

Corporate Governance and the Role of Labour as Institutional
Shareholder and Worker Representative: Towards a Strategy
Framework for Participation

by

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ABSTRACT

This study is concerned with the development of a strategy framework for the Canadian Shareholder Association for Research and Education (SHARE) and the Canadian Labour Congress (CLC) on Canadian labour movement participation in corporate governance and business strategy.

The paper examines the rationale for labour participation in corporate governance and the problem of shareholder-stakeholder conflict arising from labour's dual role as active shareholder and worker representative. Labour's support for a stakeholder-based governance is premised on the belief that shareholders and stakeholder goals can be made consistent with one another. This study addresses that assumption and argues that the opportunities to align shareholder and stakeholder goals are limited.

The paper compares and contrasts the dominant Anglo-American and stakeholder models of corporate governance with respect to shareholder and labour stakeholder participation. It also examines labour's role in both international and domestic corporate governance reform and discusses how these reforms impact both shareholder and labour participation in governance. It argues that while both Anglo-American and European Union labour unions seek a greater role in the governance of the corporation, the structure of governance systems is a function of domestic/regional laws, political customs and differing approaches to industrial organization. Therefore, a strategy framework for the Canadian labour movement should be anchored within the Anglo-American shareholder value model of corporate governance.

The paper discusses the ways in which labour seeks to gain voice, or influence, within the corporation in order to affect the direction of business strategy and decision-making. The study considers how labour participation impacts upon firm performance, the creation of shareholder wealth and the achievement of stakeholder goals. It probes labour's attempt to gain voice through its support for corporate social responsibility, socially responsible investment funds and direct participation on the board. The paper finds that the evidence supporting a positive relationship between labour participation and improved firm performance is ambiguous and, at times, contradictory. Nevertheless, it concludes that labour participation can, in certain circumstances, create mutual benefits for shareholders and stakeholders. However, the opportunities to do so are limited and the potential for shareholder-stakeholder conflict is great.

DEDICATION

This project is dedicated to Sonja and Solomon for their love, support and sacrifice during these past two years.

I am also indebted to Danny Shapiro and Mark Wexler for their generosity of spirit and good humour.

The sincere gratitude due to each of you is woven into the fabric of these pages and the ink that flows through them.

There was one a one-armed juggler
who had two eyes, two ears, two feet,
and two huge balls which he tossed into
the air and called the antinomies...

-Irving Layton, Balls for a One-Armed Juggler

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TABLE OF CONTENTS

Approval.....	iii
Abstract.....	iv
Dedication.....	vi
Acknowledgements.....	vii
Table of Contents.....	viii
List of Tables.....	ix
List of Abbreviations and Acronyms.....	x
CHAPTER 1 Introduction.....	1
CHAPTER 2 Labour Participation: Rationales and Problems.....	8
2.1 Fiduciary Duties and The Representation of Worker Interests.....	8
2.2 Worker Risk.....	10
2.3 Productivity and Performance Gains.....	12
2.4 The Problem of Shareholder-Labour Conflict.....	12
2.5 The Two Roads to Profitability.....	17
CHAPTER 3 Global Governance Models.....	20
3.1 Defining Shareholder and Stakeholder Models of Governance.....	20
3.2 International Models of Corporate Governance.....	23
3.3 The Exercise of Shareholder Voting Rights.....	25
CHAPTER 4 Labour Support for Government Intervention.....	32
4.1 The International Framework for Corporate Governance.....	33
4.2 Mandatory and Voluntary Governance Regimes.....	34
4.3 Strengthening the Recognition of Stakeholder Rights.....	35
CHAPTER 5 How Labour Seeks To Influence Governance And Strategy.....	44
5.1 Shareholder Activism.....	44
5.2 Mainstreaming Worker Participation.....	47
4.2 Labour Representation on Boards – Electrolux.....	50
4.3 Corporate Social Responsibility.....	55
5.3 CSR and Offshoring: The Case of Hewlett-Packard.....	59
5.4 Socially Responsible Investment.....	63
CHAPTER 6 Conclusions.....	70
Bibliography.....	78

LIST OF TABLES

Table 1 - Works council and board level employee representation in the OECD countries.....	29
Table 2 - Summary of Canadian Labour Participation Goals and Strategies.....	76

LIST OF ABBREVIATIONS AND ACRONYMS

AFL-CIO	American Federation of Labor & Congress of Industrial Organizations
ACTU	Australian Congress of Trade Unions
CLC	Canadian Labour Congress
ICFTU	International Confederation of Free Trade Unions, Committee for International Co-operation on Workers' Capital
OECD	Organization for Economic Cooperation and Development
SHARE	Shareholder Association for Research and Education
TUC	British Trades Union Council
TUAC	Trade Union Advisory Council to the Organization for Economic Cooperation and Development

CHAPTER 1

INTRODUCTION

All too often, investments made with our [labour] savings yield short-term gains at the expense of working Americans and their families. Destructive investment practices that rely on layoffs, mergers and acquisitions, plant closures and off-shore job flight can create quick profits and short-term stock price increases, but, over time, these management practices erode America's wealth. The challenge for labor is to find ways that align workers' savings with workers' values. We need to invest our deferred wages in companies that provide good jobs in stable, strong communities. We want to reward companies that value all the stake-holders in the enterprise, not just their shareholders. Our capital is patient and long-term, and our challenge is to develop a capital strategy that moves our savings beyond the quick saccharine highs of destructive corporate behaviour¹.

-- Leo Gerard, International President, United Steelworkers of America

Prior to 1987, labour and other institutional pension funds had sponsored shareholder resolutions dealing solely with social issues. In 1988, the California Employees' Retirement System (CalPERS), the California School Teachers Retirement System (CalSTERS) and the United Brotherhood of Carpenters and Joiners sponsored the first corporate governance resolutions ever filed by labour-backed pension funds (Fulman, 1998; Layton, 1963). In the late 1980s, unions in North America began to recognize and assert their rights as shareholders of publicly traded corporations. Armed with a rich pool of shareholder votes and motivated by a desire to fundamentally change corporate behaviour, organized labour self-consciously set out to alter its relationship with capital markets and corporate management. Labour shareholder activism began to

¹ Cited in Fung, A., Hebb, T., & Rogers, J. (Eds.). 2001. Working Capital: The Power of Labor's Pensions. Ithaca: Cornell University Press.

target under-performing companies with shareholder proposals designed to improve corporate governance practices and align management behaviour with shareholder interests. Led by unions such as the International Brotherhood of Teamsters and the United Brotherhood of Carpenters and Joiners of America, the North American labour movement began to recognize that poor corporate governance practices compromised shareholder value and affected the long-run value of pension fund assets. Labour thus had a strong incentive to become active in the governance and monitoring of the corporations in which their members' retirement assets were invested. Indeed, by the late 1990's labour had emerged as one of the most active participants in the shareholder revolution and in the corporate governance movement (O'Connor, 2001).

Labour was motivated to play a greater role in the corporate governance movement as a result of substantial concern that the widespread adoption of poison pills takeover defences compromised shareholder rights. Peter Clapman, senior vice president of the U.S. labour pension fund Teachers Insurance and Annuity Association College Retirement Equities Fund, comments:

Corporate America was living with the threat of hostile takeovers at that point and poison pills provided a great weapon for warding them off. But it was our position that if a company was infringing on the rights of stock ownership and if company management threw up a barrier, it affected the fundamental rights that belong to a shareholder (Fulman, 1998).

Labour-sponsored corporate governance reform resolutions received 25 to 40 percent support from U.S. shareholders, suggesting labour's interests were both aligned with and reflected the interests and emerging views of a broader set of shareholders. In 1992, changes to the U.S. Securities and Exchange Commission's proxy rules permitted shareholder to communicate directly with each other and corporate boards without unnecessary regulatory interference or cost. These changes, driven by CalPERS, transformed labour pension funds into powerful players in the corporate governance

movement (Fulman, 1998). According to Anne Hansen, deputy director of the Council of Institutional Investors, "once the board of directors saw that shareholders were allowed to communicate with each other about what was wrong at these companies, they fired their underperforming CEOs. It was one of the most dramatic events of the movement" (Fulman, 1998). The impact of the SEC amendments resulted in firms seeking to enter negotiations with pension funds in exchange for having resolutions withdrawn. The exercise of shareholder control rights in the form of resolutions provided labour with a powerful tool to participate in corporate governance and protect the financial interests of labour pension funds and their beneficiaries. Following the collapse of Enron, the AFL-CIO furthered the push for corporate accountability to shareholders through a successful petition to the SEC to force mutual funds to disclose their votes in proxy contests (Blackwell & Patterson, March 2003). Blackwell and Patterson also note that today the U.S. labour movement is responsible for over 30 percent of all resolutions filed in publicly traded American corporations. Thus, over the past 20 years, the labour movement in the U.S. has become a powerful advocate for the protection of shareholder interests through governance reforms.

The international labour movement's support for a stakeholder-oriented approach to governance emerged in earnest with the advent of globalisation and the creation of transnational capital markets. Market liberalisation encouraged corporations to "exploit opportunities for regulatory arbitrage" whereby firms are able to choose where to do business based on the legal framework for corporate governance (OECD, September 2003). Weakening domestic and international labour regulations, and the perceived "race to the bottom" characteristics of global competition propelled the labour movement to link the exercise of its shareholder control rights with demands for the inclusion and

protection of stakeholder interests as a central concern of governance and strategy. As Leo Gerard implies in the comment that appears at the beginning of this chapter, the globalisation of the international economy fuelled labour demands for an approach to corporate governance that values both shareholders and stakeholders as partners in the corporation.

Labour's strategic attempt to link shareholder and stakeholder values in a coherent model of corporate governance is fraught with vulnerabilities and challenges. First, labour's position assumes that shareholder and stakeholder interests can be made consistent and aligned to create mutual benefits. However, there is inherent divergence between shareholder and stakeholder goals. Whereas shareholders seek to maximize short- and long-run shareholder value, stakeholders place additional value on the achievement of social goals. Examples of these social goals are the advancement of human rights and environmental standards. Shareholders aim to achieve these goals by attempting to influence governance and the direction of business strategy.

These two sets of possibly competing claims for the control of the firm and its productive assets create the potential for significant shareholder-stakeholder conflict. Moreover, the labour movement's dual role as institutional shareholder and worker representative is also problematic and potentially conflicted. Labour holds a statutory fiduciary duty to maximize and protect the financial assets of union pension plan members and beneficiaries. A corporate strategy that optimises value at the expense of labour presents a potentially serious problem as labour is forced to mediate conflicting financial and social claims upon its pension assets and its employed members. By the same token, labour participation in corporate governance presents the potential for

unions to exercise opportunistic behaviour in pushing for business strategy that benefits workers at the expense of other shareholders and stakeholders.

The challenge for labour, therefore, goes far beyond creating a strategic framework for participation that protects shareholder value through corporate governance reforms. A successful strategy also balances shareholder activism and the need to represent workers' interests. It also recognizes the limits to the stakeholder model as vehicle for the creation of mutual gains benefits and the resolution of conflict between shareholder and stakeholder interests. Finally, a sound strategic framework may have to acknowledge that stakeholder participation is not a cure-all for the impact of domestic market forces and global competition on the direction of corporate strategy.

This study will assist the Canadian Shareholder Association for Research and Education (SHARE) and the Canadian Labour Congress (CLC) with the development of a strategy framework for participation in corporate governance. SHARE serves as an advisor to the CLC, Canadian labour pension and labour sponsored venture capital funds on corporate governance, shareholder activism and corporate law reform. It also represents the CLC on international labour organizations that are currently working to develop global policies for labour participation in corporate governance.

The Canadian labour movement has yet to develop a coherent position on union participation in corporate governance. The problem essentially revolves around two interrelated issues. The first issue is largely ideological and concerns the propriety of workers participating in the management of corporations, essentially by crossing the

traditional labour-management divide. The second concerns the issue of whether government or shareholders bear the primary responsibility for establishing norms for corporate governance and the monitoring of managerial behaviour. One school of thought within the labour movement holds that Canadian unions have a direct responsibility as shareholders and worker representatives to participate actively in the governance of corporations in which their members' money is invested. Proponents of this position contend that government has an important role to play in ensuring that legislation protects shareholder interests and the integrity of capital markets. However, public policy intervention is a complement to, rather than a substitute for, labour participation in corporate governance. The second school of thought holds that labour pension funds should be managed at arms' length from unions, in order to preserve the traditional ideological labour-management distinction. Unions in this school argue that government, rather than shareholders, holds the primary responsibility for the governance and monitoring of corporate behaviour. Rather than exercise shareholder control rights, these unions primarily exercise political lobbying efforts to gain a significant measure of control over the direction of government policy.

The role of the CLC is to provide leadership in the development of Canadian labour movement policy. Policy differences between the two schools of thought within the Canadian labour movement significantly complicate its ability to develop a coherent strategy framework for participation in corporate governance. The observations and recommendations developed in this paper are intended, therefore, to assist SHARE and the CLC in the development of a sound, unified governance strategy.

