 

Trent University’s Investments in the Fossil Fuel Industry

An Analysis of the Legal and Policy Implications Related to Investment and Divestment

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A Trent Centre for Community Based Education Project

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Executive Summary

Trent University currently invests its pension and endowment funds in pooled funds which include fossil fuel companies. The student group Sustainable Trent has called on the Board of Governors to divest from fossil fuels within five years. This paper analyzes Trent's investments and investment policies with respect to this proposal, discusses the legal and policy complications associated with divestment, and identifies solutions and options for the University to move forward with divesting from fossil fuels.

Divestment has been used successfully as a tool for the betterment of society in the past, and the fossil fuel divestment movement is the fastest growing divestment campaign in history. Recent research has demonstrated that fossil fuel companies are increasingly risky for investors due to their role in driving climate crisis. This is a case where ethical and financial concerns are aligned, and divestment can alleviate these concerns simultaneously. Trent University has a fiduciary duty to prudently manage its pension and endowment funds in order to ensure their long term viability. Thus, divestment from fossil fuels is a prudent financial decision which would avoid unncecassary risk to the performance of the funds.

Trent can implement a number of policy changes in order to transition its investments away from fossil fuels and integrate ethical concerns into its funds. The wide gap between Trent's stated values and its investments demonstrates the need for the University to adopt a mission-based investing approach. Trent should also conduct an Environmental, Social and Governance (ESG) risk assessment of its investments in order to identify non-financial factors, such as climate change, that could impact their performance, and act accordingly. These measures would allow Trent to be on the cutting edge of ethical investment and divestment.

Keywords: Fossil fuel divestment, ethical investment, fossil free Trent, fiduciary duty

Introduction

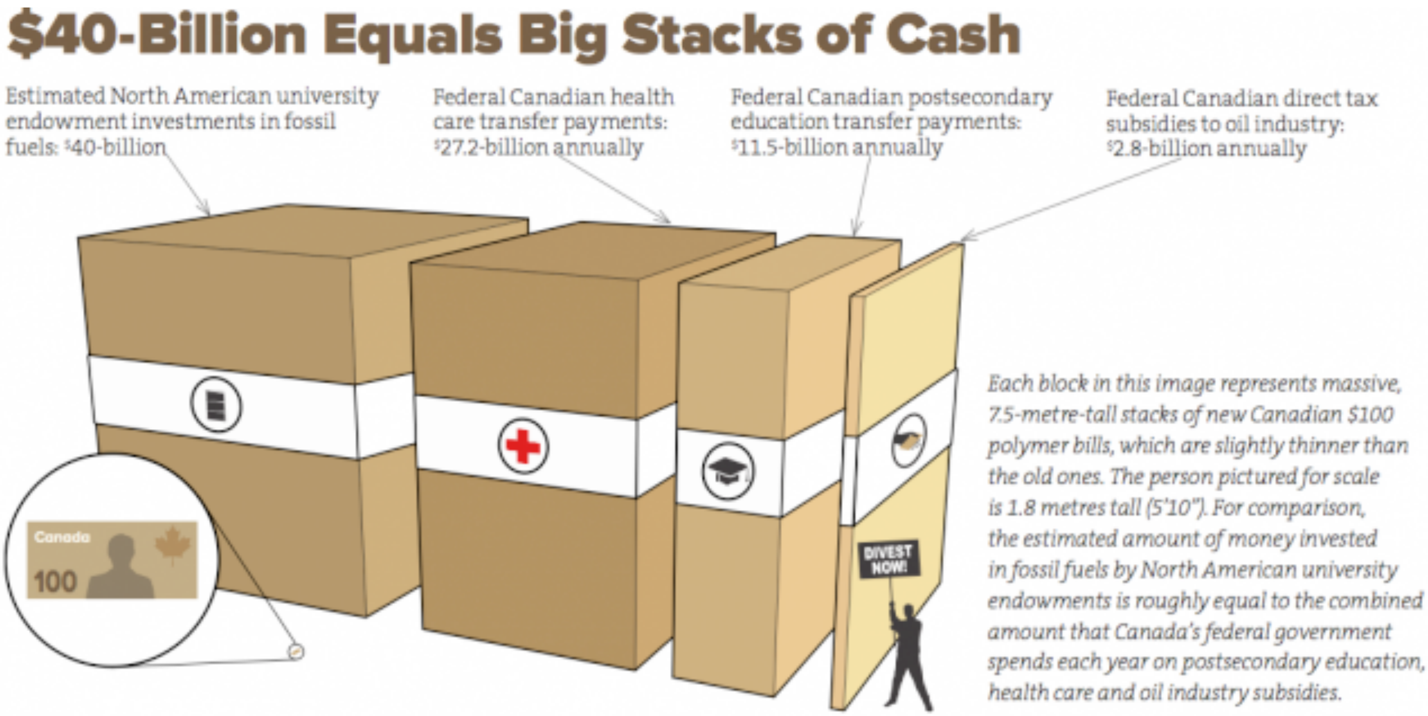
Sustainable Trent has brought forth a proposal urging Trent University to divest its endowment and pension funds from the fossil fuel industry. In the March 2013 Trent Central Student Association (TCSA) elections, 76% of full-time undergraduate student voters said yes to divestment. The proposal calls on Trent "to immediately freeze any new investment in fossil-fuel companies, and to divest within five years from direct ownership and from any commingled funds that include fossil-fuel public equities and corporate bonds" (Trent University: Go Fossil Free!, 2013). The campaign at Trent is part of an international movement which argues that it is morally wrong to profit from the wreckage of the world's climate, and that institutions should remove their investments in fossil fuels as a statement of opposition to an industry driving climate change and putting the future of the planet at risk (Fossil Free, 2013). The Trent Board of Governors will be considering a variety of factors related to Trent's investments and investment policies in order to determine whether divestment is feasible and consistent with their fiduciary duties to ensure prudent financial management of investments under their stewardship. The purpose of this paper is to analyze the legal and policy frameworks for institutional investment and divestment in the context of Trent University and its endowment and pension funds.

