

3.b/c.

Divestment is the only way for the University to avoid contributing financially to the fossil fuel industry, and by extension, to the socially injurious impacts delineated above. Besides divestment, another approach to socially responsible investment is to try to alter a firm's behavior by applying pressure through shareholder voice. However, the harmful activities (extracting and selling fossil fuels) are inherent to the primary business of many of the fossil fuels companies in which the University is invested. For example, Shell Canada lists its business activities as follows: "Shell Canada's Upstream businesses explore for and extract natural gas, and market and trade natural gas and power. Our Downstream business refines, supplies, trades and ships crude oil worldwide and manufactures and markets a range of products, including fuels, lubricants, bitumen and liquified petroleum gas (LPG) for home, transport and industrial use."¹ ExxonMobil describes its upstream and downstream activities similarly.² Given the centrality of oil and natural gas extraction, as well as the refinement and sale of these resources to the business models of these companies, shareholder voice would not be an effective method to address social injury since the companies could not abandon the socially injurious activity without dissolving their existing business models. Moreover, the market value of these companies reflects an assumption that their reserves will be extracted and burned. Therefore, it would be unreasonable for the University of Toronto to expect to be able to alter the socially injurious activities of these companies while holding onto its investments in the fossil fuel industry. Thus, divestment is the only appropriate response for the University of Toronto to adopt in order to dissolve any financial complicity in the fossil fuels industry's socially injurious activities.

3.d.

The socially injurious activities of fossil fuel companies frustrate the enforcement of rules of domestic and international law intended to protect individuals against deprivation of health, safety and basic freedoms. First, these activities undermine the Charter of Rights and Freedoms. Section 7 states, "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."³ Since life and security of the person depend on a healthy environment, implicit in this statement is the right to a healthy environment. As outlined in 3.a, the activities of companies in the fossil fuels industry undermine the right to life by depriving people of the benefits of a healthy environment.

In addition, numerous pieces of Canadian environmental legislation explicitly recognize and seek to protect the right to a healthful environment. The Ontario Environmental Bill of Rights (1993) recognizes the inherent value of the natural environment" and states that "the people of Ontario have the right to a healthful environment" and "have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations." The purposes of the Act are:

¹ <http://www.shell.ca/en/aboutshell/at-a-glance-tpkg.html>

² http://www.exxonmobil.com/Corporate/about_what.aspx Gi

³ <http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-44>

- (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
- (b) to provide sustainability of the environment by the means provided in this Act; and
- (c) to protect the right to a healthful environment by the means provided in this Act. 1993, c. 28, s. 2 (1).

The above purposes include the following:

1. The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
2. The protection and conservation of biological, ecological and genetic diversity.
3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.
4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
5. The identification, protection and conservation of ecologically sensitive areas or processes. 1993, c. 28, s. 2 (2).⁴

The activities of fossil fuel companies frustrate all of the above purposes by contributing to climate change, thereby undermining the right to a healthy environment of the people of Ontario.

Environmental laws for other provinces of Canada recognize and seek to protect the same right to a healthy environment. For example, Part 1, section 6 of the Yukon Environment Act states that, “The people of the Yukon have the right to a healthful natural environment.”⁵ In accordance with this right, the Act seeks to protect the environment of the Yukon by providing an appropriate process to assess the environmental effects of projects and activities in the Yukon or that may have effects in the Yukon. Similarly, the Northwest Territories Environmental Rights Act recognizes that “the people of the Northwest Territories have the right to a healthy environment and a right to protect the integrity, biological diversity and productivity of the ecosystems in the Northwest Territories” and establishes the means by which individuals can act to protect the environment from harm.⁶ By pursuing the extraction of fossil fuels, the companies in question undermine the right to a healthy environment that these acts articulate and protect. Finally, Quebec’s Environmental Quality Act states that, “Every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, to the extent provided for by this Act and the regulations, orders, approvals and authorizations issued under any section of this Act and, as regards odours resulting from agricultural activities, to the extent prescribed by any standard originating from the exercise of the powers provided for in subparagraph 4 of the second paragraph of section 113 of the Act respecting land use planning and development (chapter A-19.1).”⁷

The activities of the fossil fuels industry in Canada also violate First Nation’s constitutional and treaty rights.

