The New Balance Sheet

Corporate Profits and Responsibility in the 21st Century

Final Report
Canadian Democracy and Corporate Accountability Commission

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Contact information:
www.corporate-accountability.ca
commission@corporate-accountability.ca

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MESSAGE FROM THE CO-CHAIRS

A stimulating process has come to its conclusion with the publication of this report. For much of 2001 we had the pleasure of working with the three other members of this commission – Linda Crompton, Ken Georgetti, and John LeBoutillier – on a project that engaged hundreds of Canadians in conversations on the important questions related to the role of the modern corporation.

Throughout we had the strong support of Craig Forcese, who directed the research, and Susan McMurray, who managed the many details essential to such a national undertaking. We thank them for their superb work. If any parts of the text remain less than clear, it's not the fault of Alison Gordon, who provided excellent editorial assistance. We want to underline our appreciation for the positive role played by the Atkinson Charitable Foundation and its executive director, Charles Pascal. Not only was the ACF our principal funder at the outset, but during the period of our work it provided crucial additional support. We also wish to thank the Columbia Foundation and the Endswell Foundation, which contributed to the costs of the project; and we are grateful to Carleton University's Arthur Kroeger College of Public Affairs, our co-operative sponsoring institution.

We conclude by thanking the people of Canada. From every sector and all regions, Canadians volunteered their time, energy, and ideas, without which this report would not have been possible. We reflected upon what they had to say and hope our recommendations do justice to their thoughtful submissions.

Yours sincerely,

PREFACE

This commission was convened to address a growing public concern. Many Canadians, both within the business community and outside it, increasingly question what responsibility corporations have to the society within which they operate, beyond generating returns for their shareholders. The five commissioners brought varying perspectives but no preconceived notions to the task. Three of us came from the business community, one from the labour movement, and one from political life, but we all agreed on the importance of examining the ways in which Canadian corporations could operate in a socially responsible manner while still competing effectively in a global economy.

From February to September 2001, the commission travelled to Vancouver, Calgary, Winnipeg, Toronto, Ottawa, Montreal, and Halifax to ask business people, church groups, trade unionists, government leaders, investors, academics, and concerned citizens to address these issues through public hearings, private meetings, and written submissions. Specifically, participants were asked to respond to the commission's fifty-page discussion paper, *Canadian Democracy and Corporate Accountability: An Overview of Issues* (available at www.corporate-accountability.ca).

A detailed list of the many participants is found in Appendix B at the end of this report, and we refer to their views throughout. In both public and private sessions, Canadians responded frankly and with imaginative proposals for ways to combine profit-making in the marketplace with the broader social expectations of free citizens.

After our consultations had finished and the recommendations were drafted, we commissioned a national poll on the issues of corporate responsibility, to which we will be referring in this document. The poll was carried out between September 28 and October 8, 2001, and it involved telephone interviews with 2,006 adults eighteen years of age and older. It was conducted by Vector Research and Development Inc. and its principal findings are included in Appendix C.

Out of this process we have reached a consensus on twenty-four recommendations concerning the social responsibility of corporations within a democratic society. We are hopeful that they will receive serious consideration by the various decision makers. We also hope this will be followed by the appropriate steps leading to their implementation.

INTRODUCTION

The corporation is the leading form of economic organization in the modern world and, in recent years, has grown in size and influence. By the middle of the past decade, fifty-one of the hundred largest economies in the world were corporations, not nation-states. The largest 200 corporations in the world had combined sales greater than a quarter of the world's economic activity, surpassing the combined economies of the smallest 182 countries.[1] In a reversal of post–Second World War patterns, transnational corporations, not governments, now account for 80% of the investment flowing from industrial to developing nations.[2]

This growth in corporate size and influence on society, and in international scope, has given rise to key concerns about corporate "accountability." As citizens of a democracy, Canadians expect the government and its institutions to be accountable to all citizens. Corporate accountability, as currently defined by corporate law, is more limited. As long as they obey the laws of the nation, those who manage the corporations are accountable only to those with capital invested in it – the shareholders. Existing corporate law guards against management abuse of shareholder interests by first giving legal primacy to those interests and then defining their content in simple terms: the maximization of profit.

Proponents of the "shareholder primacy" view believe that shareholder interests should be paramount. This view was expressed vigorously by economist Milton Friedman[3] in the 1970s and is reiterated to this day in a considerable amount of business literature. It was presented before us by the Fraser Institute at the Vancouver hearings of the commission and by the Institut économique de Montréal.

The implications of this restricted view of corporate accountability for a democratic society lie at the heart of much of the debate now going on around the world. A range of concerned citizens – from corporate directors in Canada to international business leaders meeting in Davos, Switzerland, to human-rights and environmental activists in the streets of Seattle and Quebec City – have been calling for a broader notion of corporate responsibility.

Among the wide range of protestors at the sites of recent international economic meetings are those who question the very legitimacy of corporations. They raise the spectre of "corporate rule" establishing ascendancy over the globe, even over democratic governments. According to this view, corporate profit-maximization objectives have been responsible for shaping domestic and international policy agendas, the results of which have had serious negative consequences for human rights, working conditions, and the environment. Since corporate accountability is seen to be restricted to shareholders, these critics perceive companies to be, at worst, an incorrigible evil or, at best, not proper participants in the democratic policy-setting process.

Somewhere between the proponents of "shareholder primacy" and those warning of corporate rule there is a growing number of reformers committed to "corporate social responsibility," or CSR. The proponents of this vision do not query the propriety of corporations *per se* but do question the scope of corporate accountability, i.e., the shareholder-primacy principle. While agreeing that corporations exist to generate profits, these reformers believe that companies have responsibilities that extend beyond the maximization of shareholder returns. One variant of this position, associated with corporate philanthropy, maintains that the company has an obligation to behave as a "good corporate citizen." Another, more recent, view broadens the traditional ambit of accountability, urging that companies consider "stakeholder interests" as much as shareholder objectives. Proponents of this philosophy call for reforms that would place profit-making within a more comprehensive, democratic accountability framework.

It became clear to us from our consultations across the country, as well as from opinion-polling data, that most Canadians, including many of the

business people with whom we met, support the corporate-responsibility position.[4] The challenge before us was to devise a system of accountability that would take into consideration such domestic and international concerns as employee workplace standards, consumer protection, human rights, and the environment without eliminating existing accountability to shareholders.

The shareholder-primacy principle, while narrow in the criteria it applies, has the virtue of being verifiable, codified, and easily understood. On the other hand, a system that allows corporate managers to decide what constitutes "good corporate citizenship," as well as to define the "stakeholders" to whom they must account, would accord a great deal of discretion to those managers. As some of our participants pointed out, this could lead to a shirking of responsibility by management and boards of directors, and a net loss in accountability.

Early in our work we realized that the real job of the commission would not lie in promoting the virtues of CSR to a Canadian public already persuaded of its worth, but rather in addressing the following key question: How do we design the parameters for a profitable, internationally competitive corporation for the twenty-first century that remains accountable to its shareholders while acting responsibly towards citizens affected by its actions, in Canada and elsewhere?

We have done our best to answer this question, dividing our report into two sections. In Part 1, we outline what it is we mean by corporate social responsibility and review some of the arguments favouring its adoption by Canadian companies. In Part 2, we make recommendations for change.

Many of our recommendations reflect our view that governments must develop a broader regulatory structure not only for domestic behaviour but also for a global marketplace currently characterized by effective international laws of business transactions and ineffective protection of the environment and workers' rights and standards.

We consider this a matter of some urgency. On issues of corporate social responsibility, other democracies are moving forward. A number of the examples of innovative policy we describe in the report are drawn from international precedents. For example, many states within the United States have extended the authority of corporate boards to consider a broader range of stakeholders. The United Kingdom already has a minister for corporate social responsibility. In the summer of 2001, as we gathered to deliberate our findings, the European Union released a Green Paper on corporate social responsibility, announcing "[t]he European Union is concerned with corporate social responsibility as it can be a positive contribution to the [EU's] strategic goal . . . 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'."[5] If Canada does not adopt our recommendations or others similar to them, it will find itself not among the leading nations promoting corporate social responsibility but lagging further behind.

PART 1:
A VISION OF CORPORATE ACCOUNTABILITY

1.1 Conventional Understandings of "Corporate Accountability"

To answer the central question of corporate accountability – to whom is the corporation accountable, and for what – it is necessary to step inside the corporation and consider it as a community of human beings. Each has different responsibilities and expectations, but they join within a legally defined profit-making framework and provide jobs, as well as goods and services for the community, a socially beneficial function.

Included in this corporate community are the investors, who provide capital in exchange for shares of ownership in the company; the employees, who produce the goods and/or services; the company's customers; and the suppliers and creditors who supply materials or loan capital necessary for the goods and/or services to be produced. In addition, there are the broader national and international communities in which the corporations carry on business, which provide needed health and education services for their workers as well as the infrastructure for their factories. Finally, there will usually be a separation of ownership from control in the corporation. While shareholders technically own the company, it will be run by a select group of directors and officers who will be appointed according to the requirements of corporate law and charged with managing the firm.

In Canada, the members of this corporate community are all subject to the same laws and regulations as any other citizen, but membership in the corporate community brings with it special obligations. Employees and employers are subject to a complex web of contract, employment, and labour laws within a democratic trade-union tradition that has played an important role in holding companies to account. Creditors and debtors are regulated by contract and bankruptcy laws. Consumers are protected and vendors are governed by everything from tort law to regulations on advertising. Directors are bound by concepts of fiduciary duty and other corporate-law notions as well as a large number of special legal regimes that assign them a form of vicarious liability for infractions conducted by those they supervise.

The notable exception to a broad, societal notion of accountability is the shareholder. The basic premise of the limited-liability corporation is to protect those who invest in the company from personal liability for actions conducted in the company's name. Unlike directors, as noted above, shareholders remain largely insulated from legal accountability: typically, their liability extends only to the value of their investment in the firm. Shareholders are not vulnerable to claims made by those affected by the wrongdoing of a corporation except in the sense that the wronged parties may be awarded compensation from the corporate entity, thereby reducing shareholders' profits. As a rule, shareholders would also suffer if the wrongdoing leads to a drop in the value of shares.

We do not call into question this notion of limited liability for shareholders. Nor do we endorse calls from a small number of the participants before us for the elimination of separate corporate personality. Limited liability demarcates a very specific and long-standing limitation on accountability that the Canadian people, operating through their lawmakers, have accepted as warranted. It is a privilege justified by the desire to encourage the pooling of capital in corporations so that these resources can be applied to productive enterprise. On the other hand, as we argue below, the shareholder profit motive – the mere coming together of profit-seeking investors protected by the shell of limited legal liability – does not have primacy over other societal needs.

1.2 A Broader Understanding of Accountability: The Question of Corporate Social Responsibility

A. The Content of Corporate Social Responsibility

While there is no fixed definition, in our view, the term "corporate social responsibility" is most effectively used to describe instances in which companies respond to interests in addition to those of their shareholders. The June 2001 European Union Green Paper on corporate social responsibility saw such accountability as exceeding existing legal obligations to shareholders, "going beyond compliance and investing 'more' into human capital, the environment and the relations with stakeholders."[6] In other words, corporate responsibility means being accountable to a series of "stakeholders," regardless of whether the total "stake" of these persons is currently protected by law. We agree with the University of Toronto's Clarkson Centre for Business Ethics that stakeholders should be seen as constituencies affected (favourably or unfavourably) by the corporation's actions.[7] In addition to shareholders, this group includes employees, customers, suppliers, local communities, and society at large.

Unlike the rules that govern corporate relations, most CSR concerns are not now spelled out in laws or regulations, nor are they subject to scrutiny and debate within the legislative process. Several of the participants appearing before us underscored this fact. As David Stewart-Patterson of the Business Council on National Issues put it:

> As a society, we pass laws and enact regulations to set limits on behaviour where the distinction between right and wrong is clear. . . . Business decisions, by contrast, must take into account many dimensions that go well beyond the requirements of the law. As in ethical discussions, there is often no clear right answer, but managers, directors and shareholders must make the best choices that they can based on the information available to them at the time.

In his brief, Professor Wesley Cragg of York University's business school suggested that trying to give a precise definition to CSR is a fruitless task, since CSR varies from context to context or from country to country. However, there have been serious attempts to sharpen the definition of CSR. We note in particular the Conference Board of Canada's ongoing project, in association with the Canadian Centre for Philanthropy and the Centre for Ethics and Corporate Policy, to develop a set of CSR standards by which to measure corporate social responsibility. We also note the diligent work of the Taskforce on the Churches and Corporate Responsibility, which has developed a comprehensive codex of corporate social responsibility practices, which it describes as "Benchmarks." Canadian Business for Social Responsibility (CBSR) has also developed a set of CSR guidelines.[8] We have incorporated some of this ongoing work into a table at the end of this discussion delineating what we regard as the bare essentials of corporate social responsibility.

Before proceeding further in our discussion of corporate social responsibility and with our recommendations, we draw attention to one well-known, earlier noted type of CSR, namely "corporate citizenship." This concept is most commonly associated with corporate philanthropy. The United Way's presentation to the commission pointed to corporate charitable donations, support for community-building activities, and corporate volunteerism as examples of this practice. Clear benefits for society flow from these activities. Some presenters emphasized that they also create positive corporate reputations in the minds of employees, consumers, and other key members of the community at large. Here, altruism is buttressed by self-interest.

Perhaps because corporate philanthropy is universally understood and accepted, those appearing before us said little about this form of social responsibility. Nevertheless, it should be noted that corporate philanthropy does not run deep in corporate Canada. Presenters from Imagine, the initiative launched in

the late 1980s to promote corporate philanthropy, told the commission that fewer than 5% of businesses report charitable gifts, and fewer than 300 of the top 1,000 firms in Canada are committed to the Imagine standard of donating a minimum of 1% of pre-tax profits to charity.

In line with the view that CSR refers to obligations that go beyond the shareholder-primacy concept to include human rights and environmental concerns as well as the interests of customers and communities, the commission heard concerns both about the domestic performance of Canadian corporations and their international operations. Canadian corporations are increasingly doing business in jurisdictions that lack the labour, human rights, consumer-protection, and environmental laws that exist in Canada. In such an environment, even strict compliance with local law abroad would not prevent companies from acting in ways either illegal at home or at variance with international norms.

The fear of many of those opposed to the current pattern of globalization is the "downward harmonization" of regulatory standards in countries anxious to attract capital investment. There is intense controversy concerning the actual consequences of this aspect of globalization for the environment, human rights, poverty, and innumerable other issues. While there are many corporations that set admirable standards in these areas, there are also many well-documented examples of environmental degradation. As well, in many instances the exploitation of workers in developing countries has had devastating consequences on the health and safety of the workers involved. What we call "voluntary compliance" is in large part an effort to halt, forestall, or reverse downward harmonization.

Most of the discussion on international CSR during the commission's public hearings and private discussions focused on the question of whether or not companies have an obligation to exceed the basic legal or enforced requirements of these countries in order to meet either the higher Canadian or international standards.

Most presenters before us agreed that companies should meet "appropriate" standards in their overseas operations, with most suggesting that these standards conform to Canadian or international law. In a speech delivered in October 2001 in Montreal, Jacques Lamarre, president and CEO of SNC-Lavalin Group, had this to say: "Wherever we do business, we apply Canadian and international standards." He was referring to safety and environmental concerns. However, some submitters, such as the Business Council on National Issues, cautioned against companies imposing Canadian values on other countries where they may be culturally or economically inappropriate and warned against infringing on the sovereignty of foreign countries.

We agree that Canadian law or standards should not be applied in their entirety and uncritically in foreign operations. In particular, many of the specific regulations included in labour-relations law in Canada are not directly exportable to other national settings. An Ontario company operating in Africa, for instance, should not be expected to meet Ontario's minimum-wage standards. Such a requirement would remove a legitimate competitive advantage from an economically less developed part of the world. On the other hand, there are standards so fundamental that they should be observed universally. In this category we would place those rights set out in the Universal Declaration of Human Rights, which all members of the United Nations are obliged to uphold. We would also include core labour standards: the principles of international labour law that have now achieved virtually universal recognition by the international community.[9] Included among these standards are the rights to free association and prohibition of exploitative forms of child labour, forced labour, and discrimination in the workplace.[10]

In addition, we believe that Canadian standards in the environmental- and consumer-protection area may provide an appropriate benchmark for companies operating in countries where international principles are less well-developed and indigenous standards are less stringent. For example, we

do not believe that the absence of effective regulation in a developing nation would justify the disposal of waste by a chemical-producing company in a manner that would be deemed unsafe and illegal in Canada. Similarly, a product posing an unacceptable risk of injury in Canada is no less injurious when sold overseas.

Most of those who came before us agreed with what turned out to be the view of a large majority of Canadians: When it comes to human rights, consumer protection, and the environment, a "when in Rome" form of business practice in countries prepared to violate these norms constitutes corporate irresponsibility.

In our poll of Canadians, 84% said that the Government of Canada should attempt to obtain an international agreement on enforceable standards for socially responsible corporate behaviour on these matters and, after three years, should act unilaterally if no such agreement is reached. Of the Canadians who are shareholders, 81% agree with this, and 48% "strongly" agree.

As noted earlier, we have not produced a definitive code for the socially responsible company but offer a summary of what this commission has concluded to be basic standards in the table that follows. We refer to these as our Basic Standards throughout the remainder of this report.