Trent University's investments are guided by a standard policy framework that does not consider environmmental sustainability or ethical concerns. Investments are currently guided by the bottom-line of sufficient annual returns, while issues related to ethics and sustainability have little to no impact on the investments, even though there are other University policies related to issues such as fair trade and environmental procurement. To a large extent, Trent's investments are isolated from other University policies and appear to be guided solely by achieving adequate returns on investment through prudent management. However, the University's stated values and objectives place clear importance on ethics, morality and sustainability. The discrepancy between Trent's mission and its investment decisions presents a unique opportunity for the University to foster institutional alignment and cohesiveness. Investment decision-making processes and their associated fiduciary duties evolve as society changes and as the factors affecting investments shift. Increasingly, investors and financial analysts are finding that prudent investing requires consideration of all factors affecting investments and the beneficiaries of trust funds, including issues such as climate change. Fossil fuel divestment is a proposal which prudently addresses both ethical and financial concerns in accordance with the Board of Governor's fiduciary duties.

Divestment for the Betterment of Society: From South Africa to Fossil Fuels

Divestment for moral reasons is not a new phenomenon; it has been used as a strategy against industries and governments such as tobacco and South Africa, and in some cases very effectively. In a recent study from the University of Oxford on the fossil fuel divestment campaign, a comprehensive case study revealed that all previous divestment campaigns "were successful in lobbying for restrictive legislation" (Carrington, 2013). The fossil fuel divestment movement began at hundreds of colleges in the United States and has spread to municipalities, church groups, and over a dozen universities in Canada (Fossil Free, 2014). It has also spread internationally, reaching Europe and Australia. Already the movement has seen a significant number of institutions commit to divestment, including the Cities of Seattle, Portland and San Fransisco, and nine colleges in the US (Fossil Free). Thus far there have been no commitments made by Canadian universities to divest, but many student proposals are currently under consideration by a number of these institutions.