The paper proceeds as follows. In Chapter 2, the rationales for, and problems associated with, labour participation are discussed. This chapter defines the issues that give rise to labour-shareholder conflict, and the conditions under which labour participation can be justified. Chapter 3 discusses international models of corporate governance and establishes a simple taxonomy for comparing the differences between shareholder and stakeholder models of governance and understanding the inherent potential for labour-shareholder conflict. The chapter also describes labour's role in domestic and international corporate governance reform and discusses how these reforms impact on labour participation. Chapter 4 examines labour's support for government intervention in corporate governance policy as a strategy for strengthening the protection of shareholder and stakeholder rights in the governance process. Chapter 5 describes the means by which labour seeks to influence corporate governance and strategy and elucidates the strengths and weaknesses of each approach. Chapter 6 develops a strategy framework for participation based on the issues, problems and strategies discussed throughout the paper. It discusses seven key issues affecting labour participation and recommends strategies based on a three-point framework of shareholder activism, workplace engagement and support for public policy intervention.

CHAPTER 2

LABOUR PARTICIPATION: RATIONALES AND PROBLEMS

Internationally, trade union pension funds constitute a significant pool of global capital, with an estimated value of US \$16 trillion (SHARE, 2004a). This chapter discusses the rationales for, and problems associated with, labour participation in corporate governance and business strategy in relation to its dual worker-shareholder role.

2.1 Fiduciary Duties and The Representation of Worker Interests

To better understand the motivation for labour participation, it is useful to understand how, for some unions, the active management of pension funds is linked to the protection of beneficiary and worker interests.

Fiduciary duties refer to a set of statute and common laws that govern the management of assets on behalf of investors or beneficiaries. Fiduciaries are individuals who hold a position trust, reliance, confidence and discretionary authority with respect to the management of beneficiaries' assets. Fiduciary principles require individuals entrusted with fiduciary responsibilities "to exercise care, skill and diligence that a prudent person would apply in the management of another person's assets" and treat all members, or shareholders, equally. (SHARE, 2004a). In addition, fiduciaries are

responsible for the maximization of rate of returns to beneficiaries' across the entire investment portfolio. Unions are responsible for the fiduciary management of labour pension fund assets on behalf of beneficiaries and employed union members. In effect, these fiduciary duties requires unions to stand in the place of their shareholders – namely pension plan beneficiaries and members – and ensure that union pension fund assets are managed in a manner that maximizes rates of return. In other words, unions are responsible for managing pension fund assets in a manner that is consistent with shareholder interests. At the same time, unions are confronted with responsibilities to act in the interests of workers. Inevitably, these cross-pressures significantly complicate the ability of unions to manage both fiduciary and worker responsibilities.

It is the case that the investment strategies of many labour pension managers sometimes run contrary to the interests of the worker-shareholders they serve. The focus on short-term gains and the aggressive “play the market strategies” drive companies to maximize short-term profitability and share price performance. Gospel and Pendleton (Gospel & Pendleton, 1999) comment that: “the interest in short-term profitability on the part of capital providers inevitably leads to a desire to control labour costs, especially where these form a substantial portion of total costs”. The dichotomy between worker interests and investment manager behaviour raises two interrelated questions for labour. According to Markey, those question are, whether: “pension investment managers, in an unending search for profits, push companies into thinking only about quarterly profit statements, instead of long-term profitability, spurring the short-term cost-cutting mode that promotes layoffs? Are workers, indeed, forced to make a choice between earning good returns on their pension investments, and promoting long-term job growth and preservation” (Markey). Labour participation, therefore, is

justified on the grounds that the exercise of shareholder rights provides unions with a strategic tool to influence corporate governance and seek the alignment, and protection, of shareholder and worker interests in corporate strategy.

2.2 Worker Risk

Within the corporation, workers bear residual risk that is not matched by their influence in firm governance and decision-making processes. Both shareholders and workers bear residual risk. However, the Trade Union Advisory Council to the Organisation for Economic Co-operation and Development (TUAC) argues that workers bear risks “equal to or higher than shareholders” (OECD, September 2003). The underlying principle to this argument is that shareholders typically diversify risk across a wide range of companies. They have the option to rebalance portfolio allocations to modify risk/ return profiles. Workers, however, have no such option. Their residual risk in the firm is undiversified since the worker typically has only one job and must bear the costs and risks associated with job loss and re-entry in to the labour market (OECD, September 2003). Jones and Hubbard observe that worker investments in firm-specific assets cannot be guaranteed by contract and, therefore bear residual risk in the event of corporate dissolutions or restructurings (Jones & Hubbard, 2004). Weakening labour market regulations and the increasing move towards downsizing, offshoring and insecure work arrangements have significantly increased the level of residual risk workers bear while potentially depriving them of the long-term return on their firm-specific investments – namely long-term employment and secure retirement. Shareholders also make investments in firm specific assets, but have at least theoretical influence over corporate governance by virtue of ownership. Labour sees workers as crucial internal constituents of the firm that have legitimate claims to participation based

on their firm-specific investments and residual risk. Participation is seen as a means to ensure that boards are held accountable to ensure worker interests are protected (Jones et al., 2004).

Oliver Williamson (1984) takes indirect issue with labour's attempt to legitimize worker participation in governance on the basis that boards owe a duty of accountability only to shareholders. He contends that the sole duty of boards of directors is to protect shareholders in relation to their firm-specific risk. Shareholders require board representation to protect their investment as the only "voluntary constituency whose relation with the corporation does not come up for periodic renewal" (Schwab & Thomas, 1998). According to Schwab and Thomas, the investments of shareholders are not related to any particular corporate asset and, therefore, are difficult to protect. Moreover, shareholders are at significant risk of having their firm-specific assets appropriated, for example through the exercise of managerial opportunism or the claims of stakeholders on firm wealth (Schwab et al., 1998). Williamson argues that available forms of contractual protection are insufficient to protect shareholder interests. Moreover, boards should not be required to recognize stakeholder interests, such as those of labour, since they have the ability to seek contractual protections for their rights. Workers and other stakeholders, therefore, can negotiate contractual arrangements to protect their firm-specific investments. While firms can arguably abrogate or renege on such agreements, Williamson argues that reputational concerns may place limits on firm opportunism. Williamson's position suggests that worker participation does not produce benefits for shareholders. In fact, the opposite may be true.

2.3 Productivity and Performance Gains

A recent World Bank survey found that high unionisation rates were positively associated with improved in-country economic performance (Aidt & Tzannatos, 2002). These findings imply that high rates of unionisation create stability, reduce conflict and improve worker morale, resulting in productivity and competitiveness gains through the development of cooperative shareholder-manager-labour industrial relations arrangements. American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) President John Sweeney argues that: "[i]f we are serious about advocating long-term value, we must ask the management of the companies we invest in to join us and pursue a partnership with their workforce as a whole – a partnership based on mutual respect, cooperation and mutual gain" (Sweeney, April 2, 1996). The development of firm specific human capital assets contributes to long-term firm value through productivity gains and competitive advantage. The TUAC review of the OECD Principles argues that higher worker involvement in decision-making improves corporate performance. By virtue of their participation in the creation of firm value, workers are "as much a stakeholder as a shareholder in the company" (OECD, September 2003).

2.4 The Problem of Shareholder-Labour Conflict

Labour's attempt to link shareholder and stakeholder interests is both controversial and problematic. It assumes that the short- and long-run goals of shareholders and labour stakeholders can be made consistent, without due recognition of the fact that the two sets of goals may be in conflict with one another. The power to control and shape strategic decision-making lies at the heart of the debate over

corporate governance. From this perspective, the fundamental issue is who governs the corporation and in whose interest (Branston, Cowling, & Sugden, December 2001).

From the standpoint of shareholders, corporations should be run first and foremost in the interests of shareholders. The investor expects the firm to create shareholder value and demands performance that is equivalent to comparable investment opportunities in the market. In some cases, investor demand may be based on the expectation that the firm returns value quickly, enabling the investor to exit and deploy productive capital elsewhere. In other cases, investor capital may be "patient" and expect the realization of shareholder wealth over a longer-term horizon. The choice of short- or long-run goals depends upon the individual investment strategies and wealth maximizing objectives of the shareholder. In either case, the objective is the same: the creation of shareholder wealth. For the shareholder, the direction of corporate governance and strategy should be aligned towards the goal of wealth maximization.

From the perspective of labour, pension funds are sources of patient capital with the implications that the investments they make are long-term. The ability for labour to exit is, therefore, limited and consequently the strategic focus of many pension funds is oriented toward long-term investment horizon (OECD, September 2003). From this perspective, business strategies oriented towards short-term decision-making have the potential to impact negatively on both pension plan beneficiaries and employed members. In order to support both its investment strategies and commitment to protect the interests of workers, the ultimate objective of labour participation, therefore, is to construct a long-run strategic approach to governance and strategy in alliance with long-

term, or so-called "patient" shareholders. The deep flaw in labour's approach is that it assumes the short- and long-run goals of shareholders are somehow different.

The labour's movement attempt to draw an explicit distinction between short- and long-term shareholder goals is based on the perception that short-term business strategies deprive the firm of its productive assets and encourage managerial self-interest. According to this argument, managers respond to investor signals with strategies that generate short-term returns. These strategies may include the downsizing or outsourcing of highly productive and valuable human capital assets that have contributed to the value of the firm. Over time, this hollowing out of assets reduces the firm's long-term value creating potential and leads to takeover opportunities or exit decisions. Managers receive compensation for the outcome of short-term decisions and, in all likelihood, exit the firm before a takeover or exit occurs. The long-term investor, however, is disadvantaged by information asymmetries and the moral hazard problem that enables managers to act in a manner that is contrary to the interest of patient shareholders. Lazonick and O'Sullivan make the point that: "[i]t is common in the late 1990s for Americans to tout the innovation and prosperity of Silicon Valley as an outcome of the corporate restructuring of the past two decades that has made both capital and labour free to move into new ventures. This view, however, ignores the historical accumulations of resources and capabilities in districts such as Silicon Valley that have made the current prosperity possible" (Lazonick & O'Sullivan, 2002).

Labour's position is grounded in the belief that workers and long-term shareholders bear the costs of short-term efficiency gains and profitability measures. Jones and Hubbard (2004) contend that short-term managerial behaviour is driven by

increasing pressure to meet the demands of capital markets irrespective of the impact on the long-term value generation capabilities of the firm. According to Janet Williamson, the British Trade Union Congress (TUC) believes that investor demands for short-term wealth creation encourages a strategic focus within the firm on low investment and low productivity activities. She argues the emphasis on shareholder interests combined with fears of the takeover market and managerial opportunism encourage boards to boost share prices by paying higher dividends at the expense of investments in long-term growth and innovation (Williamson, 2003).

Depending on the strategic focus and wealth maximizing objectives of the firm, the shareholder value approach has the potential to profoundly affect both stakeholder interests and long-term performance – particularly if the firm is driven by an overriding focus on short-term results. Gospel and Pendelton comment that:

To some extent, there may be a zero-sum relationship between returns to investors and to labour, with pressures emanating from financial markets encouraging firms to give priority to the former. A deeper point...is that an emphasis on 'shareholder value' diverts attention from the value of the firm. The *value of human assets may well contribute to the value of the firm, especially in knowledge-based industries, but these are not recognised in the concept of shareholder value*" (Gospel et al., 1999).

Labour contends workers are productive assets that create value for the firm. Yet, the value of those assets is not recognized easily on either corporate balance sheets or in the concept of shareholder value. The focus on short-term profitability, achieved through cost cutting and workforce reductions, may in fact deprive the firm of the very assets and motive that creates long-term value and competitive advantage. However, since the value of those assets is not reflected on the balance sheet, workforce reductions do not lead to a reduction in the value of the firm's asset base. The result may be that

shareholders are presented with a distorted view of the firm's actual underlying value as well its ability to generate wealth in the future. Thus, one failure in the shareholder value approach is that the focus on short-term, cost-based strategies may ultimately impair the firm's long-term value generating capabilities.