A. The Content of Corporate social responsibility

Basic Standards

Area	Principle	Source (Principle either drawn directly or influenced by the source)
General	Companies abide by all applicable laws and regulations.	
Human Rights		
General	If compliance with applicable laws and regulations would oblige companies to violate international human-rights law, companies communicate this fact to the government and, where relief is not provided, withdraw from the jurisdiction.	Taskforce on the Churches and Corporate Responsibility, "Benchmarks"
	Companies are not "complicit" in human-rights abuses, and take good-faith steps to ensure their activities do not either encourage human-rights abuses or enhance the capacity of repressive regimes to engage in human-rights abuses.	United Nations Global Compact International Code of Ethics for Canadian Business
Core Labour Rights	Companies respect the right of their employees to be represented by independent trade unions and other bona fide representatives of employees, and engage in constructive negotiations with such representatives either individually or through employers' associations, with a view to reaching agreements on employment conditions.	OECD Guidelines for Multinational Enterprises ILO Declaration on Fundamental Principles and Rights at Work United Nations Global Compact
	Companies contribute to the effective abolition of child labour.	OECD Guidelines for Multinational Enterprises ILO Declaration on Fundamental Principles and Rights at Work United Nations Global Compact

Area	Principle	Source (Principle either drawn directly or influenced by the source)
Core Labour Rights	Companies contribute to the elimination of all forms of forced or compulsory labour.	OECD Guidelines for Multinational Enterprises ILO Declaration on Fundamental Principles and Rights at Work United Nations Global Compact
	Companies do not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction, or social origin, unless selectivity concerning employee characteristics furthers established governmental policies that specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.	OECD Guidelines for Multinational Enterprises ILO Declaration on Fundamental Principles and Rights at Work United Nations Global Compact
Environment	Wherever possible, environmental-protection standards are applied universally throughout companies' operations or, at the very least, are not lowered below the protection provided via the application of Canadian standards where regulatory requirements are less demanding. At the very least, companies should take due account of the need to protect the environment and public health and safety, and shall conduct their activities in a manner that contributes to the wider goal of sustainable development.	
Consumer Protection	When dealing with consumers, enterprises should act in accordance with fair business, marketing, and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide.	OECD Guidelines for Multinational Enterprises

Area	Principle	Source (Principle either drawn directly or influenced by the source)
Consumer Protection	Consumer-protection standards are applied universally throughout companies' operations or, at the very least, are not lowered below the protection provided by Canadian standards where regulatory requirements are less demanding.	
Ethical Behaviour	Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.	OECD Guidelines for Multinational Enterprises International Code of Ethics for Canadian Business
	Companies require honesty and integrity in all aspects of their business dealings, wherever business is conducted.	Taskforce on the Churches and Corporate Responsibility, "Benchmarks"
Corporate Citizenship	Companies make reasonable donations of money, service, and assistance to community and charitable organizations.	Taskforce on the Churches and Corporate Responsibility, "Benchmarks" CBSR Guidelines

B. Should companies be socially responsible?

Our discussion to this point has tacitly assumed that companies should accept a more comprehensive sense of social responsibility. As we note below, there is a strong business case to be made for this. However, CSR is fundamentally a moral issue: We believe that while the corporate shield may limit the liability of those who participate in the company, the mere fact of coming together under a corporate shell should not immunize those people from the moral and societal consequences of their actions. As the Canadian Council for International Co-operation put it in its submission, limited liability is not a licence for doing harm.

While some participants argued that the collective and profit-making nature of a corporation makes socially responsible decision-making difficult or even inappropriate, most Canadians and progressive business leaders back the view we heard from the majority of participants: Namely, companies should act in a socially responsible manner.

In our national survey of Canadians, we found that 72% believe that corporate executives should take social-responsibility concerns (impacts on communities, employees, the environment, and charitable activity) into account in pursuing profits. Only 20% said that corporate executives should have "only one responsibility, to operate competitively and make profits." Among shareholders, even more (74%) favoured CSR.

1. Competing Notions of Accountability

Although the shareholder-primacy view was rejected by a large majority of those who appeared before us, we are persuaded that this philosophy remains influential in many business circles – and perhaps in corporate law. It was strongly endorsed, for instance, in the submissions presented by the Fraser Institute and the Institut économique de Montréal, who argued that broadening notions of accountability to include stakeholders other than shareholders puts existing systems of accountability in corporate law at risk. They contend that requiring managers to respond to a set of ill-defined social imperatives that go beyond profit maximization would amount to an expropriation of the property invested by shareholders in the firm. Implicit in this last argument is the view that a CSR policy would reduce returns that would otherwise accrue to shareholders.

We believe two points lying at the heart of the shareholder-primacy thesis warrant discussion: that practising CSR reduces profits and is therefore inconsistent with profit maximization by shareholders; and that the limits CSR imposes on shareholder primacy are ill-defined and, as such, are a poor basis for measuring whether managers are serving the best interest of the shareholders they represent. (We deal with the second concern in our discussion of fiduciary duty in Part 2.)

2. CSR and Corporate Profitability

With respect to the view that CSR reduces profitability, on balance the empirical record suggests the opposite. Studies pointing to the important role CSR plays in improving the reputation of companies have become commonplace, as have those outlining the correlations between financial indicators of success and CSR. (We refer readers to a summary of some of these studies contained in our fifty-page discussion paper.) As a recent *Financial Times* report noted, "Even on a sector-by-sector basis, shares of companies with a superior environmental or human rights record appear to outperform. Clean chemical companies will outperform dirty ones, clean oil companies will outperform dirty oil companies."[11] The Centre for Innovation in Corporate Responsibility told the commission that, for many companies, CSR is no longer perceived as a cost of business to be adopted when all else goes well. Instead, it is viewed as a "profit centre" that can help companies through rough times.

Many of our participants, from the business, academic, and non-governmental sector, were emphatic in arguing that CSR does not require that profits be sacrificed. Several of the senior executives we met with during our work made identical points.

Daniel Gagnier, representing Alcan, was typical. He noted that his company has moved away from simple shareholder primacy to what he calls a "value maximization model," one that takes into account the interests of other constituencies in building a profitable company. The Canadian Institute of Chartered Accountants – currently developing the Canadian Performance Reporting Initiative to provide innovative performance-measurement tools that address such areas as the environment and social and ethical responsibilities – states that "long-term growth depends on building and maintaining strong relationships with stakeholders. It's clear that strong relationships with employees, customers, communities, suppliers and business partners also translate into increased shareholder value."[12]

It is also clear that certain types of socially responsible behaviour may have at least short-term costs for the firm, with advantages flowing only at a later date. As was pointed out by the Association de protection des épargnants et investisseurs du Québec, executive remuneration is tied to short-term stock performance on stock-exchange indexes and not to broader indicators of corporate performance. Peter Dey, chair of the TSE Committee on Corporate Governance, maintains that boards should avoid a short-run focus: "A good board will generally supervise the corporation's business by looking at its best interests over a longer time horizon. Short-term market movements should not be used as a basis for developing a corporate strategy." It was the strongly held view of some presenters that the great emphasis on quarterly results serves as the major deterrent to applying CSR principles. We repeat, the preliminary evidence of the link between profitability and CSR is positive. We nonetheless agree with the European Union in its June 2001 Green Paper that additional study is required.

While short-term profits are what motivate a number of investors, a broader range of concerns drives others. Institutional investing – in pension funds, for example – is growing in Canada, prompting a new focus on such matters as good corporate governance and, potentially, a more long-term approach to investor returns. As Peter Chapman of the Shareholder Association for Research and Education (SHARE) noted, over the time frame most pension investments operate, the key to financial success lies not in individual companies – many of which may disappear in the span of the average working life – but in the success of the economy as a whole. In the last three years, socially responsible investment has grown at more than twice the rate of the mutual-fund industry as a whole. While concerned with the level of return, an increasing number of investors also have an interest in a firm's record on environmental, working-conditions, and human-rights issues.

These encouraging developments notwithstanding, there are instances in which lasting competitive advantage can clearly be gained through irresponsible behaviour. In fact, a minority of Canadian CEOs surveyed by the *National Post*/Wilfrid Laurier in a 2000 survey (cited in an earlier endnote) openly acknowledged that they would not hesitate to do business with a reprehensible regime if the payoffs were significant and the negative consequences minimal.

Both in our public hearings and private corporate consultations, we were repeatedly told that Canadian companies today often find themselves in countries with unacceptable workplace standards and are confronted by recurring dilemmas. We fear that so long as debasement of human rights and other important standards are considered acceptable forms of international competition, otherwise ethical Canadian companies could find themselves following the lead of irresponsible competitors. Thus, while it may be true that responsible companies on average are more profitable than their irresponsible counterparts, some firms will continue to act irresponsibly.

Ethical consumer and shareholder pressure can help deter such behaviour by increasing both the costs of irresponsible behaviour and the benefits of responsible actions. However, companies in sectors with minimal direct exposure to a mass consumer base are less vulnerable to consumer dissatisfaction,

and private corporations with controlling shareholders are unlikely to be affected by disgruntled "ethical" shareholders applying pressure through divestment or shareholder proposal campaigns.

Roy Culpeper, president and CEO of the North-South Institute, suggested that we are due for a reinterpretation of a central tenet of shareholder primacy, clearly delineated in Milton Friedman's assertion that "there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception and fraud."[13]

In his presentation, Culpeper suggested that the central point is the definition of the "rules of the game." While Friedman would restrict this term to the act of engaging in free competition without fraud and deception, the North-South Institute was among many who urged that the rules of the game should include CSR. The opinion of York's Professor Cragg was typical of this position. He suggested that the guiding premise in business decision-making should be the exercise of power within the constraints of ethical principles. In Professor Cragg's view, the unalloyed shareholder-primacy model says the ends do justify the means: Profit maximization trumps ethical obligations. He, along with most other participants, asserted that this should not be the case.

Considering these arguments, we urge the following reformulation of the rules of the game: Corporations should be allowed to maximize their profits as long as they do so in open and free competition, without deception or fraud, in compliance with the law, and in a manner consistent with basic human rights, labour, environmental, consumer-protection, and ethical standards, even if these are not enforced in the jurisdiction in which the company is operating.

C. The Role of the State

A number of those who spoke favourably about CSR did so on the assumption that its requirements would remain outside the framework of law and regulation. For example, David Stewart-Patterson, representing the Business Council on National Issues, had this to say:

> However socially responsible behaviour is defined, it can only be encouraged, not compelled. If your report is to make a significant contribution to this continuing discussion with the Canadian and global communities, you must consider how to affect the behaviour of individuals wearing many hats: as managers and employees executing strategy; as directors making strategic decisions; as institutional investors influencing those strategic choices; and as shareholders and mutual fund investors choosing when and what shares to buy and sell.

A similar point was made by the Institut économique de Montréal. The Body Shop, which makes CSR principles a central component of its decision-making, also argued that while there may be room for both legislation and market forces in generating accountability, the latter is preferable, since regulatory legislation and standards could stand in the way of innovative CSR practices.

We agree that it is neither possible nor desirable to create CSR solely through legislative fiat. We agree with Professor Cragg that it would be undesirable to have legislation that would deprive companies of the flexibility needed to apply CSR in different contexts. At the same time, we do see a role for government in questions of CSR. Unlike some of our participants, we believe that government regulation is often the most democratic, most transparent, and most efficacious means of achieving important social goals.

Many presenters made the point that voluntary CSR, at its best, supplements legal regulation by aiming for standards higher than those existing in law. It is not a replacement for regulation. As the Taskforce on the Churches and Corporate Responsibility noted in its submission, voluntary codes of conduct that reflect corporate CSR commitments are

only as effective as the regulatory framework within which they operate. Indeed, it is in regard to the areas in which regulation is most lacking – the international, globalized marketplace and in countries that fail to abide by appropriate environmental and human-rights standards – that the debate over CSR is most active and the questions concerning its effectiveness are most acute. We agree with the sentiments expressed by the taskforce, and wholeheartedly support what the June 2001 European Union Green Paper had to say:

> Corporate social responsibility should . . . not be seen as a substitute for regulation or legislation concerning social rights or environmental standards, including the development of new appropriate legislation. In countries where such regulations do not exist, efforts should focus on putting the proper regulatory or legislative framework in place in order to define a level playing field on the basis of which socially responsible practices can be developed.[14]

In our view, democratic law-making is the only legitimate means of arriving at basic standards of accountability. It is wrong to leave such fundamental aspects of accountability to be decided in boardrooms, by institutions designed primarily to generate profit for investors, instead of by elected bodies responsible for seeking the common good. Indeed, our understanding from both our private conversations and public hearings with business representatives is that many of them join the majority of Canadians who prefer the certitude produced by regulation to the uncertainty of unregulated marketplaces.

In our poll, we asked Canadians whether the government should both establish standards for CSR and oblige companies to report on what they are doing to comply with them. The publication of performance data on government-established standards would enable citizens at large, as well as potential shareholders, to judge whether a company is socially responsible. Among shareholders, 75% believe that government should take this action and fully 80% of the population at large agreed.

We have noted that there are many within the corporate world who prefer relying upon a market-based solution. Mr. Stewart-Patterson contended that the free market is working better than ever to ensure that a company must be responsible to be successful. Similar arguments were made by others, such as Professor Robert Young of the University of Western Ontario, who believes that regulation and legislative change would be inadequate and raise serious problems. In his view, it is best to think of non-governmental organizations in civil society as being the key lever of influence on companies.

Our concern is that such an emphasis relieves governments of their responsibility to work towards systematic means of ensuring minimal standards of corporate behaviour in fundamental areas such as human rights and the environment. We are particularly troubled by a tendency of some in the business community to see voluntary-compliance CSR as a viable alternative to the creation of a rules-based system of international trade and commerce incorporating environmental, human-rights, and labour standards.

While market forces in the form of consumers and investors can be a potent motivator for CSR, and have already sparked an important turnaround in the behaviour of some major companies, the central generators of such pressure who appeared before us – the many consumer, shareholder, trade-union, human-rights, and environmental organizations – were virtually unanimous in their conclusion: Market and civil-society pressures are important, but they alone are not enough to bring about CSR as the dominant practice. They were supported in this argument by a good number of business executives, particularly those who had direct foreign experience.

If companies are socially responsible merely in response to external market pressures, then CSR in areas where no legal apparatus exists will continue to be dependent on the glare of publicity. We have two concerns with this approach. The first is that such

pressure will only have an effect on those with an image to protect, primarily in the consumer-goods sector, leaving firms who work outside of that particular spotlight free to conduct business as they wish. The second concern is that voluntary CSR will put the onus of supervision on non-governmental organizations with limited resources, effectively rendering the large majority of companies immune from scrutiny. Therefore, there remains a key role for government.

D. The International Competitiveness Question

As we quickly learned during our hearings, the thorniest CSR questions centre on Canada's international competitiveness. In the last of the questions set out in our discussion paper, we asked whether it was possible to change Canada's CSR policy without jeopardizing Canadian competitiveness. More concretely, would changes that increase Canadian corporate transparency and enhance the ethical reputation of Canadian firms represent a competitive disadvantage in the global economy?

Responses to these questions were extremely varied. Some, including the North-South Institute, Imagine, and the Canadian Association of Petroleum Producers, said that any negative consequences of CSR on competition could be mitigated by proceeding multilaterally, in association with like-minded states or international organizations such as the World Trade Organization. Others, including members of the Harker mission to Sudan and the Canadian Council for International Co-operation, urged unilateral action that would allow us to proceed in small steps towards global CSR for Canadian firms. Still others, such as Professor Leonard Brooks and the Canadian Centre for Policy Alternatives, argued that the apparent conflict between competitiveness and CSR was nothing but a red herring, and in fact unilateral progress on corporate accountability might well enhance competitiveness. Finally, there were those – including the Business Council on National Issues – who said that adoption of Canadian regulations requiring CSR would actually have a negative effect on competitiveness.

In Part 2 we take into account concerns about competitiveness as we make our recommendations. In our view, increased social-responsibility requirements will not undermine the success of the Canadian corporate sector, especially if restricted to large firms. At best, they will enhance the competitiveness of Canadian firms. At worst, they will have a slight negative effect on the ability of some Canadian firms to compete.

Further, we do not accept the economic-competitiveness argument as a compelling justification for inaction in the case of those companies operating overseas who may be insulated from the key market pressures that prompt CSR and continue to act improperly in generating economic returns. We strongly believe that the "rules of the game" must at least include those basic rights enshrined in international human-rights law that Canadians and the vast bulk of other countries agree codify the precepts essential to human dignity. To conclude otherwise is to accept that investors' rights to profits have precedence over the fundamental guarantees that international human-rights treaties provide to all. We join the majority of Canadians in rejecting such an irresponsible approach, even if that approach might provide a short-run competitive advantage.

PART 2:
CORPORATE ACCOUNTABILITY FOR A NEW CENTURY: RECOMMENDATIONS

2.1 Introduction

We turn now to our specific recommendations, gathered under the headings appearing in our discussion paper. For ease of reference, we include under each heading the questions that appeared in the discussion paper.

