's inception, the categories are too broad to be helpful. Along the same line of reasoning, others said the standards for certification no longer reflected the practice.

Of the 27 paralegals who participated in the consultation, 20 requested that the program be expanded to allow paralegals to be certified specialists.

Sergio Karas is a certified specialist in citizenship and immigration law and says he is concerned that Convocation is opening the door for paralegals to be certified in the future.

"This is not advisable, as it would continue to blur the line between lawyers and paralegals," he says. "The legal educational background and experience of lawyers are vastly different from that of paralegals, who in most cases lack the theoretical and critical thinking component of legal analysis and have a much more limited role in the justice system."

"To equate the two professions would diminish the value of the certification."

The certified specialist program dates to 1986, and 717 lawyers – two percent of the total number of practising lawyers – are certified specialists, according to the PDCC report. Of those 717 certified specialists, 248 – 30 percent – have the designation for civil litigation. The next largest category is criminal law, with 71 certified specialists, eight percent of the total. Forty percent of the certified specialists practice solo or in small firms, and large firms employ 20 percent.

Certified specialists must have practised for at least seven years and at least five in the specialty area. They must have "substantial involvement" in the designated area. the certified specialist board sets this standard and varies depending on the designated area of law. The certified specialists must submit four written references, and the referees must also be licensed lawyers. They are also

Most Read
Man loses almost entire inheritance in costs for...
Court denies former bencher's request for civil trial data that...
Ontario Court of Appeal allows wife to collect from...

required to complete 50 hours of "self-study," must not be subject to any order by a law society tribunal, must not be practising with any terms, conditions, limitations, or restrictions, must not be under review to determine whether they meet standards of professional competence, and must not have serious or numerous claims "made against them in a professional capacity or in respect of their practice," said the report.

The law society's professional development and competence committee appoints the certified specialist board to oversee and regulate the program. The board establishes standards, makes rules and practice procedures concerning certification, and certifies lawyers as specialists.

Related stories

Divided convocation, AI, climate, and mental health among Bencher election issues for independents
LSO Convocation approves license proposal for non-lawyer family legal services providers
Courthouse law libraries get funding boost at Law Society of Ontario Convocation vote

Free newsletter

Our newsletter is FREE and keeps you up to date on all the developments in the Ontario legal community. Please enter your email address below to subscribe.

Enter your email address here

SIGN UP

Fetching comments...

Recent articles & video

Convocation adds CPD requirement to certified specialist program, wi...

Man loses almost entire inheritance in costs for 'reprehensible,'...

Ontario Court of Appeal allows Trial Lawyers Association to interve...

Most Read Articles

Man loses almost entire inheritance in costs for...
29 Nov 2023

Court denies former bencher's request for civil trial data that...
27 Nov 2023

Ontario Court of Appeal allows wife to collect from husband's...
27 Nov 2023

Ontario Court of Appeal allows Trial Lawyers Association to...

Copyright © 2023 KM Business Information Canada Ltd.
LAW TIMES