The TUC argues that a short-term shareholder approach "has encouraged investors to embark on activity to boost share price that has damaged employee interests. Short-term share price increases often reverse, but the damage done to organisations can last much longer" (Congress, 2003). Research provides some support for labour's position. Regina Markey, of the AFL-CIO's Public Employee Department, cites a 1995 US Department of Labor study, which followed 25 large firms over a 7-year period that had downsized their workforces by an average of 31 percent. The study found the companies did not realize expected cost efficiencies and concluded the "benefits of downsizing may be illusory" (Markey). Markey also notes that shareholders fare no better from excessive downsizing. According to an American Manufacturers Association (AMA) study cited in Markey, the AMA found no significant shareholder returns over the long-term from downsized companies and in fact found shareholder losses to be the result. The AMA study also found that in 25 companies surveyed for "each \$1 invested in a portfolio of downsized companies at the beginning of the year, three years later it would have grown to \$1.05. In contrast, \$1 invested in a portfolio of companies in the same industry that did not downsize would have grown to \$1.34 over the same three years. The Department of Labor, therefore, concluded the benefits from downsizing did not hold over time (Markey). John Sweeney makes the same point arguing that downsizing cuts corporate activities and firm-specific resources that are vital to long-term profitability and growth. Cost-cutting activities designed to reduce short-term

income statement pressures either generate costs elsewhere or are offset by lost revenues (Sweeney, April 2, 1996). SHARE takes a similar position to the AFL-CIO. It notes lower productivity and performance can be found in companies that exhibit one of three traits: a lack of employment security; no meaningful role for workers in corporate decision-making, or a tendency to downsize in order to boost short-term share prices.

Proponents of the shareholder value theory would argue that market forces have compelled firms to become more efficient in order to unlock value in the form of higher profitability and asset valuation – much of which is reflected in the short-term emphasis on share price increase and quarterly earnings statements. From the perspective of labour, the problem with the shareholder value argument is that it overlooks the potential for strategic decisions, made in the name of short-term performance, to lead to a hollowing out of critical human assets, whose knowledge capital may well be the economic lifeblood and source of competitive advantage for the firm.

2.5 The Two Roads to Profitability

Regina Markey coined the phrase the “two roads to profitability” to connote the differences between short- and long-run shareholder wealth generating strategies (Markey). She asserts the focus on short-term performance, the “low road”, leads to “downsize and divest” decisions that potentially strip firm-specific human capital assets in the quest for strong quarter-by-quarter results. TUAC echoes Lazonick and O’Sullivan in arguing that the prevailing view of boards in the 1950s and 1960s was one of responsibility to all enterprise stakeholders. However, by the 1980s the historic

stakeholder approach to governance and strategy had shifted in almost all countries a shareholder value model in where companies are responsible only to investors (OECD, September 2003). This shift in emphasis reflects the rise of the corporate governance movement in the 1970s with its emphasis on shareholder value as the primary responsibility of the firm. John Sweeney contends the “low road” approach is a “negative sum game” that may generate a one-time gain but ultimately results in reduced productivity, lessening competitive advantage and the destruction of long-term value (Sweeney, April 2, 1996).

The counterpoint to short-termism, the “high road” is strategically oriented towards a long-term focus on “retain and reinvest” and high-performance work practices. Williamson states that long-term strategy encourages innovation and productivity growth which in turn creates long-run firm value and shareholder wealth (Williamson, 2003). This approach views workers as key stakeholders. Therefore, governance systems must ensure accountability to, and the involvement of, workers in corporate decision-making processes (Jones et al., 2004). The benefits of high performance work practices have been already discussed in this chapter. Markey argues worker-shareholders must use their ownership interests in firms to promote the benefits of the “high road” approach to managers, shareholders and other market actors.

Worker opportunism can act to place bargaining or employment security gains ahead of shareholder returns. As Schwab notes, there is no one-to-one relationship between worker goals and shareholder interests and, thus, workers can opt to use their influence in corporate governance and decision-making processes to further union interests at the expense of shareholders (Schwab et al., 1998). However, Schwab

maintains that worker-shareholder opportunism and the potential for conflict is held in check by three sets of legal and market forces: fiduciary duty to pension fund beneficiaries; the need to persuade other shareholders to vote for its shareholder proposals; and the capital and takeover markets (Schwab et al., 1998). Fiduciary duty refers to the legal responsibility of investor representatives, such as labour pension fund trustees and managers, to make investment decisions that protect and maximize the value of shareholder assets. Labour pension funds, therefore, are required to act in a manner that is consistent with shareholders interests. Moreover, capital and takeover market forces will exert "vote with your feet" characteristics on firms that fail to meet investor demands for the creation of short- and long-run shareholder value

Summary

Labour participation in governance is justified on the grounds that workers bear some degree of residual risk in relation to their firm-specific investments and also hold fiduciary responsibilities to pension plan beneficiaries. However, labour participation is constrained by the fact that shareholder and worker goals are often divergent, and labour faces potential problems of conflict arising from its dual worker-shareholder role. The next chapter presents the dominant models of corporate governance to illustrate the extent to which these models facilitate labour participation and address the problem of shareholder-labour conflict.

CHAPTER 3

GLOBAL GOVERNANCE MODELS

Many analysts have concluded that there are two internationally dominant models for corporate governance: the Anglo-American shareholder value model and the stakeholder model found in Western Europe and Japan. (Gedajlovic & Shapiro, Spring 2001). Governance systems are a function of legal systems, political customs and modes of industrial organization and, as such, cannot be easily adopted into foreign environments. Within these two dominant governance models there exist important variations that inform the extent to which shareholder and stakeholder participate in corporate governance.

Before examining the characteristics of the Anglo-American and European models, it is worthwhile to establish a generic definition of shareholder and stakeholder models of governance. Together, these two models create a framework that illustrates the problem of worker-shareholder conflict and the limits to labour participation in governance.

3.1 Defining Shareholder and Stakeholder Models of Governance

The Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Committee) defines the shareholder model as follows:

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship (Cadbury, 1992).

Shareholder interests are aligned with the strategic direction of the corporation through the activities of the board of directors. The exercise of shareholder control rights occurs through the selection of the board and the creation of an appropriate governance structure. The Cadbury Committee's statement implies that the locus of responsibility for corporate governance and strategy rests with shareholders and the board of directors. In turn, boards of directors appoint managers to act as shareholder agents and implement the strategic aims of shareholders under the supervision of the board. Governance in the interests of shareholders requires the participation of market actors whose overall strategic objective is the creation of wealth. The differing interests of particular stakeholders need not be recognized or necessarily accommodated in strategy as long as the outcome is the creation of shareholder wealth. This market-centred approach to corporate governance suggests that the failure to create wealth is the result of inappropriate responses to market forces on the part of the board and management. Such failures are corrected through the action of efficient market mechanisms, including shareholder divestment, takeover bids, the removal of senior management, or changes to the board of directors. The definition also implies that shareholders, by virtue of their ownership and role in governance, are internal actors within the structure of the firm. As such, their claims to the residual value of the firm take precedence over the claims of all others.

From the stakeholder perspective, the purpose of corporate governance is to create a partnership of shareholders, stakeholders and managers with the goal of creating firm value. The underlying premise of the stakeholder model is that the inclusion of both shareholder and stakeholder interests is crucial to firm performance and competitive advantage. In a later report prepared for the World Bank, Cadbury advances a stakeholder definition of corporate governance:

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society. The incentive to corporations is to achieve their corporate aims and to attract investment. The incentive for states is to strengthen their economies and discourage fraud and mismanagement (Cadbury, 1999).

This definition reflects a clear change of perspective from the earlier work of the Cadbury Committee. The basis of the stakeholder model is the notion that the corporation is governed by and for a broader set of interests. Cadbury's statement implies that the interests of private, external stakeholders, with no claims to ownership, are of equal importance to shareholder interests in the development and success of business strategy.² Governance in the interest of stakeholders, therefore, explicitly contemplates the participation of both shareholders *and* private, external stakeholders who potentially hold differing strategic goals and interests. This approach implies that poor performance is the result of what Branston, Cowling and Sugden call "strategic failure", where the concentration of strategic decision-making fails to take into account the interests and perspectives of stakeholders thus leading to negative outcomes for the firm (Branston et al., December 2001).

² The distinction between internal and external forces in corporate governance can be found in "Corporate Governance: An Issue of Global Concern" published by the World Bank and available at www.worldbank.org/html/fpd/provatesector/cg/aboutus.htm

These two definitions create a framework for corporate governance that reflects the potential for conflict between shareholder and stakeholder models. Governance in the interests of shareholders serves an unambiguous purpose: the creation of shareholder wealth. By contrast, the stakeholder model attempts to satisfy and reconcile the potentially divergent financial and social interests of shareholders and stakeholders into the development of coherent and economically successful business strategy. Problematically, the stakeholder model assumes that the financial interests of shareholders can be met through business strategy that is overlaid with private social goals and thus geared to outcomes beyond the maximization of shareholder wealth. This internal contradiction between shareholder and stakeholder goals establishes the potential for conflict in what O'Sullivan calls the "contest for corporate control" (O'Sullivan, 2000). Thus the crucial issue is who governs the corporation and in whose interests, and whether those interests create the potential for conflict in development of business strategy.

3.2 International Models of Corporate Governance

Many analysts hold that there are two dominant international models of corporate governance within developed nations: the Anglo-American shareholder value model and the stakeholder model found in Western Europe and Japan (Gedajlovic et al., Spring 2001; Gillian & Starks, 2003). Within these two models, there are material differences between national systems. These differences inform the degree to which shareholders and stakeholders can participate in firm governance. This section analyses the two

systems in greater detail and highlights some important features of the Canadian system of governance.

The Anglo-American shareholder value model is characterised by liquid capital markets, dispersed ownership and less regulatory involvement in the operation of capital and labour markets (Jones et al., 2004). Capital markets tend to supply the majority of firms' financing requirements and ownership is dispersed among a relatively large number of shareholders. For example, in the United States, the largest shareholder in the firm may own as little as five percent of the voting rights (Gillian et al., 2003). The United Kingdom also features relatively wide ownership dispersion. In Canada, firm ownership is more concentrated. The majority of large Canadian firms tend to have a dominant shareholder, with the largest shareholder holding an average 49 % ownership position (Gedajlovic et al., Spring 2001). Moreover, the largest shareholders within Anglo-American systems are increasingly institutional investors, particularly pension and mutual funds. In terms of board composition, Canadian boards firms tend to have significant representation from majority shareholders. By comparison, boards in the U.S. and the U.K. tend to be composed of managers of the firm and a number of outside directors who are commonly recommended by management. These differences affect the degree to which shareholders can actively participate in corporate governance

Within Anglo-American jurisdictions, the dispersion of corporate ownership and the liquidity of capital markets enable shareholders to quickly exit ownership positions in favour of other investment opportunities. Therefore, in order to maintain shareholder loyalty and attract new sources of capital in highly competitive Anglo-American markets, boards are disciplined to focus the direction of corporate strategy on the creation of

shareholder wealth. Shareholder interests, or shareholder voice, thus plays a dominant role in Anglo-American based governance systems. This is the foundation of the shareholder value model of corporate governance.

By contrast, European stakeholder model is defined by relatively highly concentrated ownership of large companies. Financial institutions and, in particular banks, tend to play a large role in the financing, ownership and monitoring of corporations, and share ownership dispersion is much lower than in the U.S. (Gillian et al., 2003). Consequently, European firms are much less dependent on capital markets as a source of financing and are, therefore, less sensitive to the demands of individual shareholders. Moreover, these structural differences exist alongside a European tradition of labour-management “social dialogue” in which unions and management participate in the decision-making process. Consequently, the direction of business strategy need not be focused primarily on satisfying the demands of individual shareholders for the return of value. Stakeholder interests, therefore, can be accommodated much more easily in corporate governance and decision-making in European firms. These factors underpin the stakeholder model of governance.

3.3 The Exercise of Shareholder Voting Rights

Shareholder and stakeholder participation in corporate governance is also influenced by the rules that govern the exercise of shareholder voting rights. Gillian and Starks argue that shareholder protection is much stronger where the legal system is based on Anglo-American common-law (Gillian et al., 2003). In Anglo-American legal

systems, shareholders are much less constrained in the exercise of voting rights than their counterparts in European countries. For example, shareholders in the United States who hold shares as of the date of record³ are permitted to attend and vote at the annual general meeting. In addition, shareholders can opt to have their shares voted by proxy. The proxy voting system eliminates the need for shareholders to attend the annual general meeting but still permits the full exercise of voting rights.

By comparison, in many European countries the rights of institutional shareholders are constrained by a voting system known as share blocking. Under the share blocking system, shareholders who wish to vote must hold their shares **and** appear at the annual general meeting. In addition, the share blocking system weakens shareholder rights by effectively prohibiting investors from trading prior to the annual general meeting (Gillian et al., 2003). This reduces the potential for shareholders to increase ownership positions in order to increase their voting power. Thus, share blocking effectively places limits on the exercise of shareholder rights. Moreover, the requirement for shareholders to attend the annual general meeting reduces shareholder voting rights by imposing conditions on the manner by which those rights can be exercised. These legal constraints further entrench the role of financial institution shareholders and stakeholders by reducing the influence, or voice, accorded to individual shareholders in the design of voting rights. Gillian and Starks point out that the European approach to shareholder control rights has “the potential to entrench management and exacerbate agency problems” (Gillian et al., 2003). Moreover, the design of European control rights reduces the discipline on boards to focus on the

³ The date of record is typically several months prior to the annual general meeting (AGM). Shareholders who wish to vote at the AGM must hold shares prior to the date of record in order to be eligible to attend and vote.

creation of shareholder wealth as the primary focus of strategy. Instead, it implicitly encourages broader participation in governance and strategy.

