

## **BY-LAW 15**

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September 24, 2009

### **CERTIFIED SPECIALIST PROGRAM**

#### **PART I**

##### **GENERAL**

###### **Definitions**

1. In this By-Law,

“Board” means the Certified Specialist Board;

“certification” means certification as a specialist;

“Committee” means the Professional Development and Competence Committee.

###### **Exercise of powers by Committee**

2. The performance of any duty, or the exercise of any power, given to the Committee under this By-Law is not subject to the approval of Convocation.

#### **PART II**

### **CERTIFIED SPECIALIST BOARD**

###### **Board to be established**

3. (1) There is established the Certified Specialist Board.

###### **Composition of Board**

(2) The Board shall consist of not fewer than eight and not more than twelve persons appointed by the Committee as follows:

1. Two benchers who are certified specialists.
2. One lay bencher.
3. Not fewer than five and not more than nine persons who are certified specialists who are not benchers.

### **Same**

(2.1) If the Committee is unable to comply with paragraph 1 of subsection (2), the Committee may appoint the required number of benchers who are licensed to practise law in Ontario as barristers and solicitors.

### **Term**

(3) Subject to subsection (4), a person appointed to the Board shall hold office for a term not exceeding three years and is eligible for reappointment.

### **Appointment at pleasure**

(4) A person appointed to the Board holds office as a member of the Board at the pleasure of the Committee.

### **Chair**

4. (1) The Committee shall appoint one member of the Board as chair of the Board.

### **Term of Office**

(2) Subject to subsection (3), the chair holds office for a term not exceeding three years and is eligible for reappointment.

### **Appointment at pleasure**

(3) The chair holds office at the pleasure of the Committee.

### **Function of Board**

5. It is the function of the Board,
  - (a) to establish standards for the certification of licensees as specialists;
  - (b) to determine the areas of law in respect of which licensees may be certified as specialists;

- (c) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the Board of an application under subsection 25 (3), subsection 25 (5), subsection 25 (6) or section 27 and the exercise by the Board of its discretion under subsection 25 (2) or subsection 26 (2);
- (d) to develop for the Committee's approval policies relating to the certification of licensees as specialists;
- (e) to recommend to the Committee the amount of the fees payable by applicants for certification and certified specialists under this By-Law; and
- (f) to certify licensees as specialists.

## **Quorum**

6. Five members of the Board constitute a quorum for the purposes of the transaction of business.

## **Meeting**

7. (1) The Board shall meet at the call of the chair and in no case shall the Board meet less often than twice a year.

### **Meeting by telephone conference, etc.**

(2) Any meeting of the Board may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

## **Annual report to Committee**

8. Not later than March 31 in each year, the Board shall make a report to the Committee upon the affairs of the Board of the immediately preceding year.

## **Confidentiality**

9. (1) A member of the Board shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

## **Exceptions**

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
- (b) disclosure required of a member of the Board under the Society's rules of professional conduct that apply to the member;
- (c) disclosure of information that is a matter of public record; and
- (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

## PART III

### CERTIFICATION

#### **Requirements for certification**

10. (1) A licensee may be certified as a specialist in an area of law in respect of which certification is available if the licensee meets the following conditions:

- 1. The licensee has engaged in the practice of law for at least seven years before the day on which the licensee applies for certification as follows:
  - i. Two years in Ontario immediately before the day on which the licensee applies for certification.
  - ii. At least three other years in one or more common law jurisdictions.
- 2. The licensee has practised law in the area of law for at least five years before the day on which the licensee applies for certification as follows:
  - i. Two years in Ontario immediately before the day on which the licensee applies for certification.
  - ii. Three other years in one or more common law jurisdictions.
- 3. The licensee has the number of hours of self-study and continuing legal education programs specified by the Committee for at least three years of the five years mentioned in paragraph 2 as follows:
  - i. Two years immediately before the day on which the licensee applies for certification.

- ii. Any other one year.
4. The licensee has demonstrated comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
  5. The licensee is not the subject and has no record, within the five year period immediately before the day on which the licensee applies for certification, of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction.
  6. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law.
  7. The licensee is not, in any jurisdiction in which the licensee is authorized to practise law, the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence.
  8. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law.