2.2 Information is the Currency of Democracy

> *Discussion Question*
> *In order to facilitate tracking of corporate activities in all areas of concern to stakeholders, should corporations be obliged to disclose detailed information about their records of compliance with labour, environmental, human-rights, consumer, health and safety, criminal, competition, and tax laws or policies? Should governments set up easily accessible databases containing the information? Should staff or management who disclose information a corporation is required to disclose, but has failed to do so, or who report violations of legal requirements by a corporation, be protected from retaliation by the corporation? Should independent "social audits" be legally required?*

A. Disclosure of Social-Responsibility Policies

The issue of disclosure was the matter most frequently raised before the commission. There was little agreement on what type of disclosure would be necessary or acceptable, but it became clear that disclosure is a key prerequisite for most of the participants who have seriously considered how best to ensure greater accountability in the future.

Disclosure alone will not solve all the problems the commission heard about in its travels. However, the Working Opportunities Fund noted that investors cannot make informed decisions without information. And Duff Conacher, representing Democracy Watch and the Corporate Accountability Coalition, noted that the underlying premise of a free market is free information. Others said that limiting disclosure limits accountability. At every turn, we heard that those who are committed to increasing CSR lack even the most basic information on the social-responsibility record of companies. Like these participants, we believe that greater disclosure is necessary if corporate accountability is to be achieved.

Companies currently operate under disclosure requirements geared towards keeping them honest and accountable to investors on financial matters. Under the *Canada Business Corporations Act* (CBCA), shareholders may examine the corporation's articles of incorporation, bylaws, a share register showing the owners of all the shares, and other relevant notices and agreements. Information that must be publicly disclosed includes annual financial statements and regular updates of information about the working of the company. However, there is no requirement for disclosure of data relating to corporate social responsibility – including the issues listed in our Basic Standards – in the CBCA, or any other Canadian corporate law.

The principal disclosure requirements are found in Canadian securities laws.[15] However, these requirements only pertain to matters deemed to be "material," "material" referring to something "that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value" of the securities.[16] Social or environmental information is only disclosed, in other words, when it has the potential to hurt the bottom line, as assessed by management.

A major problem with this requirement is that "materiality" varies depending on context and is strongly influenced by the size of the firm, its profits and assets, and similar considerations. An environmental spill with disastrous consequences for a local community could be material to a small firm with few assets and trifling to a company with many assets.

In addition, whether an event is material will probably depend on the legal consequences flowing from it. An environmental accident occurring in Canada is likely to be material, because the company is subject to Canadian laws and regulations. The same disaster in a part of the world where environmental regulations do not exist may not be material, even if the environmental consequences are the same. Hence, the concept of materiality is of modest utility in obliging a company to disclose data in the name of social responsibility.

Our conclusion about the inadequacy of existing disclosure practices is affirmed by a study of disclosure regimes in Canada and the United States conducted at Binghamton University in New York State. The authors conclude, "There appears to be no option but to increase disclosure regulations [in both Canada and the United States]. The current levels of mandated disclosure are insufficient and voluntary disclosure will not work. Legislation and regulation appear to be the only alternative."[17]

We agree. The challenge, in our view, is to design a disclosure regime both extensive enough to prove useful in measuring a company's social responsibility and sufficiently limited so as not to prove an administrative burden for companies or constitute a disclosure of legitimately designated proprietary information.

We believe disclosure should take two forms. First, companies should be obliged to disclose the extent to which they employ social-responsibility criteria in their business – the rules they are following and the nature of their ethical policies. Second, companies should be obliged to disclose more information on their actual behaviour and record in implementing CSR policies and guidelines.

Precedents already exist for an effective limited disclosure system requiring companies to report on CSR policies. In 1995, the Toronto Stock Exchange (TSE) introduced new rules requiring TSE-listed companies to disclose their corporate governance practices. Specifically, every company listed on the TSE and incorporated in Canada must disclose annually its approach to corporate governance, assess the extent to which these practices conform to guidelines set out by the TSE, and explain any discrepancies.[18]

Professor Tony VanDuzer of the University of Ottawa Faculty of Law admirably summarized the benefits of such a system:

> First, [this system] permits ready comparability across corporations, though admittedly consistency in the questions to be answered may not lead to consistency in the comprehensiveness of the information provided. Second, it gives corporations substantial flexibility in determining whether and how to conform to the benchmarks and how to address concerns raised by its disclosures. This is particularly important given the differing scale and scope of operations of corporations in Canada. The thrust of a mandatory disclosure regime is to educate regarding best practices and focus management attention on social responsibility issues. Management should remain able to develop an approach to social responsibility issues that is appropriate for their business. The alternative of mandating specific practices, inevitably, would require setting the standard at some relatively low level attainable by all corporations. Third, and most important, the disclosure regime relies on the marketplace to assess the significance of management's behaviour for the corporation. The available evidence suggests that disclosure called for under the TSE rules has resulted in pressure to comply with the benchmarks established and some progress toward meeting them.[19]

Obliging corporations to disclose the extent to which they comply with a comprehensive set of guidelines would provide key information on the policies of individual companies. The Government of Canada has participated in the development of – and seemingly strongly endorses – the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises.[20] We see no reason why companies listed on Canadian stock

exchanges should not be obliged to disclose whether or not they adhere to these or similar standards. In our recommendation below, we refer to these as "CSR Guidelines." Companies should be required to answer "yes," "no," or "non-applicable" for each of the standards listed in these guidelines in annual filings. If they answer "yes," the rules would then require them to explain in what fashion the standard is met. If they answer "no" or "non-applicable," then, as the TSE governance guidelines require, they would have to explain why not.

We would extend this principle of disclosure to pension funds. In this regard, we are influenced by recent developments in the United Kingdom, where, as of July 2000, regulations oblige trustees of occupational pension schemes to disclose their policy on socially responsible investment in their Statement of Investment Principles,[21] an approach strongly endorsed by the ethical shareholder rights groups appearing before the commission. Both France and Germany introduced analogous regulations in May 2001.[22] Here in Canada, most want their pension funds to be invested in a way that would provide good returns. However, according to our polling information, 51% want their plans to invest in companies with a good record on social responsibility, even if this means "somewhat lower benefits" for themselves. Only 36% wanted investments restricted to companies making the highest profits. Knowing whether pension funds take CSR into account will help investors make decisions about how to manage such funds.

We do not believe that what we propose would constitute a significant additional administrative burden for public companies or pension funds. In addition, no company would be obliged to disclose any information that might legitimately be considered proprietary, requiring confidentiality for competitive reasons.

Given the strong assertions made by presenters before the commission concerning the potency of market forces, we also believe that once companies acknowledge publicly that they employ no social-responsibility criteria, they will feel strong pressure to introduce such policies, something that may already be happening in the UK with pension funds.[23] We also note that this approach is consistent with changes in Canadian federal government regulations for chartered banks. In its 1999 policy paper on reforming the financial sector, the government announced that banks would be obliged to disclose an annual public accountability statement covering a range of activity from philanthropic behaviour to initiatives to improve access to banking services for low-income individuals and seniors.[24] New legislation came into force in the fall of 2001.

A more difficult problem relates to whether private companies should also be obliged to meet CSR disclosure obligations. We see no reason in principle for failing to extend disclosure requirements to private firms. We are especially concerned that Canada's vast number of large wholly owned subsidiaries meet CSR disclosure requirements. That said, we are also aware that many private companies are very small organizations for which the sorts of disclosure we recommend here would prove administratively burdensome. We therefore would favour a size threshold, below which private companies would have no CSR disclosure obligations. We have struggled unsuccessfully to define what this size threshold should be. Our recommendation here remains on the principle that only large firms should be obliged to meet disclosure requirements, leaving the precise size cut-off point to others with a better grasp of the administrative burdens smaller businesses should legitimately be asked to bear.

- **RECOMMENDATION 1: As with the TSE corporate-governance guidelines, companies should be required as part of their listing requirement on Canadian stock exchanges to disclose in their annual reports or annually in information circulars their approach to corporate social responsibility, assess the extent to which these practices conform to "CSR Guidelines" set out in stock-market listing rules, and explain any**

discrepancies. These CSR Guidelines should be developed by the responsible governments with reference to established indexes of corporate social responsibility, such as the standard being developed by the Conference Board of Canada, those set out in the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, or those proposed in the Taskforce on the Churches and Corporate Responsibility "Benchmarks." In any event, the guidelines should include criteria dealing with each of the Basic Standards set out in Part 1 of this report.

- **RECOMMENDATION 2: Since privately held companies ought also to be encouraged to meet corporate social-responsibility standards, corporate laws should be amended to require annual disclosures equivalent to those in Recommendation 1 for private companies of a certain size, as determined by a size threshold that exempts small and medium-sized businesses while including Canada's many large private firms and large wholly owned subsidiaries of foreign multinationals.**

- **RECOMMENDATION 3: Pension funds, including those of the federal and provincial governments, should be obliged to indicate in their Statement of Investment Policies and Procedures or an equivalent document whether or not they take into account considerations contained in the CSR Guidelines when making investment decisions.**

- **RECOMMENDATION 4: Governments and stock exchanges, after consultation with the business community and other interested parties, should implement Recommendations 1 to 3 within two years of the release of this report.**

B. Disclosure of Social-Responsibility Practices

Would such recommendations, when acted upon, be effective? This gives rise to the related question as to whether regulations should be introduced requiring companies to supplement disclosure of their CSR *policies* with disclosure of their actual CSR *performance.*

In its submission, the Taskforce on the Churches and Corporate Responsibility expressed a concern with the lack of transparency and verifiability of current corporate social-responsibility claims and assertions, a concern shared by others. Gerry Barr, appearing on behalf of the Canadian Council for International Co-operation, suggested that CSR records be disclosed and managed in a government database, since companies are often reluctant to disclose the findings of social audits. Indeed, several of the participants involved in third-party monitoring of corporate social responsibility complained that some companies they have examined have been less than frank in sharing information and may have practised "wilful blindness" in relation to their overseas projects. Companies are not the only culprits. In its presentation, Michael Jantzi Research Associates – which researches the CSR record of companies – pointed out that some governments in Canada have been unco-operative in making information about corporate violations of laws and regulations available to the public. In the province of Ontario, for example, citizens and organizations can only obtain information on corporate non-compliance with environmental regulations by applying for it through the access-to-information laws.

A few participants took the view that this paucity of information is not necessarily a bad thing. The Fraser Institute, for example, argued that corporate information shared with government is protected by confidentiality and further contended that disclosing information would reduce competitiveness. The Canadian Labour Congress disagreed, arguing that the public interest in knowing about ethically dubious behaviour outweighs any corporate interest in proprietary information.

We do not believe that disclosure of environmental- and social-performance information raises proprietary concerns. Some companies have already developed extensive social-disclosure practices. Shell Canada, Suncor, and Alcan, for instance, described to

us the extensive disclosure practices they have developed in recent years. Tim Bancroft, appearing on behalf of Shell Canada, told the commission that his company's current social and environmental practices do not undermine any competitive edge.

It was also pointed out that disclosure of CSR performance can have a positive impact on a company's competitiveness if stakeholders choose to patronize companies with more acceptable CSR track records. The Body Shop, in its presentation, admitted that ethical audits can be very unsettling if they unearth unintended negative impacts the company's activities have on communities. In fact, when the company came close to failing its first social audit, the experience pushed them to better performance. Alcan made similar points, noting that the process of doing its social audits served as an important learning experience, one that enhanced the company's credibility with its stakeholders, who welcomed the admission of shortcomings via this audit as evidence of the company's bona fides.

We strongly endorse these views. To criticize disclosure because it may air the company's dirty laundry is to refuse consumers, investors, and other market players the opportunity to make fully informed choices about the companies with which they wish to deal. Nothing in our understanding of free-market economics invalidates this conclusion. Like several of our participants, we also find no good argument against "whistle-blower" protection for employees who disclose corporate non-compliance with laws, a matter to which we return below.

While the principle of CSR disclosure is compelling, distilling it into a precise regulatory requirement is more difficult. There are areas where slight changes to existing law and practice would provide substantial information. For example, we believe that companies, as part of their corporate-law annual filings and as a listing requirement on Canadian exchanges, should be obliged to disclose criminal and regulatory convictions for every jurisdiction in which they operate, and for all companies in which they have a controlling interest. Companies already compile this information for internal purposes. The only argument we can see against disclosure of this data is that companies might find it embarrassing. For reasons outlined above, we do not find that protecting companies from embarrassment is a good reason to deny the public such information. In fact, it misses the point: Disclosure is intended to allow market actors to make rational decisions, including decisions driven by concerns about a company's record as a socially responsible firm.

As another example of the improvements that might readily be made to existing laws, the Ethical Trading Action Group proposed amendments to the "CA" textile labelling systems (whereby identification numbers are registered to Canadian textile dealers) created by the *Textile Labelling Act* to increase information on the origins of textile products sold in Canadian stores. Specifically, ETAG urged that the existing public CA database be amended to incorporate information on the "sourcing" arrangements of textile products, including listing which factories are producing the goods. Echoing comments made by Oxfam Canada and Rights & Democracy, ETAG pointed out that the current labelling system makes it very difficult to track textiles sold in Canada in order to determine which retail and textile companies allow sweatshop-labour practices in their overseas operations or among the firms from which they source. We support its proposal.

More difficult to design are disclosure requirements that would oblige companies to develop new gathering and reporting methods, as would be the case with social audits. Chris Pinney of Imagine suggested that government should simply encourage voluntary reporting regimes rather than make social audits obligatory. La Jeune Chambre de Commerce de Montréal, while supporting voluntary social audits, said that mandatory reporting would impose too great a regulatory burden on companies, particularly in the absence of any uniform auditing standards.

Other groups want stronger action. The Groupe Investissement Responsable argued that companies cannot be held accountable without such audits. The

Social Investment Organization noted the development of international social reporting standards, including the Global Reporting Initiative described in our discussion paper, and contended that companies should be obliged to file assessments reflecting these global reporting initiatives.

We have concluded that mandating greater CSR auditing would fuel the development of social auditing standards and should be encouraged, but we do not believe that the precise content of social audits should be determined by government regulation. Because of the immaturity of the social auditing field at present, the regulatory requirement for social audits should simply set out general objectives and goals and leave to companies and their auditors the task of developing measuring standards and conventions. As a minimum requirement, these audits should be independently verified by credible third parties, something that is currently uncommon. We also believe that the social auditing requirement must be tailored so that it does not prove too burdensome for small companies that aren't financially equipped to conduct such exercises.

- **RECOMMENDATION 5: As a listing requirement on Canadian stock exchanges, companies should be required to disclose annually – in their annual reports or information circulars – a list of all serious criminal or regulatory convictions for every jurisdiction in which they operate, and for all companies in which they have a controlling interest.**

- **RECOMMENDATION 6: Since privately held companies ought also to be encouraged to meet corporate social-responsibility standards, corporate laws should be amended to require annual disclosures equivalent to those in Recommendation 5 for private companies of a certain size, as determined by a size threshold that exempts small and medium-sized businesses while including Canada's many large private firms and large wholly owned subsidiaries of foreign multinationals.**

- **RECOMMENDATION 7: The CA labelling system under the federal *Textile Labelling Act* should be expanded to include disclosure of names and locations of factories in which clothing sold in Canada was produced.**

- **RECOMMENDATION 8: Large public and private companies should be obliged, as part of their corporate-law reporting requirements, to produce annual "social audits." Given the undeveloped nature of social auditing at this point, only the very largest of companies should be obliged to undertake these audits, though others should be encouraged to complete them on a voluntary basis. Further, corporate law should not currently spell out the precise methodology for these audits but should at least require that they include examination of the issues set out in the Basic Standards outlined in Part 1 and that they be independently verified.**

- **RECOMMENDATION 9: Recommendations 5 to 7 should be implemented immediately by the relevant governments and stock exchanges. To allow consultation with the business community and other interested parties and the development of social auditing methodologies, governments responsible for implementing Recommendation 8 should delay implementation of these requirements for three years following the release of this report.**

C. Whistle-Blowing

We believe that there is a strong need for whistle-blower protection in law and corporate policy to counter the significant stigma whistle-blowers can face for disclosing company wrongdoings. This was the view held by several of our participants, including long-standing corporate board members such as Thomas Kierans, chair of the Canadian Institute for Advanced Research. Based on its long experience as a CSR research organization, EthicScan concluded in its brief that in "almost all cases of serious corporate wrong-doing EthicScan has found that people in the

organization – at the level below the top executive team – suspected or knew that something was wrong. These employees suspected that someone was covering up, that deliberate malfeasance was possible, or (in the best case) that management was taking an unrealistic look through rosy glasses." Like EthicScan and other presenters, we believe that employees who come forward with information on alleged corporate crime or fraud are inadequately protected by Canadian law. In this respect, we lag far behind jurisdictions in the United States.[25]

■ **RECOMMENDATION 10: Canadian governments should introduce laws protecting employees from discharge, suspension, demotion, harassment, blacklisting, or other adverse employment action taken against an employee for the disclosure of alleged criminal or fraudulent acts committed by their employers, in the public or private sector.**

2.3 Making Social Responsibility and Stakeholder Considerations Part of Business

Discussion Question
To guarantee that directors do not run afoul of fiduciary duties in responding to socially responsible imperatives, should corporate laws be amended to permit or explicitly require directors to consider non-shareholder stakeholder interests in making decisions? Should provisions in corporate laws preventing or inhibiting shareholders from raising corporate social-responsibility issues with companies, via shareholder proposals or otherwise, be eliminated? Should the so-called "oppression" remedy presently found in corporate laws and available to shareholders, directors, and, to an extent, creditors who feel their interests have been improperly disregarded by management be expanded to permit access to these remedies by other stakeholders beyond shareholders, creditors, or directors, thereby providing stakeholders with access to court review of corporate decisions?