In fact, the European stakeholder model places explicit emphasis on the participation of labour and other stakeholders in the governance process. TUAC notes that in many European countries, stakeholders often have participation rights established either within law or collective agreements, and have a direct role in corporate governance (OECD, September 2003). In these jurisdictions, workers have the right to appoint, or recommend for appointment, governance representatives from amongst their members to sit on the boards of directors and on the executive committees of firms. The rights and duties of these worker-directors are clearly defined, and in many cases include fiduciary duties to both the firm and the union. In Japan, employees are not formally represented on boards, but corporations are intended to be run in the interests of employees rather than shareholders (Becht, Bolton, & Roell, October 2002).

Within the European Union, the exact nature of the stakeholder model varies on a country-by-country basis. In some cases, labour participation is limited to information and consultation rights on certain issues. In other cases, it extends to participation in works councils or full co-determination, wherein workers are granted seats on the board. The mechanism for the selection of worker representatives also differs from country to country. Some countries grant workers on the shop floor the power to elect directors from among their ranks, while others grant the power of appointment to trade unions. Worker involvement is mandatory in Austria and the Netherlands (two-tier boards), and in Denmark, Sweden, Luxembourg and France (one-tier board) (Becht et al., October

2002). Mandatory co-determination exists in Germany, while voluntary co-determination regimes exist in Finland and Switzerland.

Another feature of labour participation in Europe is found in the system of mandatory works councils, which operate as internal labour-management structures intended to provide labour representation in corporate decision-making processes. The mandate of works councils varies across the EU, but typically includes the responsibility to deal with significant work place issues, including restructuring and reorganization, outsourcing, health and safety issues and the introduction of new technologies and work processes (Jones et al., 2004). In 1994 the European Parliament adopted the European Works Council directive to introduce a greater degree of uniformity and improve the protection of labour stakeholder rights in the functioning of works councils across the Pan-European region. The Works Council directive requires all companies operating across the EU and employing more than 1000 workers in at least two countries to set up information and consultations bodies with employee representatives. Approximately 10 million European workers are represented in these consultation bodies (Jones et al., 2004). The following chart depicts the structure for labour participation within a subset of European Union member states:

Table 1 - Works council and board level employee representation in the OECD countries

Country	Works council	Board level representation ⁴	
		State owned enterprises ⁵	Public listed corporations ⁶
Austria	Yes*	1/3 of board members ⁷	
Belgium	Yes	No	
Czech Rep.	Yes*	1/3 of board members	
Denmark	Yes	2 to 1/3 of board members	
Finland	Yes	Determined by sector agreement	
France	Yes	2 works council representatives (no voting rights) and: 3 to 1/3 of board members	<ul style="list-style-type: none"> • 2-3 board members for privatised corp.; • Up to 1/3 of board members for other corp. (voluntary basis)
Germany	Yes*	1/3 to half of board members, chairman elected by shareholders	<ul style="list-style-type: none"> • Appointment of the personnel director of the management board in the Iron, coal and steel industry:
Greece	Yes	2-3 board members	No
Hungary	Yes*	1/3 of board members	
Ireland	No	Best practice	No
Italy	No	No (Constitutional law not implemented)	
Luxembourg	Yes	up to 1/3 to half of board members	
Korea	Yes	No	
Netherlands	Yes	Works council appoint members of the supervisory board	
Norway	Yes	Determined by sectors agreement	
Poland	Yes*	2 to 2/5 of board members	1 member of the management board for privatised companies
Portugal	Yes	No (Constitutional law not implemented)	Best practice of 1 member of the council of auditors
Slovakia	Yes	1/2 of board members	1/3 of board members
Spain	Yes	2 board members	No
Sweden	Yes*	2-3 board members	
Switzerland	?	?	?
Jurisdictions in Australia, Canada, Japan, Mexico, New Zealand, Turkey, UK and the US have no provisions for works council or for board level employee representation.			

* includes co-determination rights

Source: Jones and Habbard, 2004. Used by permission of the authors.

4 Employee representatives elected by workers or nominated by works councils, does not include employee shareholder representatives

5 State owned, state controlled (ex. minimum 20, 30 or 50% of share capital), public sector and/or other "social purpose" companies.

6 Beyond given number of employees or amount of share capital, no state ownership involved.

7 Members of the board of directors for one-tier systems, and to members of the supervisory board for two-tier systems.

Throughout the EU, the combination of weaker voting rights for individual shareholders and legislated labour participation creates the strongest opportunity to align the direction of corporate strategy with stakeholder interests. Moreover, under the European stakeholder model the direction of public policy is clearly oriented towards the protection of stakeholder rather than shareholder rights. On the positive side, strong stakeholder participation regimes have the potential to maximize the monitoring of managerial behaviour. This facet of labour participation suggests shareholders interests are enhanced, and monitoring costs are reduced, through the exercise of labour's continuous monitoring capabilities. Conversely, it can be argued that weak shareholder rights create the potential for labour-management collusion at the expense of shareholders, in particular minority shareholders. Moreover, the intense participation of labour also has the potential to increase shareholder costs through the problem of over-monitoring.

Strong labour participation rights also create the potential for a hold-up problem, wherein labour is able to leverage its role in governance and decision-making to force firms into making costly and possibly uneconomic concessions to workers. The potential for hold-up problems appears particularly strong in instances where labour participates on corporate boards and fiduciary duty to shareholders is weak. Thus, within the European stakeholder model, labour participation has the potential to protect shareholder interests through enhanced monitoring and the creation of effective industrial relations structures that minimize the possibility of strikes or other costly labour-management disputes. On the other hand, the stakeholder model can also create in-built decision-making inefficiencies in circumstances where major work place issues are subjected to mandatory co-determination processes. As Brect et al. comment, one of

the central criticisms of the Rhineland model is that the in-built inefficiencies within the governance system increase the cost of capital and can also create competitiveness problems, particularly at the global level (Becht et al., October 2002).

Summary

Governance systems are the product of a complex interplay of legal systems, political customs and economic factors. The structure of governance systems determines the extent to which shareholders and stakeholders participate. Market forces are the primary factor influencing the direction of strategy in the U.S., the U.K. and Canada, whereas stakeholder goals play a significant role in the governance and decision-making processes found in European firms. Differences in the design of shareholder voting rights also determine the extent to which shareholder can actively participate in governance. The fact that corporate governance is determined by national or regional legal, political and social factors suggests that governance models cannot be easily transposed into foreign environments. This fact is relevant to the development of a strategy framework for the Canadian labour movement since it implies that such a strategy should be rooted within the Canadian system of governance. The next chapter explores labour's support for government intervention in corporate governance policy.

CHAPTER 4

LABOUR SUPPORT FOR GOVERNMENT INTERVENTION

The labour movement views policy intervention in governance as a means to strengthen the protection of shareholder and stakeholder rights and legitimize stakeholder participation in governance. The case for government policy intervention in corporate governance has become stronger and more urgent in the wake of the global financial crises of the past decade. The collapse of the so-called Asian “Golden Tiger” economies triggered unprecedented volatility in global capital markets, which led to currency devaluations, default on national debt obligations, capital flight and significant hardship for the poor. These, and other market failures, create a case for public policy intervention.

The corporation is an engine for growth and social progress in both international and domestic markets. Increasingly, corporations are responsible for the provision of public and private services, infrastructure and employment (Bank). Blackwell and Patterson argue that: “[p]roperly regulated and governed the corporation is an extraordinarily powerful institution for the creation of wealth” (Blackwell et al., March 2003). The globalisation of financial markets and national economies has brought about the need for effective regulatory and governance mechanisms to ensure corporations are able to fulfil their economic and social mission. The efficiency, effectiveness and accountability of the corporation is now, therefore, an issue of public and private interest

and has risen to the forefront of the international policy agenda. In fact, as James Wolfensohn, President of the World Bank, comments: "the governance of the corporation is now as important in the world economy as the government of countries" (Bank).

4.1 The International Framework for Corporate Governance

In 1999, the OECD adopted international principles for corporate governance as part of broader international efforts to improve global financial stability and the functioning of corporations. The Principles cover five areas: the role of stakeholders in governance; equitable treatment of shareholders; disclosure and transparency; and the responsibilities of boards of directors (OECD, September 2003). In 2000, the Principles became one of 12 key standards of global financial stability and are now used by international financial institutions as a benchmark for corporate conduct.

The collapse of major corporations, including Enron and WorldCom in the U.S. and Marconi in the U.K., prompted OECD ministers in the spring of 2002 to accelerate a planned review of the Principles. The central issues for OECD ministers, once again, centred on the need to restore confidence in the operation of domestic and global financial markets and address the impact of falling share prices on shareholders, pension funds and national employment levels. The destruction of billions of dollars of shareholder wealth sparked considerable fear on the part of institutional and individual investors concerning the functioning of equity markets. At the same time, many workers lost their jobs as well as their pensions and medical benefits. Shareholder and stakeholder interests were thus united in common cause to demand domestic and international reforms to corporate governance and financial market regulation.

In the development of the revised Principles, the central issues for the international labour movement are to enhance the protection of shareholder interests and control rights and improve corporate accountability to both owners and stakeholders. Internationally, trade unions have taken the position that an attitude of regulatory “permissive-ism” led to the pursuit of self-enriching behaviour on the part of boards and corporate management with little regard for the interests of shareholders. TUAC cites a number of practices that have fuelled the concerns of unions, including: an over-emphasis on stock options to reward managers; illegal insider trading; chronic failures in the composition, scope, regulatory framework and accountability of boards (OECD, September 2003). In addition, the problem of international regulatory arbitrage discussed earlier has also exacerbated the potential for opportunistic corporate behaviour at the expense of shareholders. Moreover, from the standpoint of labour stakeholders, the existence of differing national corporate and tax law regimes has resulted in corporations attempting to relocate offshore in order to escape responsibilities, such as the payment of pension plan obligations⁴.

4.2 Mandatory and Voluntary Governance Regimes

The failure of domestic and international corporate governance regimes to effectively regulate corporate behaviour has thus bolstered the case for public policy intervention. However, the framework for governance regulation will vary among countries according to the structure of the legal system (common law or civil) and other market institutions, social customs and differing views on the role of the state in the regulation of public and private interests. Regulatory regimes for corporate governance

⁴ In a recent, highly publicized case the U.S. labour movement and several public and state pension funds launched a successful proxy campaign to prevent the Connecticut-based firm Stanley Works from re-incorporating in Bermuda.

can vary from voluntary, non-enforceable industry-derived codes to legally binding standards found in stock market rules or government legislation. Within Anglo-American common law jurisdictions, the direction of public policy has been focused on reforms to strengthen the shareholder value model of governance. In particular, regulatory efforts have been aimed at improving the protection of shareholder rights and the restoration of confidence in the functioning of financial markets. Both the U.S. *Sarbanes Oxley Act* and the U.K. *Combined Code of Corporate Governance* feature significant measures intended protect shareholder interests and address the agency costs of monitoring. Common provisions include disclosure and transparency, increased accountability and a strengthening of the role of audit committees. Notably absent from either were any provisions dealing with stakeholder rights. The thrust of public policy apparently did not recognize the inclusion of stakeholder issues, or indeed stakeholder participation, as an appropriate area for government intervention.

4.3 Strengthening the Recognition of Stakeholder Rights

The role of stakeholders in corporate governance continues to generate significant debate within the international labour movement. Over the past year, the issues have come into particularly sharp focus as the international labour movement has sought to develop a consensus policy position and response through TUAC on the proposed revisions to the OECD Principles. While controversial within the labour movement, it should also be noted that the issue of stakeholder participation, as has been discussed earlier, is equally controversial outside the international House of Labour. The pivotal issue framing the debate within labour is captured the following statement from the draft revisions to the Principles:

The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises (OECD, February 20 2004).

In general, both E.U. and Anglo-American unions support the view that stakeholders should be granted a stronger role in the governance of corporations. The debate arises, however, over the methodologies and tactics for obtaining a greater, and legally recognized, role for union participation. The fault line in the debate lies between the differing legal systems, political customs and modes of industrial organizations within the E.U. and Anglo-American jurisdictions. Those differences inform how E.U. and Anglo-American national labour federations have approached the debate. Anglo-American unions, such as the AFL-CIO, tend to support enhanced legal protection for shareholder rights and increased labour shareholder activism as the preferred tactical approach to gaining a direct role for workers in governance. European unions, on the other hand, tend to favour the extension throughout the E.U. of legal rights for unions to be represented on boards and a general increase in the ability of unions to participate in governance and influence the direction of business strategy. The British TUC, in contrast to its other Anglo-American counterparts has supported the European approach calling for the formal inclusion of stakeholder participation in public policy.