Given its successful precedents, it is impressive that the "campaign to persuade investors to take their money out of the fossil fuel sector is growing faster than any previous divestment campaign" (Carrington, 2013). According to the Oxford report, the strength of the campaign derives not from its direct financial impact, but from stigmatization that "poses a far-reaching threat to fossil fuel companies" (Carrington). While South African divestment required only the exclusion of companies doing business in one country, fossil fuel divestment requires the removal of a large industry which encompasses multiple sectors. However, given the large number of institutions that have already successfully divested from fossil fuels without jeapordizing their returns, it appears that investment portfolios do not rely on this industry as much as is commonly thought. In the case of Naropa University (2013) in Colorado, "Naropa's board of trustees concluded that the divestment would not threaten the stability of their stock portfolio, and that continuing to practice shareholder activism involving those companies would not result in significant changes in behavior." The university has a long tradition of screening out unethical investments, "such as weapons, nuclear power, tobacco, and alcohol, as well as companies with negative records in environmental impact and employee relations" (Naropa University). The growing number of divestment precedents creates a climate in which Trent University can divest with more confidence while still being a pioneer of environmental sustainability in Canada. As seen in Figure 1 (Brooks, 2013) below, the collective investment of Canadian university endowment funds in fossil fuels is significant, demonstrating the positive and powerful impact of divestment.



Trent University's Investments in the Fossil Fuel Industry

Trent University manages four different funds: the Pension Fund, Supplemental Retirement Arrangement Fund, Special Investment Fund, and Endowment Fund. Trent has two investment policies concerning these funds: one for the endowment fund, and one for the other three funds (Trent University, 2012a, 2012b), which this report refers to as the "pension funds". All four funds are invested in the same TDAM Emerald pooled funds, which are as follows: the Canadian Short Term Investment Fund, Canadian Bond Pooled Fund, Canadian Equity Index Fund, Hedged US Equity Pooled Fund, International Equity Index Fund, and the Pooled US Equity Fund (Trent University Board of Governors, 2012, p. 13). The portfolios of the Canadian and International TD Emerald pooled funds are available on the TD Asset Management website in the form of an annual report (TD Asset Management, 2012).

The Canadian Short Term Investment Fund and the Canadian Bond Pooled Fund both contain banks in their portfolios such as the Royal Bank of Canada (TD Asset Management, 2012), which invests heavily in fossil fuels (Rainforest Action Network, 2008). Here the question arises as to whether investments in banks which in turn invest in fossil fuels would be prohibited if divestment from fossil fuels were to be implemented. Both of the US pooled fund investment portfolios are unavailable on the TD Asset Management website. The Canadian Equity Index Fund portfolio includes many of the largest Canadian fossil fuel companies, including Suncor, Canadian Oil Sands Limited, and Imperial Oil (TD Asset Management, 2013). The International Equity Index Fund contains less fossil fuels and mining than its Canadian counterpart, but it does include companies such as BHP Billiton Limited (TD Asset Management), which is one of the largest fossil fuel companies in the world (Top 200 Fossil Fuel Companies, 2013). The purpose of this report is not to provide details on the particular companies and their impacts on the environment and human rights; rather it serves as a policy analysis. However, it is important to confirm and demonstrate that Trent does indeed have investments in large fossil fuel companies, through its pooled funds.

Trent's investment information is available online to the public within meeting documents of the Board of Governors called "Open Session Agendas". Within one of these documents, the "Annual Report on Investment Performance: March 2013" can be found (Trent University Board of Governors, 2013, p. 128). According to this report, the Asset Market Value for Trent's Endowment Fund was $41.5 million in 2012 (Trent University Board of Governors). The Pension Fund was valued at $223.4 million, the Supplemental Retirement Arrangement Fund at $6.3 million, and the Special Investment Fund at $2.7 million (Trent University Board of Governors), bringing the total value of all four funds in 2012 to $273.9 million.