A. The Shareholders' Voice
Since the commission was launched in February 2001, amendments to the *Canada Business Corporations Act* (CBCA) eliminating many of the previous constraints on shareholder "proposals" have passed through Parliament.[26] The proposal process gives shareholders a limited right to add items to the agendas of annual meetings. Although these proposals are seldom successful, they often raise issues that would otherwise be overlooked and can lead to future changes in corporate behaviour. Among other things, the CBCA amendments reduce prior legal constraints on shareholder proposals dealing with CSR matters. Many groups appearing before the commission applauded this step, though some were uncomfortable with new requirements limiting shareholder proposals to those with a sufficient number of shares held for a long time. Some groups also voiced unease with the existing requirement that challenges to management exclusions of shareholder proposals must be adjudicated in court, rather than by a more accessible administrative body. The CBCA amendments oblige a five-year review of the act, and we believe the workings of the shareholder proposal process should be reviewed to determine whether the amendments have really corrected what our discussion paper identifies as unwarranted constraints on shareholder action.

■ **RECOMMENDATION 11: At the time of the mandatory five-year review of the *Canada Business Corporations Act*, the federal government should consider whether steps taken in the most recent round of amendments to reduce constraints on corporate social-responsibility-related shareholder proposals have in fact gone far enough in enabling shareholders to communicate their concerns at shareholder meetings.**

B. Fiduciary Duty of Directors
Another concern raised before the commission related to the fiduciary duty of directors. Under corporate law, directors manage the affairs of the corporation[27] and are expected to act honestly, in good faith, and in

the best interest of the corporation, thereby placing themselves in a position of "fiduciary" to the corporation.[28] One of the principles of fiduciary duty prohibits directors and officers from putting themselves in circumstances in which their own interests and those of the corporation are in conflict. Some court cases in common-law jurisdictions have interpreted this to mean that management cannot engage in activities that are purely altruistic and involve the expenditure of corporate resources. This interpretation of fiduciary-duty law tends to codify the shareholder-primacy principle and has led to a concern that a policy of CSR might be incompatible with the interests of shareholders focused on the bottom line. Although it is not clear that such a conflict exists over the long term, it is evident that at least some socially responsible behaviour requires an investment of company resources that might reduce short-term shareholder returns. In these circumstances, directors may be reluctant to embark on ventures that might render them liable to irate shareholders.

Many groups appearing before us urged the amendment of fiduciary concepts to allow directors to contemplate the interests of non-shareholder "stakeholders," including employees, consumers, communities, and others. The Conference Board of Canada suggested that such a measure would render companies more likely to consider CSR issues. The Body Shop suggested that a standard of stakeholder accountability be devised that is as simple and easily applied as shareholder primacy.

As we have suggested in our discussion paper, the current law of fiduciary duty is unclear in Canada. The sole specific statement on the precise scope of "shareholder primacy" in fiduciary law is an aside found in *Teck Corporation Limited v. Millar*,[29] a 1973 decision of the British Columbia Supreme Court. This statement, quoted in full in our discussion paper, suggests that a CSR initiative will not conflict with fiduciary duty requirements so long as directors do not entirely disregard shareholder interests. Unfortunately, this assertion in a dated lower-court case from a single province provides no clear authority for directors confronted with complicated decisions about their legal duties almost thirty years later. As the Canadian Centre for Ethics and Corporate Policy noted, while this decision suggests that directors can take CSR into account as part of their long-term calculations, the current law provides little protection to directors asked to balance these considerations against immediate shareholder-profit interests.

In the United Kingdom and in many jurisdictions in the United States, the corporation law has been adjusted to accommodate the fiduciary concern. Since 1980, the UK *Companies Act*[30] has obliged directors to contemplate the interests of employees in managing the corporation. By the mid-1980s, a majority of U.S. jurisdictions had introduced "other constituency statutes" in their company laws that reflected a consideration for stakeholders. Even Delaware, the leading incorporation jurisdiction for U.S. corporations, has tempered the shareholder-primacy principle through a series of court decisions. In terms of their substance, constituency statutes generally provide that in contemplating the best interests of the corporation, directors may consider such things as the corporation's long-term interests,[31] including in remaining independent,[32] and the interests of shareholders,[33] employees, customers, suppliers, and creditors,[34] the communities in which the corporation operates,[35] and the economy of the state and the nation.[36] Statutes also sometimes empower directors to contemplate "all other factors such directors consider pertinent."[37]

These statutes have not been without controversy. State promulgation of constituency statutes ignited substantial academic commentary in the late 1980s and early 1990s, much of it hostile.[38] The American Bar Association argued that the statutes would lead to confusion amongst directors as to whose interest should be prioritized in the event of conflicts.[39] Further, it was argued that the erosion of shareholder primacy would render shareholders more vulnerable to so-called agency problems. Directors and managers might be less accountable for how they spent other people's money, including in ways that favoured their

own interests. Similar arguments have been made in Canada by those opposed to more stakeholder-sensitive forms of fiduciary duty.

Measuring the impact of such statutes on director behaviour is a difficult task going well beyond the resources of this commission. Yet, despite the controversy constituent statutes provoked, our research has found that in the United States, stakeholder provisions have been raised in only a handful of cases, most of which have been cited much more thoroughly in the academic literature than by other courts.[40] Fears of critics notwithstanding, constituency statutes have not prompted a rush by stakeholders into court.[41] On the other hand, there is no reason to believe that changing conceptions in corporate law, at least in this area, have rendered companies more socially responsible. Certainly, the dearth of cases decided under state constituency statutes, and the rather incidental role these statutes have played in outcomes, supports this conclusion.

If tinkering with corporate law has done little to promote CSR, one logical reaction might be to call for further tinkering. We heard proposals to extend formal fiduciary duties to stakeholders, providing them with standing in reviews of management decisions.[42] We believe that such change would be procedurally difficult to implement and would simply shift the evaluation of decisions from managers to courts, where there is a natural reticence to second-guess business decisions. We do not believe that courts will make better decisions on CSR matters than managers and therefore do not believe that corporate law should be extended to give other stakeholders the right to challenge corporate decisions on these matters.

The most compelling argument in favour of amendments to fiduciary duty stems from the corrosive impact of uncertainty. We believe that if the opinion expressed in *Teck Corporation v. Millar* represents the current law in Canada, no harm can flow from codifying its teachings in corporate statutes. While we agree with the Conference Board of Canada that such a provision may make companies more likely to consider CSR issues, we have no illusions that stakeholder amendments would fuel an outbreak of CSR. Nevertheless, clarifying fiduciary concepts would alleviate management concerns that CSR could expose it to liability. Peter Chapman of SHARE pointed out that the recent OECD guidelines on corporate governance note that "[e]mployees and other stakeholders play an important role in contributing to the long-term success and performance of the corporation" and suggested that "governments have an important responsibility for shaping an effective regulatory framework that provides for sufficient flexibility to allow markets to function effectively and to respond to expectations of shareholders and other stakeholders."[43]

Clarifying fiduciary duty would remove an artificial impediment imposed at present on managers who might otherwise engage in CSR initiatives to capitalize on the long-term potential of companies. We interpret the American experience to suggest that codifying the sort of principle expressed in U.S. constituency statutes or by *Teck* will not increase management shirking nor debase accountability to shareholders. We also note that even if *Teck* were codified, other, more fundamental aspects of fiduciary-duty law that bar managers from exercising less than due diligence in their activities or from engaging in self-dealing or other conflicts of interest would remain intact.

- **RECOMMENDATION 12: Corporate laws should be amended to clarify the precise scope of director fiduciary duties in relation to CSR. In particular, these laws should codify the approach adopted in *Teck Corporation v. Millar,* clarifying that, so long as the directors do not disregard entirely the interests of a company's shareholders in order to confer a benefit on a non-shareholder, directors may consider any of the following in discharging their duties to the corporation and in determining what they reasonably believe to be in the best interest of the corporation:**

(a) the effects of the action on the corporation's employees, customers, suppliers, and creditors;
(b) the effects of the action on the communities in which the corporation operates; and
(c) the long-term and short-term interests of the corporation and its shareholders.

C. Fiduciary Duty of Pension Trustees

We extend these conclusions not only to companies, but also to pension trustees. Our hearings and consultations convinced us that many of those controlling pension funds behave as if fiduciary duties require them to consider only profit maximization. On the basis of a legal brief commissioned by the Shareholder Association for Research and Education (SHARE), Peter Chapman considers it a misconception that trustees are restricted to considering only financial interests.[44] In its conclusion, the brief does note the confusion in this area of the law but goes on to state:

> Generally speaking, there is nothing preventing pension trustees from applying non-financial criteria to investment decisions *per se* provided that the investments are prudent and made in the best interests of the beneficiaries. Pension trustees may apply non-financial criteria in selecting investments as long as such investments provide a reasonable rate of return comparable to other investment options with similar levels of risk.

Some jurisdictions have already made this standard explicit. Manitoba's legislation allows trustees to take non-financial considerations into account.[45] And in Ontario, the Financial Services Commission issued a bulletin in 1992 suggesting non-financial, "ethical" considerations may be taken into account with appropriate disclosure.[46] However, both our review of the literature and our hearings have convinced us that the definition of fiduciary duty in pension legislation and elsewhere remains unclear. In the absence of greater clarity, many pension trustees will remain inhibited from taking into account social-responsibility criteria.

Accordingly, like many of the presenters before us, we believe provincial and federal legislation should be clarified to allow trustees to contemplate non-financial considerations, so long as the long-term profit interest of beneficiaries is not disregarded.

■ **RECOMMENDATION 13: All Canadian jurisdictions should follow Manitoba in including the following provision in their legislation governing the obligations of pension trustees:**

> **Subject to any express provision in the instrument creating the trust, a trustee who uses a non-financial criterion to formulate an investment policy or to make an investment decision does not thereby commit a breach of trust if, in relation to the investment policy or investment decision, the trustee exercises the judgment and care that a person of prudence, discretion, and intelligence would exercise in administering the property of others.**

2.4 Encouraging Responsible Behaviour at Home and Abroad

Discussion Question

(a) The Ontario Business Corporations Act specifies that a corporation may be dissolved by the relevant government official for a conviction of the corporation under the Criminal Code, any other federal statute, or a provincial offence in circumstances where the dissolution would be in the public interest. Should this power be included in other corporate laws?

(b) Should corporations and other suppliers of goods and services to the government who violate labour, environmental, human rights, consumer, health and safety, criminal, competition, and tax laws and policies be prohibited for a specific period of time (e.g. five to ten years) from receiving grants

or contracts from the government? Should access to these government benefits also be made conditional on adequate corporate responsibility in a company's overseas activities?

A. Enforcing the Law

The issue of corporate dissolution did not concern many of our participants. Still, several did call for the expansion of corporate criminal liability and the inclusion of corporate-dissolution provisions in corporate laws, especially in the case of recidivist companies. Others argued for regular mandatory review of corporations to assess the impact a company is having on society at large. On the other hand, David Stewart-Patterson of the Business Council on National Issues found the "corporate death penalty" concept worrying. He questioned the need for a provision further penalizing companies already punished for not obeying the law.

The corporate-dissolution concept stems largely from the United States. Corporate dissolution or corporate "charter revocation" provisions have been part of corporations law in most U.S. states for some time[47] and are sometimes used, albeit infrequently.[48] However, we agree with Mr. Stewart-Patterson that corporate dissolution does not make sense in a modern context, within which companies can be found liable for criminal violations and where incorporation is a simple process of filing papers. In this context, dissolution only represents an inconvenience – albeit a substantial one – for recidivist corporations, whose owners would be able to reincorporate readily. We simply do not believe that corporate-dissolution discussions are a helpful contribution to questions of CSR.

While we do not see the need for new penalties in the form of dissolution, we agree with several of our participants that laws and regulations governing company conduct must be enforced. EthicScan, in its brief, suggested that "Canada has an undeserved reputation internationally for responsible regulatory behaviour," and went on to say that existing environmental, food, water, health-inspection, consumer-labelling, and other rules are not being adequately enforced. Certainly, recent concerns in a number of Canadian communities relating to safe drinking water are consistent with this view. Like some of our presenters, we fear some Canadian governments at all levels may be accomplishing de facto deregulation in these areas simply by failing to enforce the law. We feel obliged to underscore this point.

■ **RECOMMENDATION 14: Canadian governments must work diligently to ensure that existing corporate, securities, consumer, health and safety, criminal, environmental, food, water, and other rules are properly enforced.**

B. The Role of Government

The discussion question cited above was geared towards imposing conditions on government policies and programs specifically aimed at supporting businesses. Over the course of the hearings, however, we heard a great deal about the proper role of government in "encouraging responsible behaviour at home and abroad." We choose, therefore, to discuss several questions concerning the steps governments might take to encourage CSR. First, we examine in general the role that government's influence in market decisions can play in promoting CSR. Second, we turn in particular to the vexing question of government's responsibilities in relation to corporate behaviour overseas.

Government Conditions

We learned through presentations that CSR is more common when independent external pressure or incentives aimed at compliance are in place. Voluntary measures can work. However, the evidence suggests that they do so only when the proper incentives are in place. Here is what an Industry Canada report on voluntary codes had to say:

> While codes are voluntary – firms are not legislatively required to develop or adhere to them – the term voluntary is something of a misnomer. Voluntary codes are usually a response to the real

> or perceived threat of a new law, regulation or trade sanctions, competitive pressures or opportunities, or consumer and other market or public pressures . . . . [O]nce the code is in place, the initial pressure that led to its creation may dissipate, which could cause compliance among adherents to taper off.[49]

The recommendations we have already made aim to remove impediments to market forces that might otherwise drive corporations to act responsibly. Many groups appearing before the commission advocated the additional introduction or enhancement of incentives that would tie company access to government benefits and services to adequate corporate-accountability standards. In other words, these groups see government as more than a simple regulator or facilitator of CSR. The federal government, through its purchasing power, the Canada Pension Plan, and its role in providing business promotion incentives and services, is in a position to act as an important market player.

a) Government Procurement

Canadian governments are major purchasers of goods and services in the Canadian marketplace. The Federal Contractors Program already ties large procurement contracts to employment-equity performance.[50] There is no reason in principle why this concern for ethical behaviour should not be extended. Certainly a large majority of Canadians want governments to cease buying goods or services from companies with bad CSR records. In our poll, 75% held this view. (Interestingly, the percentage among shareholders was 78%, with 49% agreeing "strongly.")

b) Canada Pension Plan

Recent changes to the Canada Pension Plan will soon make it a significant player in financial markets. It will include a reserve fund that will build up and will be invested in a diversified portfolio of securities at arm's length from governments to get higher returns.[51] We believe that in making investment decisions, the CPP's managers should be free to take CSR matters into account.

c) Investment Insurance/Export Promotion

We do not believe governments in Canada, through export development and insurance agencies such as the Export Development Corporation, should be assisting and encouraging overseas investments with potential for serious negative environmental consequences or with work conditions in conflict with ILO standards.

Our proposals in this area would encourage good behaviour. If the Canadian government, like any other consumer, applied CSR criteria in purchasing, investment, or export-promotion decisions, it could help shape the market. Firms would be free to respond to those inducements or not. We also note that, if only by reason of Canada's international obligations, such conditions in the procurement area should be applied to firms of any nationality seeking to do business with the Canadian government. Canadian companies should not be held to a higher standard for government procurement. If assertions concerning the competitiveness advantages of CSR are well-founded, as we believe they are, government conditions should have positive competitive consequences for participating firms.

Accordingly, we believe companies intent on receiving the benefits or assistance offered by Canadian governments should be required to sign a standardized compliance letter indicating that they adhere to all the requirements contained in a set of standard CSR guidelines, derived from those set out in this report or other similar documents discussed in our section on disclosure above.

■ **RECOMMENDATION 15: Consistent with the Federal Contractors Program, Canadian governments should pass laws and regulations providing that, as a condition for:**

(a) contracting for the sale of goods or services worth more than $200,000; and/or

(b) receiving business grants or benefits from government agencies, including Crown corporations such as Export Development Canada,

companies with over 100 full- or part-time employees certify a good-faith belief that they adhere to all the standards contained in the CSR Guidelines.

- **RECOMMENDATION 16: The managers of the Canada and provincial pension funds should be free to take corporate social-responsibility matters into account in making their investment decisions.**

  These pension funds should be obliged to indicate in their statements of investment policies and procedures whether or not they take into account considerations contained in the CSR Guidelines in making investment decisions.

C. Government and International Corporate Social Responsibility

The role of CSR in relation to the overseas practices of companies, particularly with respect to human rights and the environment, was the focus of much of our attention. We were told many times that Canadian governments and companies should not be seen as endorsing any form of competitive advantage that fosters human-rights abuses or environmental degradation. Once again, what the commission heard in seven cities across Canada was consistent with the opinions subsequently expressed in our poll.

