



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

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July 7, 2005

Lonny Rosen  
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Dear Mr. Rosen:

**Re: Certified Specialist Program**

As you may be aware, the Law Society of Upper Canada is in the process of expanding its Certified Specialist Program. Members will soon have the opportunity to qualify as certified specialists in Health Law. Proposed standards for certification in this area have been drafted.

We are seeking input on the standards from your organization. To that end, we enclose the program brochure and a copy of the draft standards.

We ask that you review both documents and complete the Standards for Certification. Once you have had an opportunity to do so, we would be most interested in your feedback on the experience in general, and more particularly, with respect to the following points:

1. Appropriateness of the definition of the specialty
2. Appropriateness of the 50% and 75% practice concentration requirement;
3. Clarity and understandability of the experience requirements;
4. Transparency of the certification process
5. Impact of the costs of certification on accessibility
6. Accessibility for members practicing in your geographical area

We would appreciate your feedback by September 9, 2005. For more information on the program please refer to our web page at <http://www.lsuc.on.ca/member-resource-centre/a/certified-specialist-program/> or contact me at the above number.

Thank you in advance for your participation.

Yours truly,

Kelly Reeves  
Coordinator  
Certified Specialist Program

Encl.

✓ cc: Janet Green  
Staff Liaison, Ontario Bar Association-Health Law Section

## CERTIFIED SPECIALIST PROGRAM

### STANDARDS FOR CERTIFICATION HEALTH LAW

#### Definition of Health Law Specialty

1. Health law is that branch of the practice of law pertaining to the provision of legal advice and services in respect of the provision of health care.

#### Designation

2. An applicant who is certified as a specialist in health law advocacy may be identified as a *Certified Specialist (Health Law: Advocacy)*
3. An applicant who is certified as a specialist in health law general counsel matters, may be identified as a *Certified Specialist (Health Law: General Counsel)*
4. An applicant who is certified as a specialist in the advocacy and general counsel subspecialties may be identified as a *Certified Specialist (Health Law: Advocacy/General Counsel)*

#### Achieving Specialist Certification in Health Law

5. 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 Speciality Area;
  - Professional Development;
  - References;
  - Professional Standards; and
  - Application Fee.
6. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in health law:
  - (a) applicants applying in one subspecialty will have devoted a minimum of 50% of their practice concentration to health law averaged over the 5 years of their recent experience; and
  - (b) applicants applying in both subspecialties will have devoted a minimum of 75% of their practice concentration to health law averaged over the 5 years of their recent experience; and

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(c) during the 5 years of their recent experience, applicants will have attained broad and varied experience along with a mastery of substantive law and procedures in the area, and comply with the Health Law Experience requirements set out below.

7. In the event that applicants do not entirely meet the experience requirements, they may apply to the Health Law Specialty Committee (“Committee”) 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 health 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 health 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 8, 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 and a complete list of publications.

8. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area.

### **Health Law Experience**

9. During the 5 years of their recent experience applicants must have performed the tasks set out below as follows:

Route 1: Applicants seeking the advocacy designation must have performed the tasks as required in Part I.

Route 2: Applicants seeking the general counsel designation must have performed the tasks as required in Part II.

Route 3: Applicants seeking the advocacy and the general counsel designation must have performed the tasks as required in Part I and Part II.

## **PART I - HEALTH LAW - ADVOCACY**

During the 5 years of their recent experience applicants must have attained broad and varied experience and generic skills and a mastery of matters of sufficient complexity with respect to health law advocacy.

*\*There is a minimum expectation that an applicant will have had some trial and/or hearing experience. The number of trials and/or hearings is not determinative and due regard is given to the complexity of the issues before the court and/or tribunal. If specific trial and/or hearing experience is absent, there may be special circumstances that warrant consideration. When giving examples of experience, list the best two or three, if applicable. The trial and/or hearing experience to be considered may be outside the five-year period of recent experience. Applicants also should note that experience will be assessed recognizing that in some areas of the province certain matters are more prevalent than others.*

10. Applicants are asked to confirm their knowledge and experience with each of these tasks in (a) Advocacy Skills, (b) Principles and Issues and (c) Legislation by placing a check mark (✓) next to each task to demonstrate their health law advocacy experience.