There is no direct reference to "fossil fuels" in either of the investment policies; however, in Section 3 - Permtted and Prohibited Investments, under Section 3.05 "Prior Permission Required", the first option on the list is "Direct investments in resource properties" (Trent University, 2012b, p. 9). In the Glossary of Terms at the end of the policies, Resource Property is defined as any property that is "[a] right, license of privilege to explore for, drill for or take petroleum, natural gas or related hydrocarbons" along with a right to "[p]rospect, explore, drill or mine for minerals in a mineral resource" (Trent University, 2012b, p. 20). The definition also includes real properties of both minerals and an "oil or gas well" (Trent University, 2012b, p.20). Since fossil fuels generally are understood to include coal, oil, and gas, this aspect of the investment policy demonstrates that Trent could choose to invest directly in fossil fuels. According to the research above, Trent is currently using pooled funds and not pursuing such direct investments, but the resource property option would need to be eliminated if divestment were to be implemented.

Fossil Fuel Divestment: Ethical and Financial Concerns Align

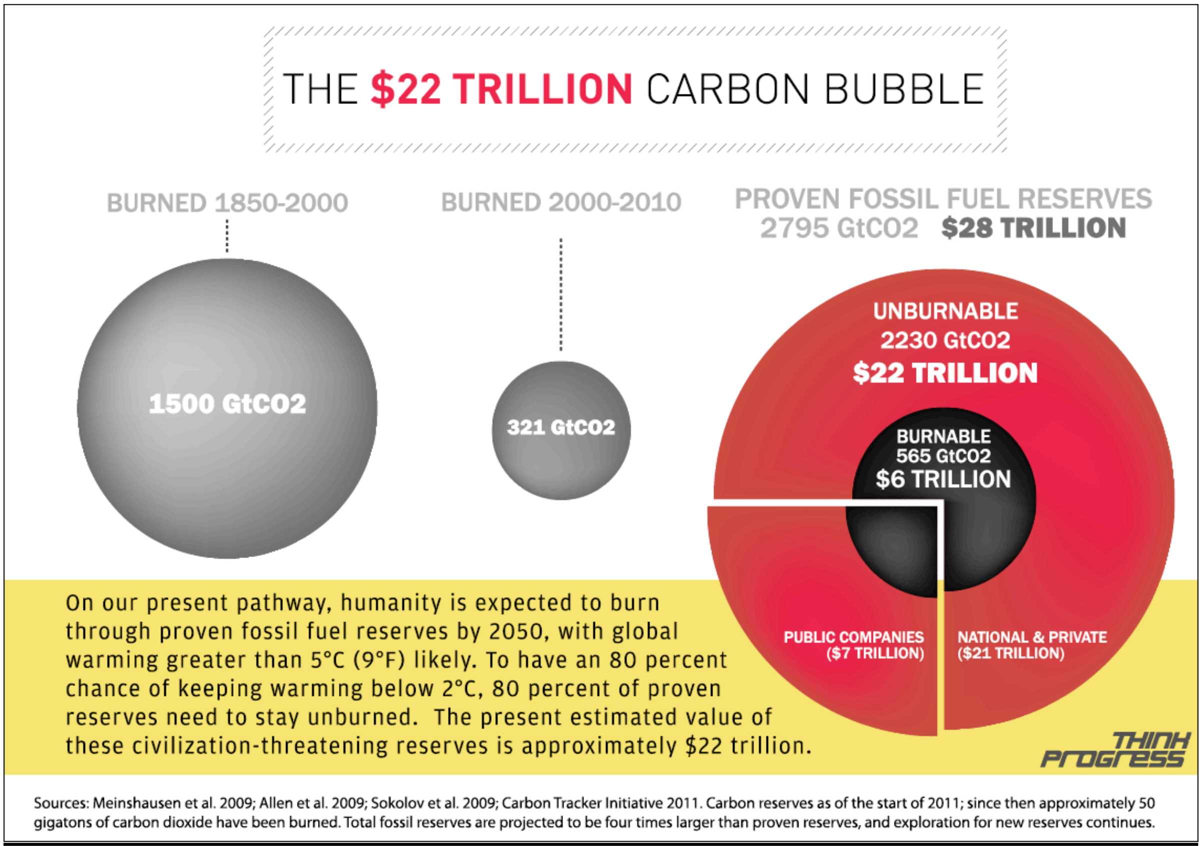
a) Global Warming's Terrifying New Math: For the Climate and for Investors