This section briefly examines the policy rationales and driving principles articulated by the TUC and the AFL-CIO on the role of stakeholders in governance. These two national labour federations have been specifically selected to examine the stakeholder participation issue within an Anglo-American context. Governance is a function of the complex interplay of legal systems, political customs and modes of

industrial organization. Therefore, in attempting to fashion a strategy framework for participation for SHARE and the CLC, it makes sense to concentrate on Anglo-American examples.

The British TUC has sought to include stakeholder rights in the scope of public policy largely as a measure to reduce workers' residual risk and protect their firm-specific investments. In the wake of governance failures in the United Kingdom and the attendant negative impact on jobs and pension benefits, the British Labour movement argued that public policy intervention was needed to strengthen protection for both shareholder and stakeholder interests.

In 1995, the TUC established a Stakeholder Task Group to develop proposals for a stakeholder economy. The TUC was motivated by recognition of the impact of corporate governance on the interests of private sector workers (Williamson, 2003). The Task Group's report, *Your Stake at Work: Proposals for a Stakeholder Economy*, argues that companies should balance the interests of all groups with a stake in the firm. Moreover, the TUC argued that such reforms would create mutual gains benefits that could be distributed much more equitably among different stakeholder groups. Williamson notes that other commentators at the time also advocated the adoption of a stakeholder model in the United Kingdom. In particular, Williamson cites Kay and Silberston's advocacy for the adoption of governance reforms as a means of bringing the United Kingdom much closer to Germany and other Rhineland economies in the adoption of mandatory labour participation (Williamson, 2003). Branston, Cowling and Sugden (2001) contend that the presence of varied interest within the firm would be reflected in different approaches to strategy, and thus position governance as a central

issue for public policy. They argue that the corporation serves a much broader interest than just that of shareholders.

Public policy must ensure that corporations are governed in a manner that serves the public interest. One possible solution to the policy challenge is to find appropriate ways to involve stakeholders in the decision-making process, in effect to “democratise” corporate governance (Branston et al., December 2001). Williamson and Branston, Cowling and Sugden recommend amendments to company law as one appropriate step in the reform process. They examine the case of English corporate law with its shareholder value model of governance. The primary duty of directors is to act in the interests of the firm, which is essentially equated with shareholders’ interests. While directors also hold a duty towards the constituents of the firm, these are considered to be secondary to shareholder interests (Branston et al., December 2001). Williamson argues the legal definition of a company as an entity created by and for the interests of shareholders reflects a gap between public policy and “common sense” reality (Williamson, 2003). That “common sense” perspective holds that the firm is in fact a complex web of interlocking relationships between shareholders, employees, customers, suppliers and other stakeholders. In fact, Williamson considers employees to be the embodiment of the company since they produce the goods and service that create its profits and represent it to the public.

Shareholders, on the other hand, are arm’s length participants in the affairs of the company, who in all likelihood will have no interaction with the firm throughout the time they hold its shares. Williamson contends therefore that the premise of the shareholder value should be challenged. Rather than being primarily accountable to shareholders,

the firm must be accountable to both shareholders and stakeholders. Branston et al point to the German co-determination model, which sees companies as serving the interests of both shareholder and employees, as a favourable policy response to the problem. They argue that one possible approach is for English corporate law to build the concept of corporate membership to include both shareholders and stakeholders and require boards to serve the interests of all of the firm's members.

However, the Hampel Committee on Corporate Governance rejected the inclusion of stakeholder participation in U.K. corporate law. The Committee argued that requiring director accountability to varied stakeholder interests would imply that "they were not effectively accountable to anyone since there would be no clear yardstick for judging their performance. This is a recipe neither for good governance nor for corporate success" (Williamson, 2003). In other words, shareholders hold a common goal: the creation of shareholder wealth and the only clear measure for judging corporate performance is the financial performance of the firm, which results in the creation or destruction of shareholder value. Stakeholders potentially have wide and varied goals that may or may not be consistent with shareholder interests and, thus, the task of defining commonly accepted performance measures is highly complicated if not impossible.

The British Labour Government sought to balance the concerns of shareholders and stakeholders in the amendments to the U.K. *Company Act*, which requires corporations to publish annually an "Operational and Financial Review" (OFR) covering three areas: the company's operations; its financial position; and its future business strategies and prospects (Williamson, 2003). The British Government takes the view that the OFR is of significant benefit to both shareholders and "a wider cross-section of

stakeholders” (Williamson, 2003). The disclosure duties covered within White Paper that preceded the passage of legislative amendments speaks to the need for companies to foster business relationships with stakeholder groups, but does not acknowledge a formal, legislated role for stakeholders in governance. However, the underlying thrust of U.K. public policy is to create “wider accountability” for British corporations, beyond their existing accountability to shareholders. Thus, while these reforms are balanced in favour of protecting shareholder rights, they have nevertheless granted stakeholders passive, informal participation rights. These reforms, arguably, represent a workable public policy balance between shareholder and stakeholder rights.

The AFL-CIO has taken a somewhat different view on the relationship between governance reforms and stakeholder rights. Blackwell and Patterson describe the role and limits of public policy as follows:

Only government can establish the laws and regulations necessary for corporate accountability – rule of law, macro-economic balance and effective regulation of product, labor and capital markets to limit the market power of individual companies. In the wake of recent scandals we can see the regulatory failures in the California energy markets that Enron manipulated; in the deregulation of the telecommunications and the financial services industries.

However, corporate accountability requires more than effective regulation. It also requires sound mechanisms of corporate governance. Corporate governance concerns the relations among shareholders, the board of directors and the senior management of corporations. Sound corporate governance assures the interests of manager are aligned with those of the company and its constituents and guides the strategic allocation of productive assets and the formation and execution effective business and competitive strategies (Blackwell et al., March 2003)

Blackwell and Patterson define the “constituents” of the corporation as shareholders, managers, creditors, suppliers and workers. The definition of constituents is distinct from the broader definition of stakeholders common in Rhineland social market systems. Constituents are internal actors that contribute productive assets and make firm-specific

investments. According to Blackwell and Patterson, the corporation bears a duty of accountability to the constituents of the firm, and to society and government under whose laws the firm is organized, regulated and operates (Blackwell et al., March 2003). Corporate accountability, therefore, requires the formulation of objective standards found in law and regulation.

The role of public policy is to set the framework for accountability and secure the efficient operation of financial markets and the linchpin to achieving economic growth and prosperity is the creation of an effective regulatory environment. However, the day-to-day functioning and maintenance of governance systems is the purview of the firm's constituents rather than public or quasi-public regulatory bodies.

The failure of financial markets in the U.S. and elsewhere were the result of weak regulation and insufficient protection of shareholder rights. The collapse of Enron also pointed out potential regulatory weaknesses or inadequacies that surfaced following the crash of the firm's stock and its Chapter 11 filing. The decline of the firm's stock destroyed the value of Enron employees' 401(K) plans and also impacted on the retirement security of public pension plan beneficiaries and members. In addition the company's Chapter 11 filing also caused numerous Enron employees to be denied severance benefits.

The fall of Enron thus impacted on the residual risk borne by both shareholders and employees. Yet, governance mechanisms in place at the time did little to protect shareholder interests or allow for the appropriate exercise of shareholder control rights

to ensure effective monitoring, disclosure and accountability. Worse still, Enron employees lacked any legal recognition of residual control rights in relation to either their firm-specific investments as workers or their financial investments as small shareholders.

In response to the market failure problems, the AFL-CIO called for stronger regulations and regulatory institutions governing disclosure, transparency and accountability to firm constituents Blackwell and Patterson contend that: '[w]orkers should not bear the brunt of corporate malfeasance and the retirement security priority. The claims of workers who lose their jobs should have first claim on the assets of companies destroyed by corporate misconduct. These include severance claims as well as unpaid wages, benefits, pension and 401(K) contributions" (Blackwell et al., March 2003). In addition, the AFL-CIO has also advocated a "strong voice" for worker capital in financial markets, through increased shareholder activism and greater participation in pension fund governance and management, rather than formal participation on corporate boards. Unlike the TUC and European Union trade unions, the AFL-CIO has essentially adopted the position that shareholder activism, corporate engagement and government lobby efforts will achieve as much or more for worker-shareholders than having seats on the boards. While the AFL-CIO does not explicitly state it, such a position minimizes both the risk of conflict from its dual role as worker and shareholder and the need for government intervention to solve problems related to "contests for corporate control" related to divergent claims and interests concerning firm assets.

Summary

The international labour movement has sought to increase the role of stakeholders in corporate governance through public policy reforms. The differing approaches of Anglo-American and E.U. unions to the question of how stakeholder should participate in governance are a function of the relationship between legal systems and political customs and the structure of governance systems. The policy options advocated by the AFL-CIO and the TUC are relevant to the development of a strategy framework for the CLC and include: a strengthening of the legal framework for accountability; enhanced public disclosure of corporate activities; and, legal protections to minimize residual worker risk to prevent economic loss in cases of corporate bankruptcy or collapse. The next chapter will examine mechanisms outside of the sphere of public policy reform by which labour and other stakeholders seek to gain influence in corporate governance and business strategy. It will also explore the limits to stakeholder participation and the potential for worker-shareholder conflict within each of these alternative mechanisms of participation.

CHAPTER 5

HOW LABOUR SEEKS TO INFLUENCE GOVERNANCE AND STRATEGY

There are a number of non-public policy based-approaches for labour to obtain influence in the direction of corporate governance and business strategy. The means include: shareholder activism; support for corporate social responsibility and socially responsible investment practices; and, seats on corporate boards. This chapter evaluates the strengths and weaknesses of each of these mechanisms in terms of the opportunity to advance labour goals and the potential within each for the emergence for worker-shareholder conflict. Each of these approaches represents a potential component of a SHARE-CLC strategy framework and each is considered on the basis of its strategic merits and weaknesses.

5.1 Shareholder Activism

Within Anglo-American jurisdictions, shareholder activism is the primary model for labour participation in corporate governance and decision-making processes. Jones and Hubbard argue that in the US, Canada and the United Kingdom, labour has committed substantial resources to corporate governance reform activities and has enjoyed growing influence amongst institutional investors and shareholder activists (Jones et al., 2004). Within the three countries, labour shareholder activism has led to improvements in the protection of shareholder rights. Notable successes include the promotion of independent directors, executive compensation reforms and the adoption of

resolutions calling on boards to respect the fundamental rights of trade unions. Anglo-American labour shareholder activism has provided three opportunities for worker participation in corporate governance and accountability: attendance at the annual general meeting; the exercise of shareholder voting rights and direct engagement with boards and management to address issues of concern.

Jones and Hubbard (Jones et al., 2004) argue that one of the important consequences of labour shareholder activism is the increasing collaboration between unions and a broader base of stakeholders, including faith-based shareholders and civil society public interest groups. One recent Canadian example is the partnership between the CLC, OxFam and a number of faith based shareholders on the development and promotion of shareholder proposals designed to improve working conditions within the global production and supply chains of Canadian apparel retailers. Labour's shareholder activism has enabled it to leverage its control rights within the Anglo-American shareholder value system to protect and advance the interests of both its pension plan beneficiaries and its stakeholder allies. An October 2003 bulletin from Washington, DC-based firm Institutional Shareholder Services report on the formation of the National Coalition of Corporate Reform (NCCR), a shareholder advocacy group composed of state and public pension plan officials dedicated to corporate governance reform.

The initial news release announcing the creation of NCCR stated the purpose of the organization as follows: "NCCR will unite institutional shareholders and individual investors, labour leaders, corporate CEOs elected officials and community leaders in support of a program of corporate governance reforms, regulation and legislation. Our goal is a program of reform that will build a strong, growing economy that benefits all"

(Services, October 2003). Thus, share ownership and the vigorous exercise of control rights has provided the Anglo-American labour movement with a powerful market-based tool to advance its dual shareholder and stakeholder interests.

The AFL-CIO situates shareholder activism inside a broader policy framework. The framework links collective bargaining and the promotion of labour's stakeholder goals to the stewardship of worker capital and the enhancement of corporate accountability mechanisms. Blackwell and Patterson argue that unions hold dual responsibilities to organize workers as employees and build strong unions to "countervail the power of corporate insiders" (Blackwell et al., March 2003). The exercise of labour's organizing capabilities and shareholder control rights operate as a comprehensive mechanism to hold corporations accountable to both shareholders and stakeholders within the community. Moreover, Blackwell and Patterson argue that:

Whether or not we are able to require that worker representatives gain a formal role in the governance of corporations as in many European countries, workers as shareholders must be empowered to play a central role in corporate governance as shareholders. Our fiduciary responsibility to the beneficiaries cannot be served without active stewardship of the five trillion dollars of workers' capital [held in U.S. labour pension funds] (Blackwell et al., March 2003).