⁴ http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_93e28_e.htm

⁵ <http://laws-lois.justice.gc.ca/eng/acts/Y-2.2/index.html>

⁶ <http://www.justice.gov.nt.ca/PDF/ACTS/Environmental%20Rights.pdf>

⁷

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/Q_2/Q2_A.htm

iii. Oil sands development in Canada has violated the First Nations' constitutional and treaty rights. Specifically, these developments violate:

- (a) The right to consultation and accommodation (Treaty 8⁸)
- (b) Constitution Act, 1982 s35: "(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada."

Keepers of the Athabasca member Vivienne Beisel explains how the oil sands development has violated Treaty 8 and the Constitution: "The cumulative impacts of oil sands development has all but destroyed the traditional livelihood of First Nations in northern Athabasca watershed. The law is clear that First Nations must be consulted whenever the province contemplates action that may negatively affect Aboriginal and treaty rights...The province has continued to issue approvals for new developments without obtaining their consent or consulting with First Nations in a meaningful and substantial way. This is in direct breach of Treaty 8 First Nations' treaty-protected Aboriginal rights to livelihood, and thus a violation of s.35(1) of the Constitution and Articles 26 and 27 of the United Nations Declaration on the Rights of Indigenous Peoples', and international agreement which Canada, along with three other nations, has refused to sign.""⁹

- (c) The right to waters and land and to fish, hunt and trap (Treaty 6,¹⁰ Treaty 7¹¹, Treaty 8¹², **Constitution Act of 1867 s91?**)

⁸ "Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained."

"It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated." [http://www.aadnc-](http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853)

[aadnc.gc.ca/eng/1100100028813/1100100028853](http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853)

⁹ <http://www.aenweb.ca/node/2131>

¹⁰ "Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government." [http://www.aadnc-](http://www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783)
[aadnc.gc.ca/eng/1100100028710/1100100028783](http://www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783)

¹¹ "And Her Majesty the Queen hereby agrees with her said Indians, that they shall have right to pursue their vocations of hunting throughout the Tract surrendered as heretofore described, subject to such regulations as may, from time to time, be made by the Government of the

Finally, the activities of the fossil fuels companies in which the University of Toronto is invested frustrate international law. First, Article 3 of the Universal Declaration of Human rights states that, "Everyone has the right to life, liberty and security of person."¹³ The right to life is a precondition to all other fundamental human rights. As outlined in 3.a, the activities of companies in the fossil fuels industry undermine the right to life by depriving people of the benefits of a healthy environment. In addition, the Hague Declaration on the Environment (1989), to which Canada is a signatory, makes the link between the right to life and the harmful change effects of climate change explicit: "The right to live is the right from which all other rights stem. Guaranteeing this right is the paramount duty of those in charge of all States throughout the world. Today, the very conditions of life on our planet are threatened by the severe attacks to which the earth's atmosphere is subjected."¹⁴ In signing onto this Declaration, Canada recognized the reality of the threat to human life posed by climate change and pledged to take measures to address that threat. The University of Toronto's investment in fossil fuels frustrates any efforts Canada has taken or may take in the future to address the problem of climate change by supporting the companies that most significantly contribute to the problem.

country, acting under the authority of Her Majesty and saving and excepting such Tracts as may be required or taken up from time to time for settlement, mining, trading or other purposes by Her Government of Canada; or by any of Her Majesty's subjects duly authorized therefor by the said Government." <http://www.aadnc-aandc.gc.ca/eng/1100100028793/1100100028803>

¹² "And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes." <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853>

¹³ <http://www.un.org/en/documents/udhr/index.shtml#a7>

¹⁴ "Hague Declaration on the Environment."

International Legal Materials, Vol. 28, No. 5 (SEPTEMBER 1989), pp. 1308-1310.