Bill McKibben, one of the leading environmentalists in the US and leading spokesperson for the divestment movement, has brought to light what he calls "global warming's terrifying new math" (McKibben, 2012). This math involves three numbers, the first being 2 degrees Celsius, the amount of global warming which almost all of the world's nations agreed should not be surpassed in order to avoid catastrophic climate change. The second number is 565 gigatons, which is the amount of carbon estimated by scientists that humans can emit and still have a reasonable chance of staying below 2 degrees of warming. The third and most concerning number is 2,795 gigatons, which is the amount of carbon contained in the worldwide coal, oil and gas reserves owned by fossil fuel companies (McKibben). This is approximately 5 times more carbon than the second number. Given this research, it becomes clear that unless fossil fuel companies keep 80% of their reserves in the ground, the planet is destined for warming beyond 2 degrees, which brings us into the territory of massive, unpredictable and catastrophic climate change. This knowledge carries with it a moral imperative to act, and one powerful way to put pressure on the fossil fuel industry to leave 80% of its reserves in the ground is to divest from fossil fuel holdings. Trent University, as a post-secondary, non-profit institution, has the power to put this pressure on fossil fuel companies to transition away from fossil fuels. This simple math demands ethical action, but it also contains a financial imperative.

b) What the Carbon Bubble Means for Investors

Stemming from the math above, the Carbon Tracker Initiative, a London-based NGO, "has carried out groundbreaking work linking climate science and the potential value at risk in the world's listed fossil fuel companies from efforts to tackle climate change" (Impax Asset Management, 2013). If fossil fuel companies can only burn 20% of their reserves without causing catastrophic climate change, and they have not taken this into account, then their business models are fundamentally flawed and inaccurate. If action is taken to reduce greenhouse gas (GHG) emissions and therefore demand for fossil fuels is dramatically reduced, then the optimistic forecasts of the fossil fuel industry will become blatantly unrealistic. In this light, the assets claimed by these companies are a major liability issue. This looming "carbon bubble" has been valued at approximately $22 trillion worth of unburnable carbon if governments take action to keep warming below 2 degrees Celcius (HIP Investor, 2013). A new report by HSBC suggests that if this were to occur, these companies could lose 40-60% of their value (Spedding, Mehta, & Robins, 2013) due to these stranded assets. While fossil fuel companies continue to explore for more reserves, "using just the reserves listed on the world's stock markets would be enough to take us beyond 2 degrees Celcius of global warming" (Carbon Tracker Initiative, 2012). Scientists have calculated that the world can burn approximately 886 gigatons of carbon dioxide during the period between 2000 and 2050, and retain a 20% chance of exceeding 2 degrees Celcius of warming (HIP Investor, 2013). In the first decade of the 2000s, society has already burnt one-third of this "carbon budget". Exceeding this threshold "risks severe climate change and the resulting economic damages" (HIP Investor, 2013, p. 5). For this reason, there is an urgent need to act fast. Meanwhile, the carbon bubble analysis is becoming much more accepted in the mainstream financial sphere (Impax Asset Management, 2013). ExxonMobil, the largest publicly traded oil company in the world, recently responded to pressure from institutional investors to disclose how climate change regulations could affect the value of its worldwide assets (McCarthy, 2014).