**Same**

(2) Despite subsection (1), if a licensee is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law, the licensee may not be certified as a specialist in an area of law in respect of which certification is available unless to certify the licensee as a specialist would not be contrary to the public interest.

**Interpretation: practice in area of law**

(3) In this section, in any year, a licensee practises in an area of law if in that year the licensee practises in the area of law for the time specified by the Board from time to time.

**Application for certification**

11. (1) A licensee who wishes to be certified as a specialist shall apply to the Society.

**Application form**

(2) An application under subsection (1) shall be contained in a form provided by the Society.

**Accompanying documents, etc.**

- (3) An application under subsection (1) shall be accompanied by,
- (a) a certificate of standing from the governing body of the legal profession in each jurisdiction in which the applicant is or was authorized to practise law issued during the three month period immediately before the day on which the applicant makes the application;
  - (b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,
    - (i) a person whose licence is in abeyance under subsection 31 (1) of the Act,
    - (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,
    - (iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;
    - (iv) a relative of the applicant,
    - (v) a member of the Board,
    - (vi) a bencher, or
    - (vii) an employee of the Society; and
  - (c) an application fee.

**Documents, explanations, releases, etc.**

(4) For the purpose of assisting the Board to consider an application under subsection (1), the applicant shall provide,

- (a) to the Society, such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

## **Application to be considered by Society**

12. Every application under section 11, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 10 (1), shall be considered by the Society and the Society shall,

- (a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant be certified as a specialist; or
- (b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant not be certified as a specialist.

## **Notice**

13. If the Society intends to recommend to the Board that the applicant not be certified as a specialist, before making the recommendation the Society shall give the applicant the opportunity,

- (a) to withdraw the application; or
- (b) to submit additional information to the Society.

## **Application to be considered by Board**

14. Every application under section 11 shall be considered by the Board.

## **Recommendation to certify and determination by Board**

15. (1) If the Society recommends to the Board that the applicant be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,
  - (i) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); and
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 10 (2) is not present; or
    - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or

- (b) not certify the applicant as a specialist if,
  - (i) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); or
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 10 (2) is present; and
    - (B) it would be contrary to the public interest to certify the applicant as a specialist.

### **Recommendation to not certify and determination by Board**

- (2) If the Society recommends to the Board that the applicant not be certified as a specialist, the Board may,
  - (a) certify the applicant as a specialist if,
    - (i) the Board is satisfied that the applicant meets the conditions set out in subsection 10 (1); and
    - (ii) the Board is satisfied that,
      - (A) the condition set out in subsection 10 (2) is not present; or
      - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
  - (b) not certify the applicant as a specialist if,
    - (i) the Board is not satisfied that the applicant meets the conditions set out in subsection 10 (1); or
    - (ii) the Board is satisfied that,
      - (A) the condition set out in subsection 10 (2) is present; and
      - (B) it would be contrary to the public interest to certify the applicant as a specialist.

### **Notice**

- 16. (1) If the Board does not certify the applicant as a specialist under clause 15 (2) (b), the Board shall notify the applicant in writing of its decision.

## **Decision final**

(2) The decision of the Board on an application under this part is final.

## **Issuance of certificate**

17. The Board shall issue to an applicant certified as a specialist a certificate of specialty stating the area of law in which the applicant has been certified as a specialist.

## **Continuation of certification**

18. A licensee certified as a specialist shall continue to be certified as a specialist so long as the licensee,

- (a) practises in the area of law in which the licensee has been certified as a specialist within the meaning of subsection 10 (3);
- (b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the licensee has been certified as a specialist;
- (c) is not the subject and has no record of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction;
- (d) has and has had no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law;
- (e) is not, in any jurisdiction in which the licensee is authorized to practise law the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence;
- (f) has and has had no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law; and
- (g) fulfils all requirements under this By-Law.

## **PART IV**

### **CERTIFIED SPECIALISTS**

## **Definition**

19. In this Part,

“certified specialist” means a licensee who is certified as a specialist by the Board under Part III.