The Anglo-American shareholder value model creates the opportunity for labour-management dialogue through the exercise of shareholder control rights. However, the exercise of labour's voice is constrained by the potential for conflict arising from its dual role as fiduciary and worker representative. One potential solution is for labour to restrict its participation in corporate governance to issues that affect the financial interests of pension plan beneficiaries. Under such a scenario, the resolution of issues affecting

workers would be resolved through negotiation, collective bargaining and other mechanisms established for the resolution of labour-management disputes.

5.2 Mainstreaming Worker Participation

A number of national labour federations have argued that firm-level economic performance is linked to the “mainstreaming” of worker participation at every level of decision-making and governance (Jones et al., 2004). This position is controversial on at least three fronts. First, it is predicated on the notion that workers have a legitimate claim to participate in corporate governance. Second, it overlooks the potential for worker opportunism in the direction of governance and decision-making. Third, it implies that worker participation enhances economic performance and occurs in a manner that is, or can be made, consistent with shareholder interests.

Nevertheless, the “mainstreaming” of worker participation is emerging as a core element of labour strategy. Markey notes that it is becoming common practice for US labour pension funds to press for the adoption of high performance work practices as key factors in the creation of corporate sustainability and long-term performance (Markey). The foundation of high performance work practices is reliance upon all members of the firm to make the firm successful by contributing their ideas, knowledge and commitment to the organization (Pfeffer, 1998). According to Markey, numerous studies point to the relationship between high performance work practices and the creation of shareholder value. The TUC also notes in its institutional investment strategy that research on the adoption of high performance work systems has demonstrated

increasing firm performance, productivity gains and a reduction in worker absenteeism and inflexibility (Congress, 2003).

The exercise of shareholder voting rights creates the ability for shareholder votes to influence corporate governance far beyond the standard reforms that deal with managerial compensation, board independence, disclosure and separation of the chair and CEO roles. In theory at least, the exercise of control rights provides an opportunity for union pension funds to promote resolutions aimed at the adoption of high performance work practices, worker participation in corporate governance and decision-making and similar strategies intended to secure long-term corporate sustainability and performance. The success of such resolutions depends on labour's ability to secure support from a majority of the company's shareholders. Schwab and Thomas note that: "[m]any shareholders will be skeptical of proposals that appear to benefit only labor and view them as an unjustified diversion of corporate resources to a special interest group" (Schwab et al., 1998). They argue that if labour wants to gain shareholder support, they will need to focus narrowly on the development of proposals that are consistent with shareholder interests. Moreover, Schwab and Thomas observe that labour's fiduciary responsibility require that union pension funds seek to maximize returns to beneficiaries and, therefore, will want to ensure that "their voting policies are directed toward approving only those proposals that can be directly tied to shareholder value creation" (Schwab et al., 1998). Market forces will act as a final check on the potential for labour opportunism and worker shareholder conflict. For example, if labour were to be successful in using its shareholder voting powers to persuade the board of directors to take actions that would divert substantial wealth from shareholders, such as increased worker pay and benefits with no attendant increase in productivity, the probable outcome

would be subpar corporate performance. In turn, poor performance would trigger an increase in the firm's cost of capital, lower share value and possibly make the firm a takeover target (Schwab et al., 1998). The firm would, therefore, be placed at a competitive disadvantage and the impact would be felt by workers in the form of job loss and, possibly, drastic cuts to worker pay and benefits. The problem, therefore, is for labour to define an approach to the exercise of its fiduciary responsibilities and shareholder voting rights in a manner that constrains the potential for opportunism and worker-shareholder conflict.

The fiduciary duties of loyalty and prudence present a partial solution to the worker-shareholder dilemma in the exercise of voting rights. The AFL-CIO's Proxy Voting Guidelines state that the fiduciary duty of loyalty requires that "the voting fiduciary exercise proxy voting authority solely in the interests of participants and beneficiaries and for the exclusive purpose of providing plan benefits to participants and beneficiaries. The voting fiduciary is prohibited from subordinating the interests of participants and beneficiaries to unrelated objectives". The duty of prudence requires fiduciaries to "seek out information from a variety of sources to determine what is in the long-term best interests of plan participants and beneficiaries". Thus, the duties of loyalty and prudence mean that fiduciaries are not obligated to maximize short-term gains if such a decision is not consistent with the long-term economic best interests of plan participants and beneficiaries.

The AFL-CIO argues that issues such as long-term corporate sustainability, responsibilities to stakeholders and policies related to employment security and wage levels of plan participants may have an impact on the long-term economic bests

interests of beneficiaries and participants (AFL-CIO, 2003). SHARE's proxy voting guidelines support the position of the AFL-CIO. Their guidelines argue that short-term strategies such as downsizing lead to slightly better stock market performance in the first 6 months after downsizing, but lag afterward (SHARE, 2004b). Fiduciaries need not be tempted into voting for short-term gains if such measures have the potential to diminish long-term performance. Thus the fiduciary duties of loyalty and prudence provide a link between long-term performance strategies and broader shareholder interests. Worker-shareholders can promote the creation of long-term firm value and seek common ground on which to link the interests of workers, shareholders, managers and pension plan participants and beneficiaries. Labour shareholder campaigns can be targeted to proposals that seek to make labour goals consistent with shareholder interests. Fiduciary duties and market forces will act as constraint on the exercise of labour's shareholder voting rights and, thus, limit the potential for worker-shareholder conflict.

4.2 Labour Representation on Boards – Electrolux

On the surface, labour representation on the board appears to present the strongest opportunity for unions to make business strategy consistent with worker goals. In theory, labour directors can exert influence on the board to promote the adoption of "labour friendly" policies⁵. However, this position is problematic and controversial for several reasons. First, it assumes that labour goals can be made consistent with shareholder interests and union directors can successfully use their position on the

⁵ Examples of "labour friendly" strategies include commitments to long-term job stability through the adoption of "no layoff" and "no contracting out" policies.

board to influence the adoption of “worker friendly” strategies, notwithstanding the impact of those policies on firm performance. Second, this position appear to overlook the fact that directors bear a primary fiduciary duty to shareholders and, therefore, are entrusted to act first and foremost in the interests of shareholders, rather than in the interest of workers or other stakeholders. Third, it ignores the impact of domestic and global market forces on strategy and implies that boards can make strategic choices to protect jobs without affecting the financial health or competitiveness of the firm. In effect, this position holds that global and domestic market forces are short-term pressures to be weathered and/or largely ignored in favour of “long-term” strategies that maintain stable employment levels and create long-run wealth. However, labour representation on the board is not a magical cure for the problems of global and domestic competition.

This section examines the case of Electrolux, a Swedish-based multinational corporation whose board includes labour directors elected by the Swedish national labour body, the Confederation of Trade Unions and one the main Electrolux unions, the Swedish Federation of Salaried Employees in Industry and Services⁶

In early 2004, Electrolux embarked on a significant restructuring program in the United States and Australia with closure of plants and transfer of significant numbers of jobs to lower wage, non-union jurisdictions. These decisions led to significant employment losses in two markets where Electrolux had a long history of providing stable, long-term employment.

⁶ Electrolux 2003 Annual Report, p. 88.

In January 2004, Electrolux announced plans to close a 127 year old refrigerator plant in Greenville, Michigan and shift production to two lower wage, non-union jurisdictions – Anderson, South Carolina and Juarez, Mexico. According to January 25, 2004 story in *The Grand Rapids Press* newspaper, Electrolux argues its decision is a consequence of global competition and the need to reduce costs, in particular wage costs (Crawley, January 25, 2004). In the case of Mexico, wage rates are US \$1.57 per day compared to US \$ 13 – 15 per hour at the Greenville plant. Keith McLoughlin, President and CEO of Electrolux Home Products North America comments: “[u]nfortunately, we face significant competitive challenges in today’s global economy, most notably that all our major competitors have located or announced they will soon locate production facilities in Mexico and thus put us at a large cost disadvantage” (Bauer & Hogan, January 16, 2004).

Subsequently, in April 2004, Electrolux announced that it would eliminate 300 jobs at refrigerator plants in New South Wales and South Australia (Grace, April 22, 2004). The company announced its intention to shift from production to importing the same products from China and Thailand. In an April 22, 2004 Australian Associated Press General News story, Tim Ayres, national secretary of the Australian Manufacturing Workers Union stated: “I challenge Mark Vaile [Australian Minister for Trade]...to go with me to Adelaide and to Orange so that he can explain to those workers...why the loss of their job, the loss of their family’s security and the diminished wealth of those local communities, is good for this county” (Grace, April 22, 2004). Ayres’ comment implies that labour believes firms can essentially disregard market forces in favour of strategies that protect jobs, rather than shareholder interests. Moreover, his position implies that strategic policies such as downsizing or outsourcing can have devastating

long-term effects on national wealth and corporate performance. Carried to its logical conclusion, Ayres' comment suggests that global competition is inherently bad, and firms who respond to global market pressures will invariably suffer poor performance.

However, Electrolux has continued to record strong earnings and share price performance, suggesting that its strategic decisions are consistent with shareholder interests and market expectations. The presence of labour directors does not appear to have prevented the board from need to address the impact of market forces and global competition on the direction of business strategy.

As noted above, directors have a primary fiduciary duty to protect shareholders interests. The direction of corporate governance and strategy must recognize that primary responsibility while seeking to develop strategy that maximizes the potential for shareholder value. For labour, the primary responsibility to shareholders may lead to circumstances in which the board may be required to adopt strategy that, to some degree, is labour unfriendly. Boards of directors play a critical role in the development of strategy. That role includes evaluating options and selecting a strategic direction that is aligned with the interests of shareholders. Strategic decision-making must take into account a complex set of factors, including the impact of domestic market forces, global competition, shareholder interests and stakeholder response in determining the direction of the firm. Nothing prevents the board from adopting strategy that ignores the pressure of short-term market forces if, in the final analysis, such a move reflects the interests shareholders and creates shareholder value.

Labour participation on the board presents an opportunity to help to break down the traditional ideological divisions between workers, managers and shareholders. The potential for labour participation to increase communication and understanding between labour and management can engender a reduction in industrial disruption due to strikes. Further, such a strategy may lead to increased productivity, which in turn creates mutually beneficial outcomes for workers and shareholders. However, labour participation on the board is constrained by its dual worker-shareholder role and the fiduciary responsibility of directors to shareholders. Moreover, labour participation on the board is not a panacea for the impact of global competition and domestic market forces on the direction of business strategy. The Electrolux case leads to two conclusions. First, labour representation cannot necessarily stop the adoption of labour unfriendly strategies. Market forces, shareholder expectations and the fiduciary responsibility of directors can all lead to circumstances in which boards must opt to downsize or outsource in order to survive in a highly competitive global economy. Labour directors cannot neglect their fiduciary duty to shareholders and, therefore, must place shareholder interests ahead of worker goals. This places substantial limits on the ability of labour directors to make business strategy consistent with worker goals. In attending to their board responsibilities, labour directors face the potential for significant conflict between their responsibilities to shareholders and workers. Therefore, labour representation on the board has highly limited value as a strategy for worker participation. Moreover, it points to the need for a strategy framework for participation to explicitly separate the exercise of labour's shareholder rights from its pursuit of worker goals. The next section discusses how labour and other stakeholders attempt to gain voice over the direction of governance and business strategy through support for corporate social responsibility.

4.3 Corporate Social Responsibility

Proponents contend that corporate social responsibility (CSR) enables corporations to link the advancement of non-financial goals with the creation of shareholder wealth. Labour has expressed strong support for CSR on the basis that it provides a mechanism to make labour goals and shareholder interests consistent. In other words, CSR appears to be a vehicle for overcoming the problem of worker-shareholder conflict.

There is no universally accepted definition of corporate social responsibility (CSR). The World Business Council for Sustainable Development defines CSR as: “the commitment of business to contribute to sustainable economic development, working with their employees, their families, the local community and society at large to improve their quality of life” (Development).

Global and domestic CSR standards are embodied in a set of documents that collectively established the principles and framework for corporate social conduct. These documents include the International Labour Organization’s (ILO) Declaration of Fundamental Principles and Rights at Work, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Principles on Corporate Governance, The Global Reporting Initiative and the United Nations Global Compact. While voluntary in nature, these codes are the product of negotiation between business, labour and government, which suggests a tripartite commitment to strengthen the regulatory and legislative underpinnings of global governance. Moreover, the

tripartite nature of these discussions suggests that business and government recognizes labour has a legitimate role to play in the governance of corporations.

Two principles underlie the concept of CSR: the promotion of “universal” social goals and risk mitigation. Speaking to the first principle, Joseph Keefe, Executive Vice President and General Counsel of Citizens Funds comments that humanity is experiencing one of the most dramatic periods of economic transformation in history, in which the world is moving towards the benefits of a global economy – an economy fraught with conflicting values and tensions that will only be resolved by a commitment to basic norms of corporate responsibility. He argues: “[I]f we are to export our contract rights, property rights, and intellectual property protections globally, as we should, should we also not take care to export human rights, labor standards and environmental protections as well? Why should we export some values but not others?” (SocialFunds.com, April 20, 2000).