Taking the carbon bubble hypothesis seriously relies on two assumptions: first, that human-made climate change is real, and second, that governments around the world are going to take action to reduce their GHG emissions. Given the current state of inaction on climate change internationally and in Canada, along with the federal government's drive to expand the Alberta tar sands, it appears unlikely that any substantive action will be taken in the near future to reduce GHG emissions. However, looking ahead 10, 20 or 30 years, the probability of such action on climate change becomes much higher (Impax Asset Management, 2013). This kind of long-term risk evaluation may not fit into conventional economic wisdom, but university pension and endowment investments are set up to consider long-term viability (Freshfields Bruckhaus Deringer, 2005). The endowment fund is meant to exist in perpetuity, and the pension fund is meant to provide retirement benefits; both funds therefore require long-term risk assessment. The threat of climate change, and the probability of eventual action to reduce carbon emissions and render the majority of fossil fuel assets obsolete, make investments in the fossil fuel industry look increasingly risky. Since the Trent University Board of Governors has a duty to make returns on its investments and avoid undue risk of loss to these returns, there is a fiduciary duty to take the carbon bubble into account, and accordingly remove risky fossil fuel investments.



Legal and Policy Considerations Related to Fossil Fuel Divestment

Both of Trent's investment policies are based on the "prudent person portfolio approach" to "ensure the prudent investment and administration of the assets" (Trent University, 2012b, p. 1) of the funds they relate to. According to the *Trustee Act (Ontario)*, this approach means that "in investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments" (Government of Ontario, 1990, 27.1). In relation to investments in the fossil fuel industry, the prudent person approach raises important questions: Is it "prudent" to invest in fossil fuels? Would it be prudent (or imprudent) to divest from fossil fuels? Prudent investment decision-making is an evolving concept and is grounded in the fiduciary duties of trustees as expressed in the law.

a) Fiduciary Duties for Investment Decision Makers

According to Freshfields Bruckhaus Deringer (2005, p. 8), fiduciary duties are "the key source of limits on the discretion of investment decision-makers in common law jurisdictions". There is often overlap in the law of fiduciary duties between different common law jurisdictions, since these duties are largely a product of case law. One of the court cases that is commonly cited as a judgement which only allows investors to seek to maximize returns is that of *Cowan vs. Scargill* in the UK, which dealt with pension fund trustee discretion when considering non-financial criteria in investment decision-making. The UNEP Finance Initiative asserts that this case is widely misunderstood, pointing to the fact that the judge who ruled on the case said himself that it "did not support the thesis that profit maximization alone was consistent with the fiduciary duties of a pension fund trustee" (Freshfields Bruckhaus Deringer, 2005, p. 9). According to US investment trustee law, funds are to be managed with the objective of an overall prudent strategy for financial return and avoidance of undue risk of loss to return. Individual investments within the portfolio do not need to maximize returns; rather, the emphasis is on the overall diversification and performance of the fund (Freshfields Bruckhaus Deringer).

The Canadian legal context is very similar; there are two general duties which fall under the umbrella of fidiciary duties: the duty of care and the duty of loyalty. The duty of care "generally requires that a trustee exercise the care, skill, diligence, and judgment that a prudent investor would exercise in making investments, including a duty to obtain a reasonable rate of return on investment" (Michael Jantzi Research Associates Inc. 2013, p. 22). This requirement is known as the prudent person rule, which was first articulated in common law in 1830, and which is currently utilized by Trent University. The *Trustee Act* of Ontario was amended in 1999 to adopt the "prudent investor rule", which allows trustees to evaluate their investments from a broad portfolio scope rather than on a case-by-case investment base (O'Sullivan Estate Lawyers, 2007). A key aspect of the fiduciary duty of care is that profit maximization is not required. Prudence "is about process, not performance" (Michael Jantzi Research Associates Inc. 2013, p. 23). The second duty of care is the duty of loyalty, under which "trustees are to administer the assets under their care in the exclusive interest of all of the beneficiaries and without regard for their own interests" (Michael Jantzi Research Associates Inc. 2013, p. 24). Where the purpose of the trust is to seek a financial return for the benfeficiaries, as is the case with Trent University's pension funds, this must be the primary objective considered by investment decision-makers.