It became apparent in public and private discussions that most Canadians who are critical of globalization do not oppose, as such, the growth in global trade and the flow of investment capital. What they do oppose strongly are associated violations of human rights and conditions of work and harm to the environment. In one of the strongest responses to our polling questions, fully 84% indicated that they believe that people would be more likely to support free trade and globalization "if these trade agreements had strong, enforceable provisions to protect the environment, protect workers from harsh unsafe working conditions, and stop the abuse of human rights." Eighty-five percent of shareholders took this position.

As we saw in the discussion in Part 1, some participants believe that international market forces alone are sufficient to encourage the application of CSR principles. Others are less optimistic. Some want the Canadian government to pass laws obliging Canadian companies operating overseas to meet basic human-rights standards, including core labour rights. They contend that such laws are the only way to ensure that companies whose business is largely immune to consumer, shareholder, or government pressures will conform to acceptable standards. For instance, on the basis of the overseas experience of its members, the Canadian Council for International Co-operation argued that the need for improved social performance in the international arena is too urgent to wait for the development of voluntary codes. They contended that compulsory compliance with international human rights and environmental standards is necessary.

One objection to such a requirement relates to its extraterritorial nature, since legislation of this kind would extend Canadian regulation into territories under the jurisdiction of other countries. We note, however, that extraterritorial jurisdiction is not incompatible with international law per se. Canada already asserts extraterritorial jurisdiction over crimes committed by Canadians abroad in some instances.[52] We believe that the objection to extraterritoriality is more political than legal. The Canadian government, for example, has suggested that international co-operation on such issues is preferable to unilateral action.

We believe that there is an urgent need for governments – whether operating independently or through multilateral organizations such as the OECD, the UN, the G8, or the WTO – to address seriously the issue of human-rights abuses and environmental degradation in the global economy. We note the progress the member states of the OECD have made

in revamping guidelines for multinational companies in the area of bribery and corruption. However, we are concerned that, unlike in bribery and corruption cases, present international efforts to grapple with the human-rights and environmental implications of globalized commerce have relied exclusively on voluntary compliance, without the regulatory underpinnings we believe necessary for such compliance to be effective. We agree fully with the European Union Green Paper on CSR:

> [Voluntary corporate] codes of conduct . . . are not an alternative to national, European Union and international laws and binding rules: binding rules ensure minimum standards applicable to all, while codes of conduct and other voluntary initiatives can only complement these and promote higher standards for those who subscribe to them.[53]

We believe that unless governments impose regulatory controls, disreputable countries and companies will continue to compete through means inconsistent with international human-rights and environmental standards. We reiterate a point made in Part 1 above: The market is not an effective disciplining mechanism in situations in which companies operate in sectors and/or have ownership structures that make them invulnerable to consumer or shareholder pressure.

In our view, the Government of Canada is left with a clear choice. Either it can seriously pursue efforts to build an enforceable international legal regime that would deter competition through the debasement of human-rights and environmental standards; or, if it is unwilling or unable to achieve such a multilateral compact, it can move ahead with judicious unilateral action designed to ensure that companies incorporated or operating in Canada are not part of the international human-rights or environmental problem.

If government policy is to reflect Canadian values, we see these as the only acceptable alternatives. We believe that if there is no concerted action in international economic institutions and effective rights protections in trade agreements, economic globalization will continue to be accurately perceived by many Canadians to be divorced from their fundamental values. International economic organizations such as the WTO will, in such circumstances, continue to be regarded by many Canadians and citizens in other countries as places governments go to conspire with large companies against the interests of citizens at home and abroad. We do not believe we overstate the case when we predict that the long-run stability of global trade arrangements will depend on whether or not they are perceived as threatening global justice.

- **RECOMMENDATION 17: The Canadian government should actively promote the development of a "social clause" in trade agreements requiring adherence to minimum international human-rights principles, including core labour rights, and incorporating consumer protection and environmental standards as a prerequisite to membership in trade organizations such as the World Trade Organization and the proposed Free Trade Area of the Americas.**

- **RECOMMENDATION 18: The Canadian government should work with like-minded nations, in the UN, ILO, OECD, World Bank, G8, or elsewhere, to draft a convention analogous to that on bribery requiring signatories to outlaw violations by companies incorporated or operating in signatory jurisdictions of at least the core labour rights contained in the Basic Standards set out in Part 1 of this report.**

- **RECOMMENDATION 19: The minister of finance, the minister of foreign affairs, and the minister of international trade should make Recommendations 17 and 18 key components of their mandates.**

- **RECOMMENDATION 20: If no substantial progress is made with respect to the multilateral**

initiatives outlined in Recommendations 17 and 18 within three years, the Canadian government should move unilaterally to introduce legislation making it a violation of Canadian law for companies incorporated or legally operating as foreign corporations in Canada not to meet in their overseas operations at least minimum human-rights standards, including core labour rights contained in the Basic Standards set out in Part 1.

2.5 Corporate Democracy

Discussion Question
Proposals exist calling for laws obliging corporations in their shareholder mail outs to include pamphlets inviting individual shareholders to join an association of individual shareholders by paying a nominal annual membership fee. The association would be directed by a board elected by members of the association and would provide centralized expertise and assistance on shareholder-rights issues. Requiring corporations to distribute such a pamphlet would be a very low-cost, effective way of helping individual shareholders band together across Canada. Such collective action by shareholders remains a difficult challenge that presently plagues many attempts by individual shareholders to defend their rights. Should these changes be made? Should corporate laws be amended to require that corporate boards include a sufficient number of "independent" directors – persons with a more arm's-length relationship to the company? Should corporate laws oblige boards to assign responsibility for stakeholder relations to one or more board members or committees of the board?

The issues raised by this question relate to corporate governance. While the ultimate emphasis of our work is on CSR, we believe that internal governance is closely related to it. We heard from some participants who maintained that many shareholders have interests that extend beyond short-term profit maximization. Given the opportunity to express their views by changes in governance structures, these shareholders might well endorse a management style consistent with CSR.

Before we turn to this issue, we want to comment on accountability as it affects employees. The history of the trade-union movement in Canada and in most other advanced democracies has been the most significant means of ensuring a high degree of legally enforced accountability to employees. This point was emphasized, among other matters, in submissions by the British Columbia Federation of Labour, the Canadian Auto Workers, and the United Steelworkers of America. Others did not discuss the worker-representation function of unions, perhaps because the legitimacy and role of trade unions have long been accepted in Canada and recognized in the Universal Declaration of Human Rights. Although a corporation is not a democracy, it is designed in part to allow employees, through collective bargaining and other means, as well as shareholders, to influence management decisions.

By far the strongest means available to shareholders to exercise influence is through a shareholder vote, but collective action is often difficult. As Professor VanDuzer pointed out, "Even if shareholders were able to gather sufficient information and analyse it, mobilizing a large number of geographically and otherwise disparate shareholders which would be needed to defeat a management proposal or to elect a new board of directors will be difficult and costly. . . . [T]he relatively small financial stake of individual shareholders discourages collective activity."[54] On the other hand, management, with a large stake in the issue, has a sizable advantage over individual shareholders in terms of resources, access to information, and control over the agenda and timing of shareholder meetings. The proposal concerning "mail outs" set out in our discussion question seeks to optimize the possibility of shareholders banding together to monitor board activities without onerous cost penalties.

Very few of the presenters appearing before us chose to discuss this matter. We believe that many of

these groups' concerns relating to collective-action problems have been eased by recent amendments to the *Canada Business Corporations Act* that relax so-called "solicitation" rules and allow greater inter-shareholder communication. Therefore, the commission does not feel a need to make a recommendation in this area.

The second portion of this discussion question raises the issue of board membership and board-committee involvement in CSR matters. On the question of "independent" directors, we are inclined to defer to those whose focus lies more squarely on corporate-governance matters. The TSE Company Manual, for instance, already contains guidelines concerning independent directors,[55] as do the OECD corporate-governance guidelines. We acknowledge submissions from groups such as EthicScan, which urged the inclusion of "stakeholder" representatives on corporate boards. However, we are hesitant to recommend this proposal as a mandatory measure, in part because of uncertainty concerning the mechanics of achieving such representation. On the other hand, we believe that Canadian companies are in a position to learn from the experience of corporations like Shell Canada, which has developed stakeholder advisory panels, including representatives from a variety of interest communities with which they consult on company strategies. We believe any forward-looking company would find such consultation enormously beneficial, especially as an integrated part of their operations.

With respect to board oversight of CSR issues, we go further. Virtually all the evidence we have seen, including, notably, private consultation with corporate executives, has led us to the conclusion that a company is unlikely to develop a CSR culture if there is no commitment to it at the highest levels. We are not prepared to set out precise measures, but like Peter Dey we believe that, at the very least, companies should establish board committees to take responsibility for CSR issues in the same way the TSE corporate-governance guidelines call for a committee of the board to take responsibility for governance matters. To emphasize the importance of this matter, Peter Dey said that CSR is the responsibility of the full board and should be addressed by the board, but could also be addressed by a committee of the board, depending on the governance system of the corporation.

On several occasions during our hearings and meetings, we heard from professors at Canada's business schools who pointed out that very few students are exposed to CSR issues in the course of their studies. Where these courses exist, many are found in philosophy departments, where business students are instructed in philosophical ethics, rather than on CSR as a dimension of business. If this experience is reflective of a common practice in Canada's universities, we believe it raises serious concerns. We agree with many participants that business schools in Canada have a key role to play in insuring that CSR becomes a mainstream business concern.

- **RECOMMENDATION 21: Companies should have governance structures facilitating the development of a corporate culture supportive of corporate social responsibility. In particular, a committee of the board of directors should be assigned responsibility for corporate social-responsibility matters. A senior executive should be appointed corporate social-responsibility ombudsperson and have direct access to the chair of that committee.**

- **RECOMMENDATION 22: Courses focusing on corporate social responsibility should be developed at all Canadian business schools and should be mandatory for all business and business-related degrees (e.g., management, accounting, etc.). There is a need for business students to see the behaviour of corporations and the making of profits within a moral and ethical context. CSR courses should have a practical, vocationally oriented focus. Further, instructors in other business and business-related courses should be encouraged to weave ethical themes into each of their courses, insuring that the social-responsibility issues that**

have become commonplace in many leading companies become equally so in business teaching.

2.6 Democracy and the Corporation

Discussion Question
Should Canada's electoral laws be amended to prohibit donations from corporations or other collective entities such as trade unions to political parties, MPs, riding associations, and candidates for public office? Should rules be introduced barring corporations from reimbursing directors, managers, staff, shareholders, or others who make political donations?

This discussion question raises central issues about the role of corporations in a democracy. Corporations are not voters. Nor is a corporation simply an association of individuals. In law, a corporation is considered a legal entity separate and distinct from its shareholders. Companies tend to be repositories of considerable wealth – and with it significant political influence – and existing corporate law does not prevent managers from spending shareholders' money to further their own political preferences. Even with the most robust application of fiduciary concepts, directors and officers retain control over the firm and its capital, unchecked in many of their undertakings by shareholder scrutiny. Specifically, the financial advantage of the corporate form of organization gives a corporation's managers an unparalleled opportunity to participate financially in elections. The Royal Commission on Electoral Reform and Party Financing made this point a decade ago.[56]

Corporate donations do not reflect a party's appeal in the voter marketplace. Instead, they reflect the attractiveness of that party's policies or candidates to the company managers who make decisions about the disposal of shareholders' assets. Corporate donations, therefore, disproportionately favour the vision of a small subset of Canadians by giving them an unequal opportunity to play a significant role in the selection of elected representatives.

This "democratic deficit" problem is somewhat less acute in the case of trade unions, since decisions about using union funds for political purposes are made at open conventions of delegates or by trade-union locals subject to control by open democratic processes. However, the key point of similarity is the spending of money for electoral purposes by a collective body, which conflicts with the democratic goal that each citizen should have an equal opportunity to shape electoral debates and outcomes.

Whether corporate donations have a direct impact on elections and decision-making is a complex empirical matter with instances dating back at least to Sir John A. Macdonald's "Pacific Scandal." For many, however, the appearance of undue influence is as important as its actual existence. The 1991 report of the Royal Commission on Electoral Reform and Party Financing had this to say:

> On occasion . . . it is asserted that some contributions were made with an expectation that they would lead to direct material benefit for the donor or they actually led to such a benefit. . . . To the degree that contributors . . . are able to exert such undue influence, the integrity of the political and electoral process is jeopardized. Moreover, if such a perception exists, public confidence will be undermined.[57]

Key business people share this concern. In private meetings, some expressed the desire to be free from the political pressure to make campaign contributions. A number of Canadian corporations have the same policy as Alcan, whose representative at the Montreal hearing stated they make no political contributions of any kind. When he was the CEO of the Royal Bank, Allan Taylor urged that the federal government ban company and union donations, saying that "[t]he purpose [of an outright ban] is to strip away any possible suggestions of unfairness, or impropriety, or undue influence [on politicians]. . . . Financially effective as it may be, the current system of corporate fundraising doesn't help with [the]

broader purpose [of] continuing the democratization of our politics."[58]

Some corporate leaders justify their donations as a contribution to the political process as a whole, not to partisan political parties. Suncor, for example, stressed in its submission to our commission that it gives equal amounts to all recognized political parties. However, most corporate political donations have tended to favour the governing party. For example, according to data available when this report was being prepared, the top ten donors to the Liberal party in 1999 gave other parties only a fraction of the money they gave to the governing Liberals. Corporate money favours "private enterprise" parties in general and in particular those within this category who are actually making laws, writing regulations, and establishing tax policy. Trade unions, on the other hand, have tended to favour the New Democratic Party, which they have considered to more closely reflect their values.

We do not believe that this is the way to run a democracy. We believe that donations that come from collective entities such as corporations and unions are undesirable. The majority of Canadians agree. Nationally, 56% would ban union contributions to candidates and parties, while 54% would do so for corporations. Approximately one-third of those polled would not ban donations for either. Support for banning corporate and union donations is highest in Quebec. Almost a quarter century after legislation banning such donations, 63% of Quebecers favour the policy for unions, and 60% do so for corporate donations.

We endorse Quebec's long-standing, and Manitoba's more recent, bar on corporate and union donations, which have the effect of leaving the democratic competition where it should be: in the hands of individual citizens. We must, however, inject an important qualification: Outlawing corporate and union political donations without revamping the system of electoral finance and expenditure controls would produce major problems for our political parties. A ban on corporate and union donations must be accompanied by restrictions on levels of individual contributions, on spending limits and by a significant expansion of electoral public financing.

Several presenters pointed out that electoral donations are simply one means by which companies exercise influence over policy-making. We must also consider questions of greater lobbying disclosure and revisit the question of government ethics and conflict-of-interest rules, matters regularly in the public eye during the period of our investigation.

In the wake of the summit meeting in Quebec City we also heard complaints raised about the prominence of company money in funding public events at which matters of great public – as well as corporate – interest are discussed and the access that this seemingly facilitates. In addition, several participants suggested that, unlike domestic governments, which have become more open over the decades, international multilateral institutions with decision-making power over matters critical to the lives of citizens are often closed to the public but open to company representatives with their own interests. Given their scope and complexity, we do not deal with all these issues in this report. We note only that they raise serious matters of transparency, democratic access, and accountability that should be addressed soon by the Government of Canada. International bodies like the WTO will only find full legitimacy if they put into practice the norms of access and accountability that democratic citizens expect of their own governments.

■ **RECOMMENDATION 23: As part of the reform of the electoral financing system, and in keeping with the approach adopted in Quebec and Manitoba, all Canadian governments that haven't already done so should pass laws barring corporate and union donations to political parties and candidates both during and between elections and during leadership campaigns. These laws should also prevent corporations or unions from reimbursing directors, managers, staff, shareholders, or others who make political donations. Greater**

public financing should be provided to supplement donations made by individuals in accordance with appropriate financing formulas to ensure adequate funding of the political process in Canada.

- **RECOMMENDATION 24: In order to ensure that public institutions and public policy continue to reflect a broad public interest, Canadian governments should review their guidelines on government ethics, lobbying, and the participation of company and industry groups at domestic and international meetings and negotiations to guard against both the appearance and existence of improper influence.**

CONCLUSION: BRIDGING THE GAP

There is no doubt that strong distrust exists between many in the corporate sector and a significant number of social-justice groups. There is also evidence that the public at large strongly acknowledges the voice and persuasiveness of many of those social justice groups. As we wrote this report, Environics International released the results of an international survey of corporate, government, NGO, and academic experts on sustainable development. Asked whether the hostility demonstrated by protests against large companies and international trade organizations reflected general public opinion, only 5% regarded the civil protest as narrowly based and not serious.[59] When combined with our polling data, these results suggest that there is serious concern among the public about the proper role of companies in a democratic society.

What we have seen and heard during our cross-country travels confirms the view that led us to embark on this project in the first place: There is a gap in Canadian society that has entangled corporations, governments, and economic/social-justice groups in a debate that has grown increasingly rancorous in recent years. But we end this process more heartened than when we began. We have learned through our public and private exposure to the business executives with whom we met that the large majority have the same concerns about human rights and environmental and other forms of social responsibility that animate most activist groups in civil society. Unfortunately, the lack of accountability requirements in some areas may make competitive pressures the sole influence, resulting in behaviour in which the individuals actually would prefer not to engage. We also discovered that the animosity of most activist groups and many individual Canadians is directed not at markets and corporations per se but at unaccountable and irresponsible practices on the part of some.