**(a) Advocacy Skills**

- Identify the appropriate procedure and the necessary parties to resolve the client's problem
- Identify the appropriate causes of action in any given case
- Identify the full range of defenses available and the appropriate defenses in any given case
- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, minors, persons of unsound mind and the discoverability principle
- Analyze, research and develop an appropriate theory to advance or defend a claim or matter
- Marshall the necessary factual evidence to advance or defend a claim or matter, including witnesses, documents, including those in the possession of a third party, and demonstrative evidence
- Marshall the necessary opinion evidence of experts to advance or defend a claim or matter
- Conduct discovery, cross-examination in advance of the hearing or trial on affidavits, and of non-party witnesses including experts on health care issues
- Apply the *Rules of Civil Procedure*, the *Statutory Powers Procedures Act* and/or the rules of procedure applicable to the forum
- Draft and argue typical interlocutory matters and significant motions
- Prepare offers to settle and requests to admit
- Advise client with respect to the full range of alternative dispute resolution options

- Advocate effectively in negotiations, mediations, pre-trials and/or pre-hearings and settlement conferences
- Advocate effectively the client's position on motions, applications, trial (jury and/or non-jury) and/or hearings and appeals
- Advise client with respect to the appropriate procedure to present matters of leave to appeal and judicial review
- Identify the appropriate procedures and the appropriate parties to bring a matter before a statutory body
- Effectively examine and cross-examine expert witnesses in regard to health care matters at a trial or hearing
- Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- Carried a contested matter forward to resolution before a tribunal and/or court

**(b) Principles and Issues**

Applicants will have dealt with the following legal principles before a court and/or tribunal:

- Duty of care
  - Fiduciary Duty
  - Informed Consent
  - Disclosure of adverse event
- Standard of care
- Negligence vs. error of judgment
- Direct and vicarious liability
- Misrepresentation or Fraudulent Concealment
- Privacy/Confidentiality
- Causation
- Proof of damages
- Health records or clinical records
- By Laws
- Limitation periods - Discoverability rule

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(c) **Legislation**

Applicants will have advised and/or represented clients with respect to issues/matters arising from the following legislation:

- Health Care Consent Act*
- Substitute Decisions Act*
- Mental Health Act*
- Regulated Health Professions Act*
- Individual Health Care College Legislation i.e. *Medicine Act*
- Coroner's Act*
- Public Hospitals Act*
- Personal Health Information Protection Act, 2004 (PHIPA)*
- Health Insurance Act*

11. During the 5 years of recent experience the applicant has acted as an advocate in at least 100 days of appearances before courts and/or tribunals, during the 5 years of recent experience, where health law issues were the primary focus. Applicants are asked identify the number of days spent before each of the following courts, tribunals or regulatory bodies during the 5 years of recent experience.

Actions and Applications before the Superior Court of Justice \_\_\_\_\_

Appeals before the Ontario Court of Appeal \_\_\_\_\_

Hearings before the Health Professions Appeal and Review Board \_\_\_\_\_

Hearings before the Consent and Capacity Board \_\_\_\_\_

Hearings before the College of Physicians and Surgeons Disciplinary Committee \_\_\_\_\_

Hearings before the College of Physicians and Surgeons Complaints Committee \_\_\_\_\_

Hearings before the College of Physicians and Surgeons Fitness to Practice Committee \_\_\_\_\_

Hearings before the College of Physicians and Surgeons Quality Assurance Committee \_\_\_\_\_

Hearings before Boards or Committees constituted under hospital By-Laws \_\_\_\_\_

Appeals to the Divisional Court on administrative decisions from health care Tribunals/Regulatory Bodies \_\_\_\_\_

Coroner's inquests on matters relating to the provision of health care \_\_\_\_\_

Public inquiries dealing with health \_\_\_\_\_

Discipline hearings before other health college disciplinary tribunals, regulatory bodies, or review boards \_\_\_\_\_

12. Applicants must provide with their application 3 summaries of proceedings outlining their advocacy experience each no longer than 2 pages and include the following information to illustrate their

Health Law Experience. Information must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, tribunal, etc.)
- Synopsis of how 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
- Role as counsel, lead or co-counsel

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## **PART II – HEALTH LAW - GENERAL COUNSEL**

Applicants seeking the General Counsel designation must meet the requirements of at least 2 of the 3 categories enumerated below, or substantially complete a combination of all 3 categories.

### **13. Category 1: Health Law: General Counsel – Corporate/Commercial**

- (a) Applicants must include with their application a summary (no more than 200 words) of their practice as it relates to health law in the corporate commercial area, and include a brief description of at least 3 significant transactions that they have been involved in.
- (b) The applicant has performed a minimum of 30 tasks in respect of the health law sector (being individuals and entities with a health care focus, or in a matter in respect of which health law considerations are of a primary or substantial importance). Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their health law – corporate/commercial experience.