However, this does not require “the pursuit of profit maximization on an investment-byinvestment basis”, which is an assumption that the UNEP Finance Initiative sees as outdated and based on unreliable case law (Freshfields Bruckhaus Deringer, 2005).

b) Environmental, Social & Governance (ESG) Factors and Risks

A strong and growing trend within investment decision-making is the consideration of Environmental, Social & Governance (ESG) factors and risks. When issues of environmental sustainability and ethics are considered in relation to the fiduciary duties introduced above, the result is not as simple as conventional wisdom suggests. Financial and ethical concerns are often considered to be incompatible or in conflict with each other. However, analysis of ESG issues in relation to fiduciary duty demonstrates that the integration of these factors into investment decision-making is actually more prudent and rigorous. The duty of care “requires decision-makers to have regard to all considerations relevant to the discussion, including those that impact upon value” (Freshfields Bruckhaus Deringer, 2005 , p. 10). In contemporary equity markets, “most of the market value is derived from assets that are not on the balance sheet” (HIP Investor, 2005). For the S&P500 equity index, which Trent utilizes, 80% of the market value is “intangible”, meaning it is not accounted for in financial documents. One large source of this “intangible” market value is “ecosystem services and natural capital”, because “if business and society actually paid for 17 ecosystem services we receive from plants, animals and the environment”, we would owe two dollars for every one dollar of GDP (HIP Investor, 2013, p. 2). It is likely that fiduciary duties actually require investors to consider ESG factors because “if investment managers are not taking into account the value of natural resources and processes, they aren’t properly considering the risk or impact that losing them poses” (HIP Investor, p. 2). While some investors may argue that these factors are too difficult to quantify, there is hypocricy embedded within this criticism, as many investors quantify intangible economic factors such as business goodwill (Freshfields Bruckhaus Deringer, 2005).

The potential of a carbon bubble is a prominent example of an ESG risk that is not considered in public equity value assessments despite the fact that it could have a huge impact on the market value of fossil fuel companies in the future. By taking into account issues such as pollution and climate change, investment managers can identify both short-term and long-term risks not considered by market indices. An ESG risk assessment of Trent’s investments could identify risks such as the carbon bubble in advance, and help to identify investments that are both ethically and financially sound. In addition to the duty of care, ESG risks are also pertinent to the duty of loyalty. Trustees must invest their funds prudently in the interest of beneficiaries; in the Trent context, this means staff and faculty for the pension funds, and students for the endowment fund. ESG factors can be considered which are beyond financial return (Freshfields Bruckhaus Deringer, 2005), such as climate change. It could be argued at Trent that fossil fuel investments go against the best interests of students and of staff and faculty, because climate change threatens their future well-being and survival. According to Freshfields Bruckhaus Deringer (2005, p. 12), "a decision-maker who chooses to exclude an investment or category of investments on this basis will need to be able to point to a consensus among the beneficiaries in support of the exclusion." For this reason, the 76%-in-favour student referendum on divestment, and the petition signatures, are important for indicating strong support among students for divestment of the endowment fund from fossil fuels and that divestment is in their best interests. The response of staff and faculty to the divestment proposal could determine whether the Board can legally divest the pension fund - it cannot do so without indication of their consent.