However, we must be realistic about this conclusion. Those with whom we met came forward voluntarily. Extreme views within the civil society and business worlds do exist. They simply were not numerous in either public or private meetings. We believe that the views of the large majority of our participants reflect the values and preferences of most Canadians. Confirmation of this can be found in the answers to our national poll, which was done after the hearings were completed.

The potential for progress is real. Creating a strong culture of corporate social responsibility in Canada will, however, require resolute leadership from all sectors. More business executives must decide that such matters constitute a clear priority. Governments must exercise political leadership. They could begin by responding promptly to the recommendations that we have made to ensure that socially responsible practices become a business priority. It is our strongly held view that governments must establish rules of conduct that curb business behaviour that drops below certain basic standards. The need for such steps is most urgent in the international marketplace. Finally, where steps are taken and progress is made, civil-society groups must be prepared to recognize good corporate behaviour. No company, just as no individual, will ever be perfect. But companies that act in good faith as they grapple with a broader range of accountability issues deserve positive recognition.

In conclusion, we ask that governments, corporate executives, and civil-society activists consider carefully what we have heard and concluded in our work over the past year. At the end of the day, after all of our stimulating conversations about Canadian corporations, after considering submissions from government representatives and private citizens, companies and public-interest organizations, we are convinced that our recommendations are practical. If they are acted upon, we could become leaders in creating what many Canadians desire: internationally successful companies that incorporate key values of our democratic society.

APPENDIX A: COMMISSIONER BIOGRAPHIES

Mr. Avie Bennett (Commission Co-Chair): Mr. Bennett is chancellor of York University, Toronto, and chair of the Canadian publishing firm McClelland & Stewart.

Over the past ten years, Mr. Bennett has been a board member of many organizations. He has been a member of the Governing Council of the University of Toronto, the Mayor's Economic Partnership for the City of Toronto, the Premier's Council on Economic Renewal for the Government of Ontario, and a director of the National Ballet of Canada.

Mr. Bennett is an officer of the Order of Canada and a member of the Order of Ontario. He was awarded a Doctor of Laws *honoris causa* by the University of Toronto in 1995 and made a Doctor of the University (D.U.) at the University of Ottawa in 1997.

Hon. Edward Broadbent (Commission Co-Chair): Mr. Broadbent is a Visiting Fellow at the Arthur Kroeger College of Public Affairs at Carleton University and recently chaired the national inquiry on Accountability and Governance in the Voluntary Sector. He is an officer of the Order of Canada and a member of the Privy Council of Canada.

Mr. Broadbent was a member of the House of Commons for twenty-one years and leader of the New Democratic Party from 1975 to 1989. He is a member of the boards of the Canadian Civil Liberties Association, the North-South Institute, and the Institute for Media, Policy and Civil Society.

Ms. Linda Crompton (Commissioner): Ms. Crompton (B.A., M.A., M.B.A.) was recently appointed president and CEO of the Washington-based Investor Responsibility Research Center.

Ms. Crompton was CEO of Citizens Bank, and prior to that was Chief Executive Officer of Citizens Trust Company. Ms. Crompton combines twenty-five years of experience in business, finance, and organizational development with a strong commitment to social issues and concern for the community. She believes that the successful businesses of the future will have a values-based approach to doing business.

Mr. Ken Georgetti (Commissioner): Mr. Georgetti was elected president of the Canadian Labour Congress at its 22nd Annual Convention in Toronto in May 1999.

Prior to that, Mr. Georgetti led the British Columbia Federation of Labour. He is a vice-president and member of the executive board of the International Confederation of Free Trade Unions (ICFTU), a member of the ICFTU Human and Workers' Rights Committee, and a member of the Trade Union Advisory Committee to the OECD. Mr. Georgetti serves as honorary chairperson of the Association of Learning Disabled Adults (ALDA); chair of the Labour College of Canada; and is a member of the board of ABC Canada, a foundation promoting literacy. He is also a committee member of the Institute for Research on Public Policy. In 1998, he became the first labour leader to receive the Order of British Columbia, and in 2000 received the Order of Canada.

Mr. John LeBoutillier (Commissioner): Mr. LeBoutillier (B.A., LL.L., M.B.A.) is the chair of Intellium Technologies Inc. and a member of the board of directors of several companies, including Industrial-Alliance Life Insurance Co. and Novamerican Steel Inc.

Mr. LeBoutillier has held a number of senior executive positions in several of Canada's major firms. From 1996 to 2000, he was CEO and president of the Iron Ore Company of Canada. From 1983 to 1996, Mr. LeBoutillier was CEO and president of Sidbec-Dosco. Mr. LeBoutillier also serves as chair of the Pointe-à-Callière Foundation and sits on the board of the Fondation Hospitalière Maisonneuve-Rosemont. He was recently a member of the Quebec Commission of Inquiry into Health and Social Services.

APPENDIX B: PARTICIPANTS

In February 2001, the commission released a discussion paper outlining six areas of questions about corporate accountability. (The discussion paper is available at www.corporate-accountability.ca.) After its release, the commissioners travelled to the following cities to get input and advice from governments, members of the corporate sector, organized labour and non-governmental organizations, academics, and citizens:

- Ottawa, February 20 and 21
- Winnipeg, March 16
- Toronto, April 3 and 4
- Halifax, April 17
- Vancouver, May 9 and 10
- Calgary, May 22 and 23
- Montreal, June 5 and 6

Not all interested participants were able to attend meetings during these dates, so some sent electronic or written submissions or arranged for subsequent meetings. Others were consulted or offered their opinions on the discussion paper prior to the launch in February 2001. Listed below are those organizations and individuals with whom the commissioners met or from whom the commission received submissions.

The commission also received numerous other letters, e-mails, and telephone calls. People sent newspaper clippings, Web site links, and background information and sometimes included their personal stories and experiences. We have not included these individuals in the participants list, in the interests of their privacy, but wish to thank them for the information they shared with the commission.

Inclusion in the following list does not imply endorsement of the report or any of its details.

Corporate Sector:

- Alcan, Daniel Gagnier, Senior Vice-President, Kathleen Boucier, Manager
- Aliant Inc., Alan Buchanan, Director of Government Relations
- Assiniboine Credit Union, Russ Rothney, Manager, Community Economic Development
- Baylis Medical Company, Frank Baylis, President
- BC Hydro, Joanne McKenna, Robert Penrose
- Business Council of Manitoba
- Business Council on National Issues (recently renamed Canadian Council of Chief Executives), David Stewart-Patterson, Senior Vice-President
- Caisse de dépôt de placement du Québec
- Canada's Research Based Pharmaceutical Companies
- Canadian Association of Petroleum Producers, David MacInnis, VP
- Canadian Bankers Association
- Canadian Business for Social Responsibility, Adine Mees, Executive Director
- Canadian Chamber of Commerce
- Canadian Nuclear Association
- Canadian Pulp and Paper Association (recently renamed the Forest Products Association of Canada)
- Canadian Steel Producers Association
- Citizens Bank, Gilian Dusting, Director
- Community Development Business Association of Winnipeg
- Conseil du Patronat du Québec
- Conseil québécois du commerce de détail
- CPP Investment Board, John MacNaughton, President and CEO
- Crocus Investment Fund, Cheryl Crowe, Manager
- Dey, Peter, Lawyer, Osler, Hoskin and Harcourt
- DLI Database Solutions, Dan Litvack, Principal
- Ethical Funds Inc., Bob Walker, Vice-President
- Export Development Corporation (recently renamed Export Development Canada), Glen Hodgson, Vice-President
- Family Funeralhome Association, Tom Crean, Chair

- Foragen Technologies Management Inc., Murray McLaughlin, President and CEO
- Forum du monde des affaires
- Grainger and Associates, Jack Gallagher, Associate
- Insurance Corporation of British Columbia, David Dunne, Senior Manager
- Jarislowsky Fraser Limited, Stephen Jarislowsky, Chair
- La Jeune Chambre de Commerce de Montréal, Marc Perron, President, Chantal Dauray, Dominique Anglade
- Jubilee Fund, Jim Hercus, Vice-President
- LL2 Léonard Inc.
- Magna Entertainment Corp., Jim McAlpine, President and CEO
- Mining Association of Canada
- Mountain Equipment Co-op, Rick Kohn
- NATIONAL Public Relations Inc.
- Noranda Inc.
- Ontario Municipal Employees Retirement Board, Tom Gunn, Senior Vice-President
- Ontario Ostomy Supply Ltd., Shirley Lin, Neil Lucy
- Ontario Teachers Pension Plan Board, Claude Lamoureux, President and CEO
- Pacha Partnerships Consulting, Debra Kerby
- Real Assets, Deb Abbey, CEO/Portfolio Manager
- Shell Canada, Tim Bancroft, General Manager
- SNC-Lavalin Group Inc.
- Solstice Consulting, Susan Todd
- Stothers, Walter, former Director of Agra Inc.
- Suncor, Patricia O'Reilly, Director of Corporate Communications
- Talisman Energy Inc., Reg Manhas, Senior Advisor, Corporate Responsibility
- Taylor, Alex, former CEO of Agra Inc.
- TD Bank Financial Group, Ed Clark, President and COO
- TG International Ltd. Management Consultants, Peter R. Downing, President
- The Body Shop, Margot Franssen, President, Quig Tingley, Partner
- Working Opportunity Fund, Donna Bridgeman, Senior Vice-President

Government:

- Government of Canada, Prime Minister's Office, Percy Downe, Chief of Staff
- Government of Canada, Department of Finance Canada, Honourable Paul Martin, Minister of Finance
- Government of Canada, Department of Foreign Affairs and International Trade, Honourable Pierre Pettigrew, Minister for International Trade
- Government of Canada, Department of Foreign Affairs and International Trade, department officials
- Government of Canada, Industry Canada, Honourable Brian Tobin, Minister of Industry
- Government of Canada, Industry Canada, department officials
- Government of Manitoba, Ministry of Labour, Honourable Becky Barrett, Minister of Labour and Immigration

Labour:

- British Columbia Federation of Labour, Jim Sinclair, President
- Calgary and District Labour Council, Estelle Kuzyk, Second Vice-President
- Canadian Auto Workers, Jim Stanford, Economist, on behalf of Buzz Hargrove, President
- Canadian Labour Congress, Nancy Riche, Secretary Treasurer
- Canadian Union of Public Employees, Local 500, Paul Moist, President
- Communications, Energy and Paperworkers Union of Canada, Peter Murdoch, Vice-President
- Fédération des travailleurs et travailleuses du Québec, Henri Massé, President, Réjean Bellemare, Union Representative

- Manitoba Federation of Labour, Rob Hilliard, President
- United Steelworkers of America, Sunit Kundra and Mark Rowlinson, Staff, on behalf of Lawrence McBrearty, National Director for Canada

Non-Governmental Organizations, Academics, and Other Citizens:

- Aarup, Kariann
- Amnesty International Canada, Alex Neve, Secretary-General
- Association de protection des épargnants et investisseurs du Québec, Paul Lussier, President
- Aurora Institute, Kari Hewett, David Thompson, Directors
- BC Public Interest Advocacy Centre, Sara Khan, Lawyer
- Canadian Assessment Mission to Sudan (Harker Mission), Georgette Gagnon, Audrey Macklin, Members
- Canadian Centre for Ethics and Corporate Policy, Chris Chorlton, Chair, Larry Hebb, Past Chair, Anne Kerr, Executive Director
- Canadian Centre for Philanthropy's Imagine Program, Chris Pinney, Director
- Canadian Centre for Policy Alternatives, Ed Finn, Senior Editor
- Canadian Centre for Policy Alternatives BC, Seth Klein, Director
- Canadian Council for International Co-operation, Gerry Barr, CEO and President
- Canadian Friends of Burma, Corinne Baumgarten
- Canadian Institute for Advanced Research, Thomas Kierans, Chair
- Canadian Life Insurance Policyholders, Anne Holmes
- Canadians for Direct Democracy, Colin Stark
- Centre for Innovation in Corporate Responsibility, Darin Rovere, President
- Centre for Social Justice, David Langille, Co-Director
- Concordia University, Department of Religion, Frederick Bird, Professor
- Conference Board of Canada, George Khoury, Director, Gilles Rheaume, Vice-President
- Conservation Council of Ontario, Chris Winter, President
- Cooke, Cynthia
- Cumming, Lawrence S.
- Dalhousie University, Economics, Michael Bradfield, Professor
- Dalhousie University, Medical School, Department of Bioethics, Chris Macdonald, Lecturer
- Defence of Canadian Liberty Committee, Jim Jordan, Chair
- Democracy Watch/Corporate Responsibility Coalition, Duff Conacher, Coordinator
- Ethical Investors Group, Brenda Plant
- Ethical Trading Action Group, Moira Hutchinson, Kevin Thomas, Members
- EthicScan Canada, David Nitkin, President
- Favreau, Raymond
- FGL Open Global Business Society, David Mitrovica, Executive Director
- Fraser Institute, Michael Walker, Executive Director
- Freedom Quest International, Mel Middleton
- Groupe Investissement Responsable/Morelos Forum, Eric Steedman, Principal Advisor
- Halifax Initiative, Emilie Revil, Coordinator
- Hay, Douglas R.
- Institut économique de Montréal, Michel Kelly-Gagnon, Executive Director
- International Association of Educators for World Peace, Mitchell Gold, Coordinator
- International Centre for Human Rights and Democratic Development/Rights and Democracy, Diana Bronson, Coordinator
- Jessie Smith Noyes Foundation, Stephen Viederman
- Kerr, Faye

- Killoran, Joseph, Investor Advocate
- Lowry, Peter
- Lyman, Eva H.
- Maier, Margaret
- Manitobans With Disabilities
- Masters, Wayne
- McCandless, Henry E.
- McGill University, Faculty of Management, Diane Girard, Lecturer
- McGill University, Faculty of Law, Jean-Guy Belley, Professor
- Michael Jantzi Research Associates, Kevin Ranney, Managing Partner
- MiningWatch Canada, Catherine Coumans, Research Coordinator
- Moldofsky, Rhoda
- Mount Royal College, Business Department, Susan Quinn, Lecturer
- North-South Institute, Roy Culpeper, President
- Osgoode Hall Law School, York University, Harry Glasbeek, Professor Emeritus
- Oxfam Canada, Rieky Stewart, Executive Director
- Parkland Institute, Gillian Steward, Associate
- Plamondon, Chantal
- Project Peacemakers, Beverly Ridd, Jennifer Wushke, Members
- Project Sudan, Meagan Smith Windsor, Laura Richardson, Members
- Romahn, Jim
- Ross, Walter
- Rural Advancement Foundation International (recently renamed ETC Group), Pat Mooney, Executive Director
- Selley, David C.
- Shareholder Association for Research and Education, Peter Chapman, Executive Director
- Skinner, David
- Smith, Muriel
- Social Investment Organization, Eugene Ellman, Executive Director, Tim Johnson, President
- St. Mary's University, Angela Bishop, Lecturer, Business Ethics
- Taskforce on the Churches and Corporate Responsibility, Tim Ryan, Co-Chair, Stephen Allan
- Taylor, Marie
- Tiller, Richard
- United Church of Canada, St. Matthew's, Calgary, Reverend Clint Mooney
- United Church of Canada/Taskforce on the Churches and Corporate Responsibility Calgary, The Very Reverend Bill Phipps, Past Moderator
- United Church of Canada, Winnipeg, Carl Ridd
- United Way of Canada, David Armour, President, Mary Anne Chambers, Chair
- University of Toronto, Clarkson Centre for Business Ethics, Len Brooks, Executive Director
- University of Toronto, Rotman School of Management, Myron J. Gordon, Professor Emeritus of Finance
- University of Toronto, University of St. Michael's College, Laurent Leduc
- University of Western Ontario, Political Science, Robert Young, Professor
- Veterans Against Nuclear Arms, Cec Muldrew
- Williams, Colin
- Wilson, Lois, Senator
- York University, Schulich School of Business, Business Ethics, Wesley Cragg, Director

APPENDIX C: ANALYSIS OF THE POLL ON CORPORATE GOVERNANCE AND SOCIAL RESPONSIBILITY

72% say business should pursue social responsibilities, not just profits

Canadians have high expectations of business. Seven out of ten people in the Canadian Democracy and Corporate Accountability Commission poll say business executives have a responsibility to weigh the impact their decisions have on employees, communities, and the country. Canadians solidly reject the argument that business has just one responsibility: to make profits.

Only half of Canadians, however, believe corporations actually have become more socially responsible in recent years.

Business executives and other professionals also agree overwhelmingly that private-sector executives should take into account the environment and the welfare of their employees and communities.

There are no important differences in opinion among the regions. Young people are as inclined as their parents and grandparents to expect executives to run their businesses to meet society's needs, not just the needs of shareholders.

Some might be skeptical about the poll findings and wonder if Canadians who have a stake in corporate profits support broader corporate responsibility and accountability.

Shareholders, however, like other Canadians, say business executives have more responsibilities than just making sure their companies earn profits and are competitive. Among shareholders, 74% say executives have a responsibility to measure the impact their policies have on local communities and employees. Some 36% of adults report owning shares in publicly traded companies or have units in mutual funds that own corporate shares.

The question posed to the national sample of 2,006 was this:

I would like you to think about corporate social responsibility, which refers to how business decisions affect the community and how companies treat their employees, protect the environment, and support local charities and other organizations in the community.