#### **(i) Establishment/Organization of Health Related Business Structures**

- Health care professionals
- Cost-Sharing/Associate Agreements
- Family Health Networks/Teams/Groups
- Partnerships, unincorporated associations, corporations, joint ventures
- Alternative Payment Plans
- Government agencies, boards/transfer payment organizations
- Health care facilities, including: long-term care facilities, nursing homes, hospitals, community care access centres, independent health facilities, health care clinics, diagnostic facilities, rehabilitation companies (collectively, “Health Care Facilities”)
- Local Health Integration Networks

**(ii) Business Reorganizations**

Act on behalf of client with respect to:

- Purchase & sale of Health Care Facilities (shares and asset transactions)
- Amalgamation of Health Care Facilities
- Implementation of Restructuring Initiatives (e.g., LHINs, HSRC & Ministerial Directions, Devolution of Government Services)
- Transfers of Services between Health Care Facilities
- Structuring strategic alliances between Health Care Facilities
- Structuring Joint Venture arrangements
- Establishing Health Care Buying Groups
- Winding up/dissolution of Health Care Facilities
- Structuring of Public/Private Partnerships
- Oversight of health regulatory issues in commercial financings

**(iii) Corporate Governance**

- Provide advice regarding directors & officers' liability
- Draft Medical/Administrative By-Laws
- Draft corporate materials (e.g., resolutions, board policies, Committee Charters)
- Develop Board orientation/continuing education sessions and materials
- Organize annual general meetings
- Organize meetings of members and directors
- Provide advice regarding conflict of interest

**(iv) Negotiating and Drafting Contracts**

- Asset/share purchase agreements & related documentation
- Strategic alliance agreements
- Memoranda of understanding with government
- Memoranda of understanding among Health Care Facilities
- Incorporation documents, including articles of incorporation/letters patent
- Research & Clinical Trial agreements
- Services Agreements
- Manufacturing and Distribution/Supply Agreements (e.g., medical devices & drugs, medical equipment)
- Outsourcing Agreements
- Consulting and Management Agreements
- Agreements with Health Care Facilities and Health Professionals
- Development and implementation of procurement processes for goods and services in the health care sector (RFPs, RFQs)
- Agreements regarding health information management systems

**(v) Non-Share Capital Corporations**

- Establish non-share capital corporation (e.g., application for letters patent, drafting objects and special provisions, supplementary letters patent)
- Advise regarding non-share capital corporations
- Prepare By-Laws and By-Law amendments

(vi) **Establishment of Charities and Foundations**

- Apply for the registration of charities
- Advise regarding charity issues (e.g., revenue generation) and the implications of charitable status
- Establish charitable foundation(s) for health care facilities

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14. **Category 2: Health Law: General Counsel - Opinions and Advice**

- (a) Applicants must also include with their application, 5 summaries of substantive opinions rendered to illustrate their experience in the area of health law opinions and advice.
- (b) The applicant has prepared and/or provided a minimum of 200 substantial oral or written legal opinions or advice in respect of litigation, transactions or health sector/industry management regarding the application, interpretation of, or compliance with health law.
- (c) Applicants seeking to qualify under this category will have a broad and varied experience in providing advice and opinions in the area of health law. To demonstrate this experience applicants are asked to identify with a checkmark (✓) next to the areas in which they have rendered advice and/or opinions as listed below.
  - Health Sector Governance issues in respect of Health Care Facilities, Local Health Integration Networks etc.
  - Hospital Appointments/Privileges
  - Licensing and Regulation of Health Professions
  - Licensing and Regulation of the Health Sector, including laboratories, pharmaceutical/drug programs (including marketing and distribution issues), medical devices
  - Quality Assurance and Risk/Error Management, including
    - patient safety issues
    - health product liability issues
    - occupier's liability issues
    - organizational, staff and patient safety issues
  - Privacy, Confidentiality and the Regulation of Health Information
  - Health Records Management
  - Malpractice and Institutional Liability
  - Public Health, including emergency preparedness, communicable disease reporting obligations and quarantine
  - Health Care funding issues, including issues related to the *Canada Health Act* and related provincial health insurance statutes
  - Insurance for health professionals and institutions

- Medical/Legal/Ethical issues, including matters related to:
  - consent and capacity
  - community treatment orders under the *Mental Health Act*
  - conduct of clinical trials
  - decision making by research ethics board
  - end-of-life issues
  - resource allocation issues
  - tissue/organ donation
  - reproductive health issues
  - patient disclosure/duty to warn
  - access to health care

15. **Category 3: Health Law: General Counsel - Substantial Contribution, Development of Health Law**

The applicant has made a substantial contribution to the development of health law through a combination of all or some of the following activities. Applicants are asked to place a checkmark (✓) next to activities engaged in:

- Drafting health legislation
- Teaching health law at an accredited post-secondary institution
- Contributing to health law literature through publications, including commentary, research papers, and treatises
- Receiving graduate degrees or other academic qualifications in the area of health law
- Making presentations at conferences and continuing education programs in the area of health law to lawyers and professionals in the health sector
- Contributing to the public's understanding of health law matters through public education, including oral presentations and the development of written materials
- Participating as an active member on health sector boards or tribunals, or on the executive of any organization related to health law
- Participating as an active member on research ethics boards

**Professional Development**

16. For each of the 5 years of recent experience, applicants must attest to the completion of annual professional development requirements. For 2004 and all subsequent years, the requirements are:

- (a) Not less than 50 hours of self-study; and
- (b) Not less than 18 hours of relevant professional development, at least 6 hours of which consist of participation in CLE programs that have either been accredited or are capable of being accredited by the Committee.

