

Canadians, the corporation may still be foreign dominated, because, if the shares held by Canadians are widely distributed and the shares held by Americans are concentrated in a group, the group of American owners can usually elect the entire Board of Directors and therefore the management of the company by voting as a block. This is particularly true because the annual elections of directors are organized and supervised by the management of the corporation. Voting proxies are issued to shareholders by management in favour of nominees of management and in the absence of an organized attempt by the multitude of independent shareholders, the owners of a concentrated block of stock, with the voting support of proxies returned by individual shareholders, would usually be sufficient to control the corporation.

It has been noted that in an attempt to encourage Canadian participation in foreign dominated corporations, income tax incentives have been given to corporations which have at least 25% Canadian ownership. It is true that the existence of a minority group of Canadian shareholders may have some influence upon the management of the corporation. Minority shareholders who believe that a corporation is not being managed in accordance with the best interests of all shareholders have the right, under Canadian law, to institute a minority shareholders' action against the corporation and its management. However as a practical matter, holdings by Canadians of a minority interest in a corporation is unlikely to affect in any material way the dominant position of the majority American owners.

For this reason it would seem desirable that any provisions for encouraging Canadian participation in ownership of corporations should be accompanied by provisions which would ensure that Canadian shareholders would have the right to elect a number of directors proportionate to their share interest in the company. There are a number of ways that this could be done in accordance with sound principles of corporation law: for example, by cumulative voting, or by permitting Canadian shareholders to vote as a class for the election of a number of directors proportionate to the number of shares owned by Canadian shareholders. This would mean for example that if Canadian shareholders owned 25% of the voting shares of a corporation, they would be entitled to elect one quarter of the directors and this would give them a voice in the affairs of the company. If on the other hand Canadian shareholders owned 51% or more of the voting shares of the corporation they would be entitled to elect a majority of the Board of Directors which would give them control.

It appears to the Committee that provisions designed to encourage Canadian equity participation by the investment of scarce capital funds may often be undesirable unless accompanied by a requirement that voting procedures be reformed to ensure that Canadians can elect a number of directors proportionate to their voting shares in the corporation.

Conclusions and Recommendations (Part III)

3.28 *Definite Policy Required on Foreign Ownership* The Committee endorses the conclusion of the Watkins Report at page 392 to the effect that the major deficiency in Canadian policy with respect to foreign ownership has been not its liberality toward foreign investment but the absence of an integrated set