Which of the following two statements comes closest to your opinion about corporate social responsibility? [Statements were read out in random order.]

	Total pop.	*Shareholders*
Business executives have a responsibility to take into account the impact their decisions have on employees, local communities, and the country as well as making profits.	72%	74%
Business executives have only one responsibility, to operate competitively and make profits.	20%	20%
Neither	2%	1%
Depends (volunteered)	3%	3%
No opinion	3%	1%

Most want pension funds invested in responsible companies

Just over half of all Canadians (51%), including people who are retired and approaching retirement age, want their pension plans to invest in companies with a good record of social responsibility.

Even if it means "somewhat lower benefits" for themselves, most Canadians say their pension funds should not invest only in companies that "make the highest profits and give the fund the highest return on its investment."

Canadians who own shares in public companies directly or have mutual funds also want their pension

funds to invest in firms with a good record on social responsibility.

People are prepared to trade off higher benefits if it means their pension funds will be invested in socially responsible firms.

Overall, 51% want to have a socially responsible pension fund, but so do 50% of Canadians who are fifty and older. A 46% plurality of retired people want their pension funds to invest in socially responsible companies even if it means somewhat smaller pension cheques.

Women are more likely than men to say their pension funds should invest in firms with a good record of social responsibility. Some 54% of women want socially responsible firms in their pension fund's portfolio versus 47% of men.

Some 54% of shareholders want a pension fund that covers them to invest in companies with a good social-responsibility record. Wealthy shareholders (in households with annual earnings over $100,000) by 59% to 38% also prefer pension funds with investments in socially responsible companies instead of firms with the highest profits and returns to the fund.

Would you want a pension fund covering you that ___ [statements were read in random order] *or one that ___?*

	Total pop.	*Shareholders*
Invests in companies with a good record of social responsibility even if it resulted in somewhat lower benefits for yourself	51%	54%
Invests in companies that make the highest profits and gives the fund the highest return on its investment	36%	36%
Both (volunteered)	3%	4%
Depends	2%	2%
Neither	4%	2%
No opinion	4%	1%

80% say government should set social-responsibility standards

Canadians believe governments should establish standards for corporate social responsibility and refuse to do business with firms that have a bad record in compliance.

An 80% majority says the government should establish standards for social responsibility and make firms report on how well they are meeting the standards so that shareholders and customers can judge for themselves whether the firm is socially responsible.

More than half of all Canadians (53%) agree strongly that government should set social-responsibility yardsticks for the private sector. Just 14% of those sampled disagree.

Among shareholders of publicly traded companies, 75% support government standards for corporate responsibility (45% "strongly" support it). Some 20% of shareholders disagree.

I am going to read a number of statements and I would like you to tell me whether you agree or disagree with each of them. Let's start with ___. [Statements were read in random order.] *Would you say that you agree strongly, agree somewhat, neither agree nor disagree, disagree somewhat, or disagree strongly?*

Agree (somewhat + strongly)	*Total pop.*	*Shareholders*
The government should establish standards for corporate social responsibility and make companies publish what they are doing to meet the standards so their shareholders and customers can judge whether the company is socially responsible	80%	75%

75% say governments should boycott firms that don't comply

According to the national poll for the Canadian Democracy and Corporate Accountability Commission, 75% of Canadians agree that governments should not buy goods and services from firms that flout their social responsibilities.

Just over half (51%) agree "strongly" that governments should use their purchasing power this way while just 17% disagree.

Canadians who own shares in publicly traded companies and who are mutual-fund investors agree governments should boycott firms with poor records on corporate social responsibility. Some 49% of shareholders agree "strongly" with this policy, and 29% "somewhat" agree.

Agree (somewhat + strongly)	*Total pop.*	*Shareholders*
Governments should not buy goods and services from businesses that have a bad record of social responsibility.	75%	78%

Most doubt people will pay more for socially responsible products

The public is skeptical that consumers will pay more to shop at companies that operate in socially responsible ways.

73% of people agree that "many people say they would pay more for products or services from companies that are socially responsible" but "in reality few people really would pay more."

The poll could imply that consumers are unwilling to pay higher prices in times of economic uncertainty.

Among shareholders, 81% say people would not pay more for products from socially responsible companies.

Agree (somewhat + strongly)	*Total pop.*	*Shareholders*
Although many people say they would pay more for products or services from companies that are socially responsible, in reality few people really would pay more.	73%	81%

84% say "go it alone" on corporate ethics code if other nations stall

Just over half of Canadians agree "strongly" (51%) that Canada should pursue an international agreement for enforceable corporate-accountability standards but set standards itself even if other countries don't.

Overall, 84% agree with this process, according to the national poll for the Corporate Accountability Commission conducted in late September and early October.

Support for this view is strong in all regions and among all income groups and occupations, including the high-income categories that would include senior corporate executives. Some 81% of shareholders agree with the concept, including 48% who agree "strongly."

Now I am going to read you a statement, and please tell me whether you agree or disagree with it. The statement is: The federal government should attempt to get an international agreement with other countries to set minimum enforceable standards for socially responsible corporate behaviour in their overseas operations such as protecting workers, the environment, and human rights. But if after three years the federal government cannot get other countries to agree, then Canada should set minimum standards by itself for socially responsible behaviour by Canadian companies. And would you say you strongly agree/disagree or just somewhat agree/disagree?

Canada should set corporate-accountability standards itself if other countries don't (agree somewhat + strongly)						
Total pop.	*B.C.*	*Alta.*	*Sask./ Man.*	*Ont.*	*Que.*	*Atlantic*
84%	79%	81%	81%	82%	92%	89%

MOST FEEL PEOPLE BACK TRADE DEALS WITH WORKER AND ENVIRONMENT RIGHTS

Eight out of ten people believe there would be less opposition to globalization if trade agreements had strong, enforceable standards to safeguard the environment, protect workers from harsh conditions, and stop human-rights abuses.

A 52% majority "strongly" agrees that the public would be more likely to support free trade if global-trade agreements included worker and environmental protection.

Shareholders, too, say enforceable human rights, labour, and environment standards would make world-trade deals more appealing. Some 54% of shareholders agree strongly, and 31% somewhat agree.

As you probably know, there is a lot of controversy today over globalization, which refers to the increasing growth in world trade and the flow of investments between countries and the movement toward more international free-trade agreements. Do you agree or disagree that if these trade agreements had strong enforceable provisions to protect the environment, protect workers from harsh, unsafe working conditions, and stop the abuse of human rights that people would be more likely to support free trade and globalization? And would you say you strongly agree/disagree or just somewhat agree/disagree?

% who "strongly" and "somewhat" agree more Canadians would support trade deals with strong, enforceable protection for environment, human rights, and worker rights					
Total pop.	*Women*	*Men*	*18-29 years*	*30-49 years*	*50+*
84%	87%	81%	85%	85%	81%

HALF SAY FIRMS HAVE BECOME MORE SOCIALLY RESPONSIBLE

A 51% majority of Canadians feel Canadian companies have become more socially responsible in recent years. People over fifty and residents of Quebec are less inclined to agree.

One-third (33%) in the national survey who are fifty and older say Canadian firms have, in fact, become less socially responsible.

Many shareholders are critical of corporate performance in social responsibility. Among shareholders, 59% say firms have become more socially responsible in recent years, but 25% say firms have become less responsible. People who own shares in public companies may watch corporate activities more closely than non-shareholders. Shareholders, arguably, are better informed about how well firms meet social and community responsibilities.

In your opinion have Canadian companies overall become more socially responsible in recent years or have they become less socially responsible?

Canadian companies have become more socially responsible					
Total pop.	*Women*	*Men*	*18-29 years*	*30-49 years*	*50+*
51%	49%	53%	57%	54%	44%

Have become less socially responsible					
Total pop.	*Women*	*Men*	*18-29 years*	*30-49 years*	*50+*
30%	30%	30%	24%	30%	33%

Economic status has some influence on opinion about corporate responsibility. People with below-average household incomes and people with less than university or college education are more inclined to think Canadian firms have not become more responsible. For example, 38% of Canadians with annual household earnings of $15,000 to $25,000 say companies have become less socially responsible.

Shareholders in Quebec are more critical of corporate performance than shareholders in other provinces. Compared with 59% of all shareholders in the country who say firms have become more responsible, in Quebec only 46% of shareholders think so.

Shareholding is most common in Ontario, where attitudes about corporate social responsibility are the most favourable to corporations. In Ontario, 41% of adults report owning shares directly or via mutual funds.

In Ontario, 54% say firms have become more socially responsible (compared with 51% nationally). Among Ontario shareholders, 65% think firms have become more responsible, compared with 59% of all shareholders in the country.

MOST WANT A FEDERAL BAN ON UNION AND CORPORATE POLITICAL DONATIONS

A majority of Canadians feel the federal government should prohibit political parties from accepting financial donations from unions and corporations.

Nationally, 56% say the government should prohibit union donations, and 54% say the government should ban corporate donations.

Support for a federal ban on contributions from unions and corporations is strongest in Quebec, where 63% say to ban union contributions and 60% say to ban corporate donations.

In every region, a majority supports a ban on contributions from unions and corporations.

The poll indicates, however, that banning contributions is opposed by a significant minority. Across the country, 33% say the government should not ban union contributions, and 35% say the government should not prohibit corporate contributions. More than a third of people under thirty would not ban union and corporate donations. Younger people typically are more skeptical about government regulations.

Just counting people who expressed an opinion, the public favours banning contributions from unions by 63% to 37% and banning corporate donations by 61% to 39%. Among people in households earning more than $100,000 a year, 62% would ban union donations and 57% corporate donations.

As you know, politicians and political parties raise money from corporations, unions, and individuals to pay for their election campaigns. In Manitoba and Quebec, only individuals can make financial contributions to parties and candidates. Corporations and unions are prohibited from contributing to parties and candidates. Do you think the federal government should prohibit political parties and candidates for public office from accepting donations from ___? [Responses were read in random order.] *How about from ___?*

Should the federal government prohibit political donations from . . . ?		
	Unions	*Corporations*
Yes	56%	54%
No	33%	35%
Depends	5%	5%
No opinion	7%	6%

Method

The findings in this poll are based on telephone interviews conducted from September 28 through

October 8, 2001, with 2,006 adults eighteen and older throughout the country. The sample of phone numbers chosen was drawn by recognized probability sampling methods and a method that gave all adults who have telephone numbers, both listed and unlisted, an equal chance of being included in the poll.

The sample was weighted in tabulation to replicate the actual population distribution by gender and age within each region. (The Yukon, Nunavut, and the Northwest Territories are excluded from the sample.)

In sampling theory, in nineteen cases out of twenty (in 95% of polls, in other words), the results based on a random sample of 2,006 will differ by no more than ± 2.2 percentage points.

Marc Zwelling
President, Vector Research + Development Inc.

NOTES

[1] Sarah Anderson & John Cavanaugh, *Top 200: The Rise Of Global Corporate Power* (Washington, DC: Institute for Policy Studies), at www.corpwatch.org/trac/corner/glob/ips/top200.html.

[2] For the most comprehensive data and analysis of corporations in a global context, see David Held et al., *Global Transformations* (Stanford University Press, 1999).

[3] Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," *The New York Times Magazine* (Sept. 13, 1970).

[4] Evidence of the growing change in the perspective of business leaders is to be found in a recent survey of 361 Canadian chief executive officers (CEOs) completed for the *National Post* and Wilfrid Laurier University. Data from this poll suggest that most CEOs believe corporate ethics – defined most commonly with reference to justice and fairness concerns – have become more important over the past twenty years. In addition to concerns about employee matters, such as workplace discrimination, CEOs are troubled with operations in repressive foreign countries. Indeed, confronted with a hypothetical scenario in which their firm could increase its value by 50% without any negative public relations or legal consequences by doing business with a "very unethical regime," 72% of CEOs surveyed in the study said that the company should "definitely not proceed" or "probably not proceed" with the venture. A mere 5% concluded the company should "definitely" go ahead with the deal. Similarly, in the environmental area, the survey concluded that Canadian CEOs place a greater priority on environmental matters such as hazardous waste disposal than on traditional business foci such as maximizing shareholder value.

[5] Commission of the European Communities, *Green Paper: Promoting a European framework for Corporate Social Responsibility* (June 2001), at http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf.

[6] Commission of the European Communities, ibid., at para 21.

[7] Clarkson Centre for Business Ethics, University of Toronto, *Principles of Stakeholder Management* (2000), at http://mgmt.utoronto.ca/~stake/Principles.htm.

[8] CBSR Guidelines, at http://www.cbsr.ca/CBSRguidelines/. See also http://www.conferenceboard.ca/ for the Conference Board of Canada, and http://www.web.net/~tccr/ for the Taskforce on the Churches and Corporate Responsibility.

[9] As of April 2000, Convention 29 on forced labour had 153 ratifications; Convention 98 on the rights to organize and bargain collectively had 146; Convention 100 on equal pay, 146; Convention 111 on non-discrimination, 142; Convention 105 on forced labour, 146; Convention 87 on freedom of association, 128; Convention 138 on child labour, 89; Convention 182 on exploitative child labour, 13. See the ILO homepage, www.ilo.org.

[10] Labelled "fundamental principles" by the ILO, these four standards were invoked in the June 1998 ILO *Declaration on fundamental principles and rights at work,* a call for all ILO members to ratify the conventions containing these rights.

[11] Geoffrey Heal, "Mastering Investment: The bottom line to a social conscience," *Financial Times* (July 2, 2001).

[12] See the Canadian Performance Reporting Initiative (CPRI) on the CICA Web site, http://www.cica.ca/cica\cicawebsite.nsf/Public/50B87F862A3CAC1E85256AB6001A7312.

[13] Milton Friedman, *supra* note 3.

[14] Commission of the European Communities, *supra* note 5, at para 22.

[15] Securities-law disclosure requirements are currently being reviewed by security regulators, with current standards likely to be revised by National Policy 51-201, http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/51-201_disc_stand_611_010525.pdf. The proposed changes do not affect comments made in this section.

[16] *Ontario Securities Act,* s.1.

[17] Nola Buhr and Marty Freedman, *A Comparison Of Mandated And Voluntary Environmental Disclosure: The Case Of Canada And The United States,* at "Conclusions" (1995). School of Management, Binghamton University, Binghamton, New York. 13902-6015. Available at http://panopticon.csutan.edu/cpa96/txt/buhr.txt.

[18] Toronto Stock Exchange Company Manual, Sec. 473.

[19] J. Anthony VanDuzer, "To Whom are Corporations Responsible? Some Ideas for Improving Corporate Governance" in *Transactions of the Royal Society of Canada,* D. Hayne, ed. (Toronto: University of Toronto Press, 2000).

[20] Available at http://www.oecd.org//daf/investment/guidelines/mnetext.htm.

[21] The regulations came into force in July 2000. Occupational Pension Schemes (Investment) Regulations 1996 (SI 1996 No 3127): "The matters prescribed for the purposes of section 35(3)(f) of the 1995 Act (other matters on which trustees must state their policy in their statement of investment

principles) are – (a) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments." A discussion of this provision from the UK SRI Forum is found at http://www.uksif.org/publications/reprt-2000-10/frameset.shtml.

[22] Shareholder Association for Research and Action (SHARE), Canada, *Prospectus* (Spring/Summer 2001).

[23] See, for instance, *Response of UK Pension Funds to the SRI Disclosure Regulation* (UK Social Investment Forum, October 2000). Available at http://www.uksif.org/publications/reprt-2000-10/frameset.shtml.

[24] Government of Canada, *Reforming Canada's Financial Services Sector: A Framework for the Future* (1999), at http://www.fin.gc.ca/toce/1999/finserv_e.html.

[25] The United States has a rich history of rewarding those who blow the whistle on fraud committed against U.S. federal and state governments (see *False Claims Act,* 31 U.S.C. Sections 3729 through 3733). Many states have also revised employment law to protect private-sector workers from retaliatory discharges that run counter to public policy. For discussion, see the National Whistleblower Center, http://www.whistleblowers.org/private.htm.

[26] Bill S-11 received Royal Assent in June 2001, available at http://www.parl.gc.ca/PDF/37/1/parlbus/chambus/house/bills/government/S-11_4.pdf.

[27] *Canada Business Corporations Act* (CBCA), s.102.

[28] *CBCA,* s.122(1)(a).

[29] [1973] 2 W.W.R. 385, 33 D.L.R. (3d) 288 (B.C.S.C.).

[30] *Companies Act,* c.6, s. 309 –. (1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members. (2) Accordingly, the duty imposed by this section on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

[31] Connecticut: Conn. Gen. Stat. § 33-756; Florida: Fla. Stat. § 607.0830 (2000); Hawaii: HRS § 415-35 (2000); Idaho: Idaho Code § 30-1702 (1999); Illinois: 805 ILCS 5/8.85 (2000); Iowa: Iowa Code § 491.101B (2001); Kentucky: KRS § 271B.12-210 (2000); Massachusetts: Mass. Ann. Laws ch. 156B, § 65 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); New Jersey: N.J. Stat. § 14A:6-1 (2001); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); New York: NY CLS Bus Corp § 717 (2001); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Rhode Island: R.I. Gen. Laws § 7-5.2-8 (2001); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Vermont: 11A V.S.A. § 8.30 (2001): Wyoming: Wyo. Stat. § 17-16-830 (2000).

