

# THE GR COURT DOCKET

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## Ontario Eliminates the Resident Canadian Director Requirement

By Barbara R. C. Doherty and Eliane Leal da Silva

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

**Barbara R. C. Doherty**  
Counsel  
416.865.6740  
bdoherty@grllp.com

**Eliane Leal da Silva**  
Associate  
416.865.3257  
elealdasilva@grllp.com

The province of Ontario, by Bill 213, *Better for People, Smarter for Business Act* ("Bill 213"), has revoked subsection 118(3) of the *Business Corporations Act* (Ontario) ("OBCA") which requires that at least 25 percent of the directors of an OBCA corporation be resident Canadian. Bill 213 received Royal Assent on December 8, 2020, and those portions that revoke this requirement have been enacted and came into force on July 5, 2021.

Prior to its revocation, section 118 (3) of the OBCA required that at least 25 per cent of the directors of a corporation be resident Canadian, and if the corporation had less than four directors, at least one director be a resident Canadian.

This resident Canadian director requirement has been an impediment to foreign direct investors looking to incorporate their Canadian operations in Ontario. Typically, foreign direct investors establishing their business in Canada through incorporation do not have access to a resident Canadian individual who can act as a director of the corporation. This meant that they would have to look elsewhere for a jurisdiction which does not have this requirement to

incorporate. Additional filings were then required to enable that corporation to carry on business in Ontario.

With the repeal of subsection 118(3), foreign direct investors can establish and incorporate their businesses in Ontario, without being required to have a minimal number of resident Canadian directors. If foreign companies are not able to appoint or retain a resident Canadian director, they will no longer have to incorporate their business in another jurisdiction.

Despite not being required, the foreign direct investor may still want to engage a resident Canadian to be a director of their new Ontario corporation. It may be advantageous to the operation to have a resident Canadian director who is knowledgeable about the legal and business environment in Ontario. In the right circumstances and with the proper protections, your legal team at Gardiner Roberts would be able to provide such a director.

The Ontario government is focused on ensuring that Ontario has modern laws that facilitate a prosperous business



climate and reduces the burden on business. By eliminating this requirement and by making certain other amendments, Ontario provides more flexibility and reduces the burden for businesses, makes it easier for people to do business in Ontario and drives economic growth, investment and job creation in the province.

If you are planning to incorporate and grow your foreign-controlled business in Ontario, we invite you to contact us. We would be pleased to help.

### **Contact us**

If you have a corporate law matter and are in need of legal advice, please do not hesitate to contact **Barbara R. C. Doherty**, at 416.865.6740 or via email at [bdoherty@grllp.com](mailto:bdoherty@grllp.com) or **Eliane Leal da Silva**, at 416.865.3257 or via email at [elealdasilva@grllp.com](mailto:elealdasilva@grllp.com)

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