The balance, if any, of the 18 hour professional development requirement may be met 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**

- 17. Applicants must submit 4 references from legal practitioners eligible to practise law in Ontario who have direct knowledge of the applicant's work in Health Law in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under Health Law Experience above.
- 18. Applicants should not include as reference: judges, partners, associates, co-workers, employers, counsel to their firm, employees, relatives, members of the Health Law Specialty Committee or the Certified Specialist Board, benchers or employees of the Law Society.
- 19. 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.

**Assessment of Application by Health Law Specialty Committee**

- 20. The Committee will consider the totality of an applicant's practice in Health Law, the applicant's Professional Development Report and references.
- 21. 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.
- 22. Applicants may be required to provide additional information to the Committee to facilitate the assessment process.
- 23. The Committee may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

## Areas of Specialization

- Bankruptcy and Insolvency Law
- Citizenship and Immigration Law  
(Immigration/ Refugee Protection)
- Civil Litigation
- Construction Law
- Corporate and Commercial Law
- Criminal Law
- Environmental Law
- Estates and Trusts Law
- Family Law
- Intellectual Property Law  
(Patent/Trade-mark/Copyright)
- Labour Law
- Real Estate Law
- Workplace Safety and Insurance Law

## Coming in 2005

- Health Law
- Municipal Law

Plan to become a  
Certified Specialist -  
we'll help you get there.

Legal information and  
support designed for you.

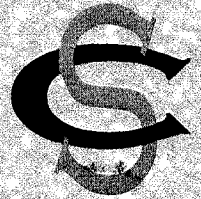


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# CERTIFIED SPECIALIST PROGRAM



Becoming a Certified Specialist gives you recognition as a leader in your field. The right combination of experience and education provides you with an opportunity to distinguish yourself. Plan to become a Certified Specialist - we'll help you get there.



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## The Program

The Certified Specialist Program focuses on helping lawyers develop legal expertise through a combination of practice experience and professional development, including continuing legal education and self-study.

## Becoming a Certified Specialist Staged Learning Process

The Certified Specialist Program will help lawyers acquire the requisite skills and knowledge to qualify for certification as a Specialist in a given practice area. To that end, each specialty has:

- learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of activity;
- a wide range of programs accredited on the basis of the learning criteria. Program providers, whose individual programs have been accredited, will have the right to advertise that fact in their materials; and
- detailed experience requirements for certification used by Specialty Committees to assess a lawyer's eligibility for certification.

## Qualifications for Certification

You may submit an application for certification when you have:

- practised for a minimum of 7 years prior to the date of the application;
- had substantial involvement in the specialty area during 5 of the 7 years, i.e.,
  - mastery of substantive law, practices and procedures, and
  - concentration of practice in the specialty area;
- complied with the professional development requirements; and
- complied with the professional standards requirements.

## Maintenance of Certification

Certification is renewed on an annual basis simply by filing a declaration stating your continued substantial involvement and a synopsis of professional development activities.

## Certification Package

Once certified as a Specialist:

- You will receive a package designed to help you maximize the benefits of your certification including an electronic copy of the Certified Specialist logo for use on your letterhead and business cards.
- You will receive an 11" x 16" personalized certificate complete in a ready to hang frame for your office.

- Your name will be included in the complete list of Certified Specialists that will be advertised annually in a major Ontario newspaper (*The Globe & Mail* or *The National Post*).
- A press release about your new Certified Specialist designation will be sent to your community newspaper.
- A full page advertisement in the *Ontario Reports* will list all new Certified Specialists quarterly.
- You will be listed in the online *Directory of Certified Specialists*. Your listing will include your name, area of specialization, contact information, a practice description and a link to **your** website. The online Directory is fully accessible to the public.

## Fees

The one time application fee, due with the application package, is \$428 (including GST).

The annual fee is \$321 (including GST) due on January 1 of each year.

The annual fee for each additional certificate is \$107 (including GST).



Look for this logo on CLE program materials indicating that the program has been accredited by the Law Society's Certified Specialist Program.

**Focus your  
efforts  
and specialize**