# Is a director required to be a shareholder or member of the legal person? / Who is eligible to become a director?

May 1, 2014

## Author

André Vautour

Partner, Lawyer

**This *Need to Know Express* is part of a series of newsletters which each answers one or several questions in a practical and concrete way. These bulletins have been or will be published over the next few weeks. In addition, a consolidated version of all the *Need to Know Express* newsletters published on this topic will be available upon request.**

**These various newsletters, as well as others published on the subject of governance, are or will be available on our website (Lavery.ca/publications – André Laurin).**

### 1. IS A DIRECTOR REQUIRED TO BE A SHAREHOLDER OR MEMBER OF THE LEGAL PERSON?

Subject to the following, the answer to this question is no.

However, the governing statute, articles of incorporation, internal or administrative by-law or unanimous shareholder agreement may stipulate specific eligibility conditions.

For example, as a non-exhaustive list of examples:

- the incorporating statute or the by-law of a not-for-profit organization (NFPO), professional corporation or some other legal persons may stipulate requirements as to membership, residence, citizenship, etc.;
- the articles of incorporation of a corporation or a unanimous shareholder agreement may confer on a shareholder the authority to appoint one or several directors or provide that a director must also be a shareholder.

### 2. WHO IS ELIGIBLE TO BECOME A DIRECTOR?

The eligibility conditions are mainly found either in the *Civil Code of Québec*[1] for legal persons governed by it or in the incorporating statute of the legal person, as completed in both cases by the internal or administrative by-law duly adopted by the legal person or a unanimous shareholder agreement.

Under all relevant statutes, a director must be a natural person. A legal person cannot be a member

*Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.*

of the board of directors of another legal person.

Article 327 of the *Civil Code of Québec*[2] stipulates that “Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office” are disqualified for office as directors. Exclusions which are similar in whole or in part are to be found in most incorporating statutes of legal persons.

Most incorporating statutes do not require directors to be shareholders or, in the case of a NFPO, a member of the legal person.

Moreover, some incorporating statutes prescribe eligibility conditions, such as citizenship or residence.

Some statutes other than the incorporating statutes or some regulations or decisions of regulatory authorities establish prohibitions from acting as a director generally or, in other circumstances, from acting as a director of specific legal persons.

In another publication entitled “May a director be removed by the board of directors during his term of office?”[3] we discussed some additional eligibility conditions which may be prescribed by the internal or administrative by-law. Some legal person may, for example, wish to impose as an eligibility condition the absence of criminal record to avoid having to file an application with the court under article 329 of the *Civil Code of Québec*[4] to obtain the removal of a director who has been found guilty of an offence pursuant to the *Criminal Code*.

Failure to meet the conditions of eligibility and the loss of eligibility should, in our opinion, result in most cases and for most purposes, in the automatic disqualification of a natural person as a director.

Any person who is invited to become a director of a legal person and the legal person itself must therefore verify that the applicable eligibility conditions are met.

---

1 *Civil Code of Québec*, CQLR, c. C-1991.

2 *Civil Code of Québec*, CQLR, c. C-1991.

3 Lavery website - Publications - André Laurin - “The Corporate Director’s Q & A”, “20. May a director be removed by the board during his term of office?”.

4 *Civil Code of Québec*, CQLR, c. C-1991.

*Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.*