## **Specialist designation**

20. (1) A certified specialist may use any of the following designations:

1. C.S.
2. Certified Specialist [*area of law in which certified as specialist*]

## **Same**

(2) A licensee who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the licensee is a certified specialist.

## **Requirement to pay annual fee**

21. (1) Every year a certified specialist shall pay to the Society an annual fee and any taxes that the Society is required to collect from the certified specialist in respect of the payment of the annual fee.

## **Payment due**

(2) Payment of the annual fee is due on January 31 of each year.

## **Certified specialists**

(3) Subsection (2) applies only to licensees who are certified specialists on January 31.

## **Licensees certified after January 31**

(4) A licensee who is certified as a specialist after January 31 shall pay, in respect of the year in which the licensee is certified as a specialist, an amount of the annual fee as determined by the formula,

$$(A \div 12) \times B$$

where,

- A is the annual fee, and
- B is the number of whole calendar months remaining in the year after the month in which the licensee is certified as a specialist.

### **Payment due**

(5) Payment of the amount of the annual fee specified in subsection (4) is due on the day on which the licensee is certified as a specialist.

### **Requirement to submit annual report**

22. (1) A certified specialist shall submit a report to the Society by January 31 of each year in respect of the certified specialist's compliance with this By-Law during the immediately preceding year.

### **Report form**

(2) The report required under subsection (1) shall be in a form provided by the Society.

### **Continuing legal education requirements**

23. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

- (a) the number of hours of self-study specified by the Committee, and
- (b) the number of hours of continuing legal education programs specified by the Committee.

### **Proof of compliance**

24. (1) A certified specialist shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society of the certified specialist's compliance with this By-Law.

### **Deemed failure to comply**

(2) A certified specialist who fails to provide proof to the Society by the day specified by the Society of the certified specialist's compliance with this By-Law, the certified specialist shall be deemed not to be in compliance with this By-Law.

## **Notice to Society**

(3) A certified specialist shall notify the Society immediately the certified specialist is not in compliance with this By-Law.

## **Automatic abeyance**

25. (1) A certified specialist's certification is in abeyance while,
- (a) the certified specialist's licence is in abeyance under subsection 31 (1) of the Act;
  - (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
  - (c) the certified specialist is, in any jurisdiction in which the certified specialist is authorized to practise law, the subject of a review of the certified specialist's professional business for the purpose of determining if the certified specialist is meeting standards of professional competence; or
  - (d) the certified specialist has serious claims or a substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice of law in any jurisdiction in which the certified specialist is authorized to practise law.

## **Abeyance by Board: discretion**

(2) The Board may place a certified specialist's certification in abeyance if the certified specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the certified specialist is authorized to practise law and to not do so would be contrary to the public interest.

## **Abeyance by Board: mandatory**

(3) The Board shall place a certified specialist's certification in abeyance if the certified specialist applies to the Board to have the certification placed in abeyance.

## **Restoration**

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), upon notice to the Society of the change in conditions, the certified specialist's certification shall be restored.

**Same**

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board may restore the certification if to do so would not be contrary to the public interest.

**Same**

(6) If the Board placed a certified specialist's certification in abeyance under subsection (3) and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board shall restore the certification if,

- (a) none of the conditions in subsection (1) are present; and
- (b) the condition in subsection (2) is not present, or if it is, the Board is satisfied that it would not be contrary to the public interest to restore the certification.

**Revocation**

26. (1) A certified specialist's certification is automatically revoked immediately,
- (a) the certified specialist ceases to practise law in Ontario;
  - (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 10 (3);
  - (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
  - (d) the certified specialist fails to pay an annual fee or submit an annual report;
  - (e) the certified specialist fails to meet the requirement set out in section 23; or
  - (f) the certified specialist's certification has been in abeyance for more than 12 months.

**Same**

- (2) The Board may revoke a certified specialist's certification if the certified

specialist does not maintain comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the certified specialist has been certified as a specialist.

### **Surrender of certification**

27. (1) A certified specialist who wishes to surrender his or her certification shall submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board shall approve the request.

### **Same**

(2) A licensee ceases to be certified as a specialist immediately the Board approves the licensee's request to surrender his or her certification under subsection (1).

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