The risk mitigation principle refers to potential downstream liabilities arising from poor environmental or human rights-related business practices. The New York based Interfaith Centre for Corporate Responsibility (ICCR), a coalition of 275 religious institutional investors, led a recent campaign urging ExxonMobil to adopt a more “responsible” position on climate change. Citing the pattern of legal settlements against tobacco companies, ICCR argued Exxon’s sceptical stance on climate change could damage brand value by US \$3 billion. Moreover, ICCR argued that if environmental liability claims could be established, court imposed damages could cost shareholders in excess of US \$100 billion (2004). Phillip Rudolph, former general counsel at McDonalds argues that, from a corporate responsibility perspective and pension fund activism

perspective, companies face large risks of legal exposure arising from cases brought under the U.S. *Alien Tort Claims Act*, Sarbanes Oxley, E.U. regulations and U.N conventions. In addition, shareholders are also at risk from exposure to lawsuits arising from numerous diverse ethical and social issues. He cites, for example, the case of JP Morgan being sued in Illinois courts on the issue of whether or not the company uses slave labour or not. Rudolph argues, therefore, that the adoption of CSR standards mitigates risk and protects shareholder value. Thus, in an era of globalisation CSR is held out as a “win-win” business strategy – creating mutual gains benefits in the interests of shareholders, stakeholders and society as a whole. CSR drives up shareholder value, promotes the positive benefits of globalisation and improves environmental and social standards at home and abroad.

There are two distinct sides to the CSR debate. The “social causes” side contends that the advancement of ethical standards should supersede, although not neglect, the creation of shareholder wealth. According to this view, corporations have a responsibility to improve environmental standards and social conditions, particularly in countries with low labour costs and weak regulatory regimes. However, the shareholder value school holds that firms should act in their own self-interest and attend to the creation of shareholder wealth. The adoption of CSR principles could be acceptable as a risk mitigation tactic or as a means to create shareholder wealth, but otherwise does not constitute a legitimate area for business activity. *Economist* magazine editor Matthew Bishop contends that: “responsibility means to observe the law and meet your contractual obligations to the people you do business with, whether we are talking about shareholders, stakeholders, employees, suppliers customers. Beyond that, it is really a matter of pragmatic choice, not responsibility” (Dimofte, 4 June 2004). These two

positions thus define the inherent potential for conflict and contradiction between the protection of shareholder and stakeholder interests in the development of CSR-oriented strategy. The tension between these two positions also brings the question of who governs the corporation and in whose interest to the forefront of the debate.

The implicit contradiction between the creation of shareholder wealth and the promotion of social goals is especially problematic for institutional investors in terms of their fiduciary duty to maximize shareholder returns. This is the conundrum for the international labour movement. Almost universally, labour has been at the forefront of efforts to promote CSR through vigorous proxy voting campaigns and active corporate engagement programs. Labour has taken the position that it has a dual responsibility as both shareholder and stakeholder to hold business to a higher standard of conduct. According to AFL-CIO President John Sweeney, the creation of shareholder wealth can – and must – go hand in hand with improvements to global social and environmental standards (Sweeney, July 13, 2000). Moreover, he argues good governance and CSR share a fundamental objective – the creation of sustainable wealth on a global scale for the benefit of shareholders, workers and communities in developed and developing nations. Sweeney contends labour pensions funds must, therefore, adopt long-term investment horizons on the basis that: “if our funds act as though we are short-term investors, with no interest in either the long-term fate of the global corporations in which we invest in or in the global economy they inhabit, no structure can protect us from the consequences of our own irresponsibility” (Sweeney, July 13, 2000). Sweeney’s position implies, problematically, that shareholder interests and stakeholder goals can be made consistent. It also assumes that shareholder interests extend beyond the maximization of shareholder wealth. In point of fact, the opportunities to link shareholder interests and

labour goals through CSR are limited and fraught with problems. Moreover, the adoption of CSR policies does not necessarily prevent corporations from implementing “labour unfriendly” policies, such as offshoring, as strategic responses to global competition and shareholder expectations for the creation of wealth. The next section presents a case study of Hewlett-Packard (HP) and the impact of HP’s CSR and offshoring strategies on the advancement of stakeholder goals and shareholder interests. It illustrates the point that while labour can seek to influence business strategy through support for CSR, the adoption of CSR strategies does not diminish the need for firms to respond to the impact of global market forces and the financial expectations of shareholders.

5.3 CSR and Offshoring: The Case of Hewlett-Packard

On the one hand, the adoption of global CSR strategies promotes labour’s non-financial goals by seeking to improve environmental and social standards in the developing world. At the same time, offshoring – the transfer of company functions to lower cost jurisdictions – leads to job loss at home while creating new opportunities and improved standards of living for workers abroad. Shareholders benefit from cost reductions and the ability to refocus scarce resources on critical areas of activity that drive the creation of shareholder wealth and competitive advantage. However, the loss of jobs at home impinges upon labour’s responsibility to workers but, at the same time, offshoring creates financial benefits for its pension plan beneficiaries and members. HP is a case study in the link between CSR, firm performance and offshoring in global firms

that are noted for both strong financial performance and socially responsible corporate citizenship.

For the past five years, *Business Ethics* magazine has rated HP in the top ten firms that have demonstrated leadership in global corporate social responsibility. The ratings are based on quantitative measures of corporate responsibility to seven stakeholder groups: shareholders, community, women and minorities, employees, environment, non-U.S. stakeholders and customers (Development, 17 May 2004).

During the same period HP has also generated strong financial results for shareholders, with strong share price performance and earnings performance. The company has adopted an explicit strategy that links a commitment to corporate responsibility with the creation of shareholder wealth. According to Debra Dunn, HP's Senior Vice President of Corporate Affairs and Global Citizenship:

Global citizenship is a company-wide business objective at HP, and we are continually integrating our citizenship efforts into our core business practices. We believe we can achieve this goal by aligning our business strategy and our global citizenship strategy, so that while everything we do is good for business, it is also good for society and the environment (HP, June 24, 2004).

In a recent report, the U.S. social investment research firm KLD Research & Analytics has also cited HP's strong commitment to corporate social responsibility. In particular, KLD noted the company's support for workplace diversity, educational programs in the community and commitment to global philanthropy (Analytics, 2004b).

According to an April 12, 2004 story in *Forbes*, HP began to move operations offshore to India in 1995 and currently has 10,000 employees there (Dolan & Meredith, April 12, 2004). By contrast, in November 2002, HP downsized its US workforce by 15,000 employees as a consequence of its merger with Compaq. The *Forbes* story notes that many employees at both HP and other Silicon Valley powerhouses have seen their jobs move offshore – in some cases being filled by workers whom they trained. While Silicon Valley workers experience the effects of downsizing and offshoring, wages in the tech sector in India are on the rise (Dolan et al., April 12, 2004). At the same time, despite the economic downturn in Silicon Valley, HP increased revenues by 29 percent to \$73 billion and reported profits of \$2.5 billion. Moreover, a story which appeared in the April 17, 2004 issue of *The Hindu Business Line* newspaper states that HP “perceives the country as a favoured outsourcing destination with likely plans to shift its call centres and offshoring units to the country in the near future” (April 17, 2004). The globalisation of jobs and production functions has generated significant cost savings for HP’s shareholders. Job functions in the company’s U.S. operations that paid U.S. \$60,000 can now be delivered for just US \$20,000 in India. But those same cost reductions have also created opportunity for foreign workers. For example, an Indian worker who previously earned the equivalent of US \$800 a year as a tea broker now earns nearly \$40,000 in a country where the per capita annual income is estimated at US \$500 (Dolan et al., April 12, 2004). At \$40,000, the Indian worker is able to afford a luxury apartment, servants and private schooling. Catherine Mann of the Institute for International Economics⁷ argues that offshoring has boosted productivity and enabled companies to channel resources into innovation. She also cites a report from McKinsey & Company, which argues that for every dollar spent on offshoring, the U.S. economy gets a return of \$1.12 and the global economy gains another 33 cents. Thus, both

⁷ Cited in Dolan, April 12, 2004 #73.

shareholders and foreign workers benefit from the creation of wealth and rising standards of living. Rising incomes in the developing world also improve social conditions as previously poor workers are lifted from poverty to relative prosperity. In addition, HP has adopted corporate social responsibility policies that include codes of conduct for the protection of human rights and labour standards in its global production and supply chain operations. Moreover, it has implemented comprehensive social and environmental auditing procedures to test the company's performance against a series of environmental and social performance benchmarks (Analytics, 2004a). At the same time, HP company has established a program to assist workers displaced by offshoring, which includes severance payments, a nine-week HP-paid job search period, several months of careers transition counselling and an internal online job search system to assist workers in locating available jobs within the company (Analytics, 2004a).

The export of jobs, opportunities and developed world social standards achieves, at least to some extent, labour's support for global trading systems that balance wealth creation with a commitment to common norms of conduct. The financial performance of firms such as HP suggests that the globalisation of production and the adoption of CSR strategies together create benefits for both shareholders and stakeholders. The problem for labour is the need to reconcile the tensions between the economic dislocation of workers at home, the improvement of living standards for foreign workers and the fiduciary responsibility of unions to maximize value for their pension plan beneficiaries. In the following statement Union Network International appears to both recognize the problem for labour and point towards a strategic solution:

The migration of jobs around the world poses its own dilemma for the trade union movement. Union action on the ground is aimed at the protection of workers' jobs and rights, so the loss of jobs in developed countries is to be opposed. But the growth of new sectors in developing countries opens up massive opportunities to raise the level of working conditions for a massive and growing working population in the developing world – and to eliminate worse forms of exploitation, where they may exist (Kuszewski, February 2004).

We want to have good standards of work and good rates of pay for people regardless of where they are. Our focus is on developing framework agreements with respect to workers' rights and looking to have multinational corporations apply those rights. We accept that there has to be some migration of labour as there has been for the past 200 years, but we don't accept the migration to areas of exploitation (Kuszewski, February 2004)

This statement implies that labour accepts that the impact of global competition has forced firms to transfer jobs offshore in order to remain competitive. However, in accepting the logic of globalisation, labour also seeks work in partnership with global business to develop, implement and enforce minimum global standards for wage and conditions of work. CSR can, therefore, serve as a mechanism for labour to influence how business strategy affects the social and economic conditions of communities in which the corporation does business. However, CSR is not a cure-all for the impact of market forces on strategic decision-making. Nor is it a strategy for making shareholder interests and stakeholder goals universally consistent. The following section explores the phenomenon of socially responsible investment (SRI) funds as a vehicle for linking the advancement of stakeholder goals with the creation of shareholder wealth through the operation of capital markets.

5.4 Socially Responsible Investment

SRI is defined as the integration of social values with investment decision-making to produce a “triple bottom line” of financial, social and environmental returns. SRI serves a vehicle for “ethical” investors to gain influence over corporate strategy through the use of investment screening criteria designed to provide or deny capital to

companies based on their compliance with a set of social, environmental and financial screening criteria. Proponents contend that the incentive for corporations to adhere to SRI principles is based on the promise of superior financial performance and the opportunity to attract socially screened pools of capital.

However, evidence surrounding the relationship between SRI and financial performance is mixed. Asmundson, Foerster and Winter note that over \$2 trillion of U.S. investment capital is managed in accordance with SRI principles. For Canada, the number is approximately \$6 billion in assets under SRI management (Asmundson & Foerster, Winter 2001). Advocates for SRI claim it achieves better returns as a result of the additional screening criteria imposed on investment decision-making. The basic tenet to the argument is that well-managed companies with good social and environmental practices will attract stronger customer support and greater investment capital. In addition, proponents argue that screening reduces investor risk arising from potential liabilities, which could negatively impact on shareholder wealth.

Opponents maintain that SRI places undue constraints on investment managers. Further, they argue that SRI compromises portfolio performance through the imposition of criteria other than technical analysis, which forces investment managers to reject a large number of potentially financially sound investments. The imposition of non-financial screening criteria thus restricts the size of the potential investment universe and can result in portfolios that exhibit lower returns for a given level of risk or higher risk for a given level of return. A further argument cited by critics is that SRI-managed investment funds increase costs associated with portfolio administration and social screening criteria compliance. Asmundson et al. cite a series of four studies conducted between 1993 and

2000, 3 of which found that there was no statistical difference between the performance of SRI funds and conventional investment funds and one of which found that U.S. SRI mutual funds to have performed near the top of their asset class. In their study of the performance of Canadian SRI mutual funds Asmundson, Foerster and Winter found that SRI funds slightly underperformed the benchmark, but the difference was not statistically significant. In a study comparing the performance of optimal SRI mutual funds against conventional (or unconstrained) portfolios, Geczy, Stambaugh and Levin (Geczy, Stambaugh, & Levin, 2003) found the cost of the SRI constraint ranged from just a few basis points per month to more than 30 basis points per month. The higher cost figures were found in portfolios based on the Capital Asset Pricing Model (CAPM) and managerial skill in stock picking, whereas the lower costs were associated with market-index based portfolios in which the investor discounts skill but still believes in the CAPM.