[32] Connecticut: Conn. Gen. Stat. § 33-756; Hawaii: HRS § 415-35 (2000); Idaho: Idaho Code § 30-1702 (1999); Iowa: Iowa Code § 491.101B (2001); Kentucky: KRS § 271B.12-210 (2000); Massachusetts: Mass. Ann. Laws ch. 156B, § 65 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); New Jersey: N.J. Stat. § 14A:6-1 (2001); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Rhode Island: R.I. Gen. Laws § 7-5.2-8 (2001); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Vermont: 11A V.S.A. § 8.30 (2001); Wyoming: Wyo. Stat. § 17-16-830 (2000).

[33] Connecticut: Conn. Gen. Stat. § 33-756; Florida: Fla. Stat. § 607.0830 (2000); Georgia: O.C.G.A. § 14-2-202 (2000); Idaho: Idaho Code § 30-1702 (1999); Indiana: Burns Ind. Code Ann. § 23-1-35-1 (2000); Iowa: Iowa Code § 491.101B (2001); Kentucky: KRS § 271B.12-210 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); New Jersey: N.J. Stat. § 14A:6-1 (2001); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); New York: NY CLS Bus Corp § 717 (2001); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Rhode Island: R.I. Gen. Laws § 7-5.2-8 (2001); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Vermont: 11A V.S.A. § 8.30 (2001); Wisconsin: Wis. Stat. § 180.0827 (2000); Wyoming: Wyo. Stat. § 17-16-830 (2000). Note that some of these statutes require shareholder interests to be considered (ex., Ohio).

[34] Connecticut: Conn. Gen. Stat. § 33-756; Florida: Fla. Stat. § 607.0830 (2000); Georgia: O.C.G.A. § 14-2-202 (2000); Hawaii: HRS § 415-35 (2000); Idaho: Idaho Code § 30-1702 (1999); Illinois: 805 ILCS 5/8.85 (2000); Indiana: Burns Ind. Code Ann. § 23-1-35-1 (2000); Iowa: Iowa Code § 491.101B (2001); Kentucky: KRS § 271B.12-210 (2000); Louisiana: La. R.S. 12:92 (2000); Maine: 13-A M.R.S. § 716 (2000); Massachusetts: Mass. Ann. Laws ch. 156B, § 65 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); Montana: § 351.347 R.S.Mo. (1999); New Jersey: N.J. Stat. § 14A:6-1 (2001); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Rhode Island: R.I. Gen. Laws § 7-5.2-8 (2001); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Tennessee: Tenn. Code Ann. § 48-103-204 (2000); Vermont: 11A V.S.A. § 8.30 (2001); Wisconsin: Wis. Stat. § 180.0827 (2000); Wyoming: Wyo. Stat. § 17-16-830 (2000).

[35] Connecticut: Conn. Gen. Stat. § 33-756; Florida: Fla. Stat. § 607.0830 (2000); Georgia: O.C.G.A. § 14-2-202 (2000); Hawaii: HRS § 415-35 (2000); Idaho: Idaho Code § 30-1702 (1999); Illinois: 805 ILCS 5/8.85 (2000); Indiana: Burns Ind. Code Ann. § 23-1-35-1 (2000); Iowa: Iowa Code § 491.101B (2001); Kentucky: KRS § 271B.12-210 (2000); Louisiana: La. R.S. 12:92 (2000); Maine: 13-A M.R.S. § 716 (2000); Massachusetts: Mass. Ann. Laws ch. 156B, § 65 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); Montana: § 351.347 R.S.Mo. (1999); New Jersey: N.J. Stat. § 14A:6-1 (2001); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Rhode Island: R.I. Gen. Laws § 7-5.2-8 (2001); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Tennessee: Tenn. Code Ann. § 48-103-204 (2000); Vermont: 11A V.S.A. § 8.30 (2001); Wisconsin: Wis. Stat. § 180.0827 (2000); Wyoming: Wyo. Stat. § 17-16-830 (2000).

[36] Florida: Fla. Stat. § 607.0830 (2000); Hawaii: HRS § 415-35 (2000); Kentucky: KRS § 271B.12-210 (2000); Maine: 13-A M.R.S. § 716 (2000); Massachusetts: Mass. Ann. Laws ch. 156B, § 65 (2000); Minnesota: Minn. Stat. § 302A.251 (2000); Mississippi: Miss. Code Ann. § 79-4-8.30 (2000); New Mexico: N.M. Stat. Ann. § 53-11-35 (2000); Ohio: ORC Ann. 1701.59 (Anderson 2000); Oregon: ORS § 60.357 (1999); South Dakota: S.D. Codified Laws § 47-33-4 (2000); Wyoming: Wyo. Stat. § 17-16-830 (2000).

[37] Connecticut: Conn. Gen. Stat. § 33-756; Florida: Fla. Stat. § 607.0830 (2000); Georgia: O.C.G.A. § 14-2-202 (2000); Illinois: 805 ILCS 5/8.85 (2000); Indiana: Burns Ind. Code Ann. § 23-1-35-1 (2000); Oregon: ORS § 60.357 (1999); Pennsylvania: 15 Pa.C.S. § 1715 (2000); Tennessee: Tenn. Code Ann. § 48-103-204 (2000); Wisconsin: Wis. Stat. § 180.0827 (2000); Wyoming: Wyo. Stat. § 17-16-830 (2000).

[38] For an excellent overview of the arguments both for and against these statutes, see Jonathan D. Springer, *Corporate Constituency Statutes: Hollow Hopes And False Fears,* Ann. Surv. of Am. L. 85 (1999). Arguments for and against these statutes were raised in a large number of articles, including Edward S. Adams & John H. Matheson, *A Statutory Model For Corporate Constituency Concerns,* 49 Emory L.J. 1085 (2000); Thomas J. Bamonte, *The Meaning Of The 'Corporate Constituency' Provision Of The Illinois Business Corporation Act,* 27 Loy. U. Chi. L.J. 1 (1995); Stephen M. Bainbridge, *Interpreting Nonshareholder Constituency Statutes,* 19 Pepp. L. R. 971 (1992); William W. Bratton, *Confronting The Ethical Case Against The Ethical Case For Constituency Rights,* 50 Wash. & Lee L. Rev. 1449 (1993); Walter M. Cabot, *The Free Market Promotes Long-Term Efficiency That Benefits All Stakeholders,* 21 Stetson L. Rev. 245 (1991); Alexander C. Gavis, *A Framework For Satisfying Corporate Directors' Responsibilities Under State Nonshareholder Constituency Statutes: The Use Of Explicit Contracts,* 138 U. Pa L. Rev. 1451 (1990); James J. Hanks, *Playing With Fire: Nonshareholder Constituency Statutes In The 1990s,* 21 Stetson L. Rev. 97 (1991); Rima Fawal Hartman, *Situation-Specific Fiduciary Duties For Corporate Directors: Enforceable Obligations Or Toothless Ideals?,* 50 Wash. & Lee L. Rev. 1761 (1993); Morey W. McDaniel, *Stockholders And Stakeholders,* 21 Stetson L. Rev. 121 (1991); Nell Minow, *Shareholders, Stakeholders, And Boards Of Directors,* 27 Stetson L. Rev. 197 (1991); Lawrence E. Mitchell, *A Theoretical And Practical Framework For Enforcing Corporate Constituency Statutes,* 70 Tex. L. Rev. 579 (1992); Lynda J. Oswald, *Shareholders V. Stakeholders: Evaluating Corporate Constituency Statutes Under The Takings Clause,* 24 J. Corp. L. 1 (1998); Edward D. Rogers, *Striking The Wrong Balance: Constituency Statutes And Corporate Governance,* 21 Pepp. L. Rev. 777 (1994); William H. Simon, *What Difference Does It Make Whether Corporate Managers Have Public Responsibilities?,* 50 Wash. & Lee L. Rev. 1697 (1993); Steven M. H. Wallman, *The Proper Interpretation Of Corporate Constituency Statutes And Formulation Of Director Duties,* 21 Stetson L. Rev. 163 (1991); Janette Meredith Wester, *Achieving A Proper Economic Balance: Nonshareholder Constituency Statutes,* 19 Stetson L. Rev. 581 (1989); Mark E. Van Der Weide, *Against Fiduciary Duties To Corporate Stakeholders,* 21 Del. J. Corp. L. 27 (1996).

[39] Committee on Corporate Law, American Bar Association, *Other Constituencies Statutes: Potential For Confusion,* 45 Bus Law 2253 (1990) at 2270.

[40] See *Hilton Hotels Corp. v. ITT Corp*., 978 F. Supp. 1342 (D.Nev., 1997) (holding that the Nevada constituency statute merely codified the Delaware approach); *Amanda Acquisition Corp. v. Universal Foods Corp*., 708 F. Supp. 984, 1989 (E.D. Wis., 1989), *aff'd* 877 F.2d 496 (7th Cir. Wis. 1989), *cert. denied* 493 U.S. 955 (1989) (holding that the Wisconsin constituency statute merely codified the Delaware position); *Keyser v. Commonwealth Nat. Financial Corp*., 675 F. Supp. 238 (M.D.Pa., 1987) (holding that social issues could be considered in a Pennsylvania takeover case, but not deciding the extent to which these matters prevailed over shareholder profit interests); *AMP Inc. v. Allied Signal,* 1998 U.S. Dist. LEXIS 15617 (E.D. Pa., 1998) (invoking Pennsylvania's constituency law, but deciding a case on the ground that directors had conflicts stemming from membership on multiple boards); In re McCalla Interiors, Inc., 33 Bankr. Ct. Dec. 775 (Bankr. N.D. Ohio 1998) (citing Ohio's statute in a bankruptcy case with little explanation of its bearing on the case); *Georgia-Pacific Corp. v. Great Northern Nekoosa Corp.,* 727 F. Supp. 31 (D. Me.

1989) (citing Maine's statute as additional support for refusing an injunction that would accelerate a shareholder vote on a takeover offer); *Abrahamson v. Waddell,* 63 Ohio Misc. 2d 270 (Ohio Ct. of Common Pleas, 1992) (invoking Ohio's law with no explanation as to its bearing on the case); *ER Holdings Inc. v. Norton Co.,* 735 F. Supp. 1094 (D. Mass. 1990) (holding that Massachusetts statute could not be interpreted to justify a failure to hold an annual general meeting); In re Bakalis, 220 B.R. 525 (Bankr. E.D.N.Y. 1998) (musing in a bankruptcy case about the potential impact of New York's law on a takeover contest). In none of these cases was it clear the constituency statute determined the outcome.

41 Stakeholders who have sought court review of director decisions have been denied standing. See, for instance, *Munford v. Valuation Research Corp.,* 98 F.3d 604 (11th Cir.). At issue was whether the directors had acted improperly in authorizing a sale of the company through a leveraged buyout that ultimately led to Chapter 11 bankruptcy proceedings. This matter was raised by unsecured creditors in bankruptcy court, who urged that provisions in the company's charter specifying directors were required to give due consideration to "the social, legal, and economic effects of the transaction on the employees, customers, and other constituents of the corporation" gave creditors a private right of action and imposed a higher duty of care than that existing under state law. Without squarely addressing the duty-of-care issue, the court held simply that because the creditors had "failed to present any binding legal authority to support its contention that Article 9 [of the charter] creates a cause of action independent of Georgia law, we reject this argument." *Ibid.* at 611.

42 See, for instances, Mitchell, *supra* note 38.

43 OECD Principles of Corporate Governance (1998), at http://www.oecd.fr/daf/governance/principles.htm.

44 Gil Yaron, *The Responsible Pension Trustee: Reinterpreting The Principles Of Prudence And Loyalty In The Context Of Socially Responsible Institutional Investing* (May 2001).

45 *Trustee Act,* S.M. 1995, c.14, s. 79.1.

46 Financial Services Commission of Ontario bulletin (February 1992) "Ethical Investments" Bulletin 2/4 (Index No. I400-350). See discussion in Yaron, *supra* note 44.

47 See Alabama: Code of Ala. § 6-6-590 (2000); Arizona: A.R.S. § 10-1430 (2000); Arkansas: Ark. Stat. Ann. § 4-75-205 (2000); California: Cal Code Civ Proc § 803 (2001); Cal Corp Code § 1801 (2001); Colorado: C.R.S. 7-114-301 (2000); Connecticut: Conn. Gen. Stat. § 35-36a (1999); Delaware: 8 Del. C. § 284 (2000); Florida: Fla. Stat. § 607.1430 (2000); Georgia: O.C.G.A. § 14-4-160 (2000); Hawaii: HRS § 842-5 (2000); Illinois: 805 ILCS 20/1 (2000); Indiana: Burns Ind. Code Ann. § 23-1-47-1 (2000); Iowa: Iowa Code § 490.1430 (2001); Kansas: K.S.A. § 17-6812 (1999); Louisiana: La. R.S. 12:163 (2000); Maine: 13-A M.R.S. § 1111 (2000); Maryland: Md. Corporations and Associations Code Ann. § 3-513 (2000); Michigan: MSA § 27A.4521 (2001); Minnesota: Minn. Stat. § 556.07 (2000); Montana: Mont. Code Anno., § 35-6-102 (2000); Nebraska: R.R.S. Neb. § 25-21,121 (2000); Nevada: Nev. Rev. Stat. Ann. § 598A.180 (2000); RSA 293-A:14.30 (2000); New Jersey: N.J. Stat. § 14A:12-6 (2001); New Mexico: N.M. Stat. Ann. § 53-16-13 (2000); New York: NY CLS Bus Corp § 1101 (2001); North Carolina: N.C. Gen. Stat. § 55-14-30 (2000); North Dakota: N.D. Cent. Code, § 10-19.1-118 (2000); Ohio: ORC Ann. 2733.02 (Anderson 2000); Oklahoma: 15 Okl. St. § 567 (2000); Oregon: ORS § 30.580 (1999); Pennsylvania: 71 P.S. § 824 (2000); South Carolina: S.C. Code Ann. § 33-14-300 (2000); South Dakota: S.D. Codified Laws § 21-28-12 (2000); Tennessee: Tenn. Code Ann. § 48-24-301 (2000); Utah: Utah Code Ann. § 16-10a-1430 (2000); Vermont: 11A V.S.A. § 14.30 (2001); Virginia: Va. Code Ann. § 8.01-636 (2000); Washington: Rev. Code Wash. (ARCW) § 7.56.010 (2001); West Virginia: W. Va. Code § 53-2-1 (2000); Wisconsin: Wis. Stat. Ann. 180.1430; Wyoming: Wyo. Stat. § 17-16-1430 (2000).

48 In the past two years, there have been at least two high-profile efforts to revoke corporate charters. In 1998, the then attorney general of New York succeeded in having a court issue a show-cause order to two tobacco industry non-profit companies, the Council for Tobacco Research-USA Inc. and The Tobacco Institute, Inc. See *People Of The State Of New York* by Dennis C. Vacco, Attorney General of the State of New York, Index No. 107479/98, at http://www.oag.state.ny.us/tobacco/cause.html. A subsequent settlement between the tobacco industry and New York provided for the dissolution of these companies. See *State Of New York V. Philip Morris, Inc., QDS:22303349*, *New York Law Journal* 26 (Dec. 29, 1998); Betsy Jelisavcic, *Plan to dissolve research group funded by industry gets judge's OK*, *The Herald-Sun* (Durham, N.C.) B8 (Oct. 25, 1998).

In the second case, a number of advocacy groups petitioned the California attorney general to seek the dissolution of Unocal Inc., thus far without much impact. See Robert W. Benson, "*Three Strikes, and the Company's Out: There has to be a point at which repeat corporate offenders are permanently prevented from doing further harm.*" 154 N.J.L.J. 455 (1998); The idea of resuscitating charter revocations as a means of regulating corporate conduct has been explored in at least one article in the academic literature. Thomas Linzey, *Killing Goliath: Defending Our Sovereignty And Environmental Sustainability Through Corporate Charter Revocation In Pennsylvania And Delaware* 6 Dick. J. Env. L. Pol. 31 (1997).

49 Government of Canada, *Voluntary Codes: A Guide for their Development and Use* (March 1998), 8-9.

[50] According to Human Resources Development Canada, "The Federal Contractors Program covers employers/suppliers that have signed a certificate of commitment to implement employment equity. Employers with 100 or more employees that have secured goods and services contracts of $200,000 or more are required to fulfill their commitment." (See HRDC Web page at http://info.load-otea.hrdc-drhc.gc.ca/~weeweb/fcpe.htm.)

[51] *Securing the Canada Pension Plan: Agreement on Proposed Changes to the CPP* (February 1997), at http://www.cpp-rpc.gc.ca/sec/secure.html.

[52] These are the prohibition against child sex tourism in s.7(4.1) of the *Criminal Code* and the prohibition on bribery of overseas officials in the *Corruption of Foreign Public Officials Act*.

[53] Commission of the European Communities, *supra* note 5, at para. 54.

[54] VanDuzer, *supra* note 19.

[55] Toronto Stock Exchange Company Manual, Sec. 474.

[56] Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy* (Ottawa: Minister of Supply and Services, 1991) at 445.

[57] *Ibid.* at 432.

[58] Konrad Yakabuski, "Ban contributions to political parties, Royal's chief urges," *The Toronto Star* (February 27, 1991), at B7.

[59] Environics International, *Globe Scan Survey of Experts* (2001).