At least two interpretations can be drawn from these studies. From the perspective of SRI proponents, since there is either no difference or possibly little difference in financial performance between SRI and conventional funds, shareholders are no worse off from having firms practice corporate social responsibility. Moreover, if the risk mitigation argument is factored in, then shareholders could be better off under a CSR/ SRI approach. However, from the standpoint of critics the results suggest SRI creates no beneficial outcomes for shareholders and, in fact can increase fund costs. Shareholders are better off from having access to a broader investment universe and are financially disadvantaged by the SRI constraint. Thus, evidence to support the proposition that SRI creates mutual gains benefits for shareholders and stakeholders may be somewhat illusory.

For investors who seek to combine financial returns with “socially responsible” business practice, the evidence on SRI performance may be sufficient to support a commitment to social screening and shareholder activism as component of active portfolio management. However, for investors who seek high returns relative to risk and maximum flexibility in the choice of investment universe, SRI may present a significant conflict with the principle of shareholder value maximization. The evidence also suggests that SRI does not necessarily present a strategic remedy the worker-shareholder dilemma.

Depending on the actual return characteristics and costs of an SRI fund compared to a conventional fund, SRI may achieve the alignment of labour's fiduciary duty with the advancement of its social goals and responsibility to workers. However, if fund costs are higher and returns are lower, the potential for conflict arising from the dual worker-shareholder role will likely be realized. Therefore, the problems associated with SRI and the ambiguous nature of the evidence supporting the linkage between corporate social responsibility and firm performance suggest that social investing has limited utility as a component of a strategy framework for labour participation.

In addition to controversy surrounding SRI fund performance, there is a broader set of policy issues that further underscore the problem of making the demand for socially responsible investment goals consistent with shareholder interests. These issues further highlight the limitations of SRI as strategy for worker participation in governance and business strategy.

The adoption of CSR standards arguably benefits shareholders to the extent that it creates the ability for firms to attract a wider pool of both SRI and conventionally managed investment capital. The potential backlash from communities, customers, and even shareholders, arising from environmental liabilities, severe downsizing and human rights problems in overseas operations can provide a powerful incentive for firms to adopt CSR standards as a check against negative reputational effects. Moreover, the adoption of global CSR standards may serve as strategic point of differentiation with competitor firms, thus enabling CSR firms to tap into new customer bases and drive up shareholder wealth.

However, these desirable outcomes may also have a negative effect on multinational firms operating in the developing world, as well as on the countries in which they do business. Bishop argues: "[I]f now quite a lot of companies are reluctant to go to these countries, because they fear they could be made accountable for just about everything there, and they choose to sit on their hands and not do it, the overall effect is quite damaging for these countries".⁸ Moreover, the issue is whether corporations bear a responsibility for replacing government regulation and adherence to mandatory standards of conduct with self-regulation and voluntary compliance.

Critics argue that the application of CSR principles should be both voluntary and limited to areas where the adoption of such principles serves the business interests of the firm. Moreover, corporations have a responsibility to comply with domestic law and regulations in the countries where they do business and it is the responsibility of national

⁸ Cited in Dimofte, C.; The brave new world of corporate responsibility; www.wbcds.org; July 11, 2004..

governments, rather than firms, to determine the basis for domestic labour, environmental and human rights standards (Dimofte, 4 June 2004). From this standpoint, the shareholders of global firms should not be held accountable for the payment of costs related to the development and monitoring of standards that exceed what is mandated under domestic law and regulation. Or conversely if firms opt voluntarily to implement broader standards of corporate conduct, that strategy should be the result of a conscious decision by shareholders that sees the implementation of a CSR strategy as the strategic basis for wealth creation. In other words, shareholders should be required to pay for global corporate social responsibility only to the extent that it is required by law or creates firm value.

Dimofte cites the argument of Matthew Baker of the group Business in the Community who contends that the problem with mandatory CSR is that it invites the “greenwashing” of corporate behaviour to ensure compliance. (Dimofte, 4 June 2004). However, Baker argues that if the core issues propelling the CSR movement are the amelioration of poverty and injustice in the developing world, then the voluntary engagement of business and government – and labour - towards the creation of practical solutions will deliver the stakeholder-oriented benefits of CSR and protect the financial interests of shareholders. Moreover, a strategy based on voluntary engagement grants an opportunity for worker influence over the direction of strategy, while reducing the potential for conflict between labour’s fiduciary duties and social goals.

Summary

This chapter has explored the strategic merits and weaknesses of mechanisms designed to gain labour influence in governance and strategy. The opportunity for labour

to advance its goals through participation in governance is constrained by labour's fiduciary duty to maximize the value of union pension fund assets. The possible solutions involve limiting participation to issues that affect the financial interests of pension plan beneficiaries and pursuing the advancement of worker goals through voluntary workplace engagement with business to break down the traditional ideological labour-management barriers.

CHAPTER 6

CONCLUSIONS

The labour movement has become an active participant in the governance of corporations and in the formulation of global governance-related public policy. The motivation for active participation is a product of labour's dual responsibilities as fiduciary and worker representative. Unions have a fiduciary duty to protect and maximize the value of pension fund assets on behalf of beneficiaries and plan members. Poor governance practices can erode or inhibit the creation of shareholder wealth. Labour participation is thus justified as a means of protecting the financial health of union pension funds.

Workers bear some degree of undiversified residual risk in relation to their firm-specific assets. That risk is not matched by their influence in firm governance, and workers have no option to rebalance their risk within the firm. Moreover, worker risk is not necessarily guaranteed by contract and, therefore, labour participation is justified as a strategy to protect workers' firm-specific investments.

Labour is an increasingly important player in the development of international and domestic governance policy. In the aftermath of the global financial crises of the past decade and the recent spate of corporate scandals, labour views policy intervention as means to strengthen the protection of shareholder rights and, at the same time,

legitimize stakeholder participation in governance. Moreover, labour has promoted the development of global governance principles to address the problem of regulatory arbitrage whereby firms can choose where to do business based on the legal framework for corporate governance.

In addition to the creation of international governance principles, labour has also supported the adoption of corporate social responsibility (CSR) policies within firms as a means of advancing universal social goals. Labour also views CSR as a strategy to mitigate shareholder risk against potential downstream liabilities caused by environmental or human rights related business practices. Thus, labour supports CSR on the basis that it provides a mechanism to make worker goals consistent with shareholder interests.

Labour participation is complicated by the problems of conflict that arise from labour's dual role as worker-shareholder and the difficulty of making labour goals consistent with shareholder interests. The goals of labour participation are multiple and include: a more equitable role for workers in corporate decision-making in relation to their residual risk and firm-specific investment; reforming governance practices to protect shareholder interests; and, making corporations socially responsible and accountable to the workers and communities in which they do business. These goals are mutually inclusive if shareholder interests and stakeholder goals can be mutually accommodated. Conversely, they are mutually exclusive if shareholder interests and stakeholder aspirations come into conflict with one another. For example, labour support for governance reforms and CSR can be complementary provided that the common objective is to improve firm performance and create shareholder wealth. However, where

the objectives and outcomes between goals are different and create the potential for shareholder-labour conflict, the goals are likely mutually exclusive.

The analysis developed in this in this paper identifies five goals for Canadian labour participation in corporate governance. The goals are: 1) the protection of worker risk and worker firm-specific investment; 2) the protection of shareholder interests in terms of labour pension fund assets; 3) the development of domestic and international governance policy to strengthen the global protection of shareholder rights, create a legitimate role for stakeholders and address the problem of regulatory arbitrage; 4) worker representation on the board of directors; 5) support for corporate social responsibility as a means of developing global social and environmental standards and reducing shareholder risk from potential downstream liabilities caused by poor environmental or human rights practices. Fundamentally, labour seeks to promote a longer-term time horizon for corporate governance and business strategy through participation. Labour views the move away from short-term practices as a means of improving long-run firm performance and linking the creation of shareholder wealth to employment security and the promotion of global social and environmental standards. As discussed throughout this paper, labour believes the creation of shareholder wealth and the promotion of global social standards cannot necessarily be accomplished when the direction of business strategy is focused on maximizing short-term share price performance and quarter-by-quarter earnings. As a significant institutional shareholder, labour has a fiduciary and moral responsibility to protect the integrity of union pension fund assets. As a social and political institution with representational responsibilities, labour has an obligation to advance the economic and social aims of its members. Labour's governance goals, therefore, reflect its dual worker-shareholder role, and

labour participation functions as one particularly important means of achieving this multi-layered agenda.

Can labour participation achieve these goals and at the same time overcome the problem of worker-shareholder conflict? The answer is yes, but the opportunities to do so are limited. Labour participation can create mutual benefits for shareholders and workers and enhance long-term corporate sustainability through the creation of co-operative industrial partnerships.

This paper has identified three main strategic approaches to labour participation: shareholder activism, public policy reform, and workplace engagement. The proposed strategy framework for the Canadian labour movement assesses the goals motivating labour participation and recommends solutions based on these three themes. In developing the framework, it is important to recall that the framework must take into account the differing views of Canadian unions towards worker involvement in corporate governance and management. The goals and recommended strategic solutions are compiled below.

Canadian Labour Participation: Goals and Recommended Strategies

1. Worker Risk and the Protection of Firm-Specific Investments. Recommended Strategies: *Workplace Engagement and Public Policy Reform*. Seek legislative and regulatory amendments where necessary to protect the financial interests of workers and shareholders in the event of bankruptcies or business collapse. Workplace

participation should be based on voluntary labour-management agreements aimed at increasing worker participation in decision-making in relation to their firm-specific investments.

2. . Protection of Shareholder Interests. Recommended Strategies: *Shareholder Activism and Public Policy Reform*. Fiduciary duty to pension plan beneficiaries must be the cornerstone of labour participation in corporate governance. Unions have legal and moral responsibility to protect the financial interests of pension plan beneficiaries. The protection of shareholder interests must, therefore, be the starting point and guiding principle for labour participation in governance.

3. Domestic and International Governance Policy Development. Recommended Strategy: *Public Policy Reform*. Continue active involvement in the development of domestic and multilateral governance principles and reforms to protect the long-term integrity of capital markets and reduce opportunities for regulatory arbitrage. Support the adoption of the draft OECD Principle listed on page 32 of this paper related to the protection of stakeholder rights under domestic law. Press for the adoption of a flexible approach to stakeholder participation based on the structure of national legal systems and political customs.

4. Worker Participation on the Board.

Recommended Strategy: *Not recommended*. Labour representation on the board creates the significant potential for loyalty and conflict problems arising from the fiduciary responsibilities of union directors to shareholders, union pension plan beneficiaries and

workers. Address issues related to governance and the protection of shareholder interests through the exercise of shareholder voting rights. Address issues related to worker interests through collective bargaining processes and workplace-based labour management engagement programs.

5. Corporate Social Responsibility. Recommended Strategy: *Shareholder Activism*.

Limit the development of, and support for, CSR-oriented shareholder proposals to instances where it can be demonstrated in quantifiable financial terms that the adoption of “socially responsible” practices will improve shareholder value. Where that test cannot be met, engage with governments and multinational bodies such as the United Nations to lobby for improvements to social and environmental standards.

These goals and strategies are summarized in the following table:

Table 2 - Summary of Canadian Labour Participation Goals and Strategies

Strategies

	Shareholder Activism	Public Policy Reform	Workplace Engagement
Goals			
Protection of Worker Risk/ Firm-Specific Investments	Recommended	N/A	Recommended
Protection of Shareholder Interests	Recommended	Recommended	N/A
International and Domestic Governance Policy Development	N/A	Recommended	N/A
Worker Participation on Boards	Not Recommended		
CSR	Recommended	N/A	N/A

Labour participation cannot resolve all of the problems related to corporate governance and business strategy in a changing and competitive global economy, but it can help to create mutual benefits for shareholder and workers. The challenge for labour is to resist the temptation to leverage its investment policies and practices and voting power to subvert the corporation from its primary societal responsibility – the creation of wealth. The primary determinant of how successful the Canadian labour movement will be in pursuing a strategy for participation lies in its ability to separate its fiduciary responsibilities from its social goals and representational responsibilities.

Fundamentally, there is nothing wrong with labour's pursuit of social issues and the advancement of worker interests. The issue is how the advancement of those issues should be pursued. In the face of twin demands for the maximization of pension fund assets and the pursuit of labour goals, the challenge for labour leaders will be to muster sufficient political courage to place fiduciary responsibilities ahead of social aspirations where necessary. Trade unions in Canada and abroad have fought for good pensions, good living standards and the development of prosperous, stable corporations. The implementation of a sound framework for participation will enable labour to pursue these objectives through both capital markets and collective bargaining, while reducing the potential for worker-shareholder conflict.

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