In the Canadian legal landscape, "there is nothing in the trustee statutes of any province that prevents trustees from considering non-financial criteria, nor does legislation expressly restrict trustees from applying such criteria at the expense of financial returns on investment" (Michael Jantzi Research Associates Inc., 2003, p. 22). This leaves questions around ethics and fiduciary duties open to interpretation. This report argues that fiduciary duties should be interpreted as requiring prudent consideration of all factors impacting upon the value of investments, and necessitating subsequent action to eliminate risky investments such as fossil fuels. Howard Pearce, the former head of the Environment Agency Pension Fund in the UK, believes that "pension funds have a fiduciary duty to their beneficiaries to take ESG into account" and that "climate change and environmental issues [present] financial risks and opportunities" (Nichols, 2013). This is a key point - ESG factors identify not only risks but opportunities for strategic investing that promotes solutions to environmental and ethical problems while retaining reasonable rates of return.

Need for a Link Between Stated Objectives and Investment Choices

a) Lack of Ethical Considerations in Investment Policies

Environmental and ethical issues are not addressed anywhere in either of Trent's investment policies. The list of permitted investments in the policies is fairly extensive, and includes Canadian and foreign equities, bonds, cash investments, pooled funds, and mutual funds (Trent University, 2012a, 2012b). The list of prohibitted investments is quite short, consisting only of four items, including investing "in companies for the sake of managing them" (Trent University, 2012a, p. 12). There is nothing on this list related to the environment, social justice, ethics, human rights, or sustainability, or anything to do with prohibitting investments for moral reasons. This is significant, given that Trent does have policies related to the environment, fair trade, and environmental procurement (Trent University Administration, 1995, 2001, 2008). These policies do not seem to have any real or legal impact on the investment policies. At the same time, the investment policies allow for pooled fund and mutual fund policies to be in conflict with University investment policies themselves if the Investment Manager chooses to invest in such funds, subject to prior approval of the Investment Committee (Trent University, 2012b, 2012a). This means that Trent's investment policies are flexible to other financial investment policies, but not to those University policies which are not profit-focused.

There is a significant discrepancy between Trent University's stated values and objectives and its investment choices. The *Trent Act (1963)*, to which the Board of Governors must adhere, does not link the University's objectives to its investments. According to the Act:

"The objects and purposes of the University are,
(a) the advancement of learning and the dissemination of knowledge; and
(b) the intellectual, social, moral and physical development of its members and the betterment of society."
(Trent University, 1963).

Given the reality of accelerating climate change and current destructive fossil fuel extraction processes such as the tar sands and fracking, the fossil fuel industry is currently doing the opposite of supporting "the betterment of society". The moral imperative in this statement suggests that divesting from fossil fuels would align with the mission of the University, as a moral statement against the actions of an industry profiting from the destruction of the planet. However, this ethical aspect is missing from the Act's paragraph on investments:

“The funds of the University not immediately required for its purposes and the proceeds of all property that come into the hands of the Board, subject to any trust or trusts affecting them, may be invested and re-invested from time to time in such investments as the Board in its absolute discretion deems meet.”
(Trent University, 1963).

It is not clear anywhere in the Act whether the “absolute discretion” of the Board should take the objectives of the University into account, and here a clear flaw is exposed in the relation between Trent’s investments and its objectives.

A similar dynamic can be seen between the University’s investment policies and its current mission statement, which is arguably much stronger than the original one from an ethical and environmental sustainability standpoint. The endowment fund policy’s objective is to support the University’s academic and research mission by providing capital for a “broad range of worthy activities including student scholarships and bursaries” (Trent University, 2012b, p.1). There is no dicsussion of whether or not the investments used to generate this income adequately support the mission of the University, as the emphasis is on the money being obtained, not the process through which it is gained. The story would potentially be very different, however, if Trent’s vision and mission statements were taken into account when choosing investments. Trent’s mission statement is much broader in scope than scholarships and buraries; here is the goal that is most pertinent to the issue of fossil fuel divestment:

“Over the next 5 years, Trent University’s mission is to...
Foster sustainability, in its environmental, social and economic dimensions, on our campuses and in all aspects of our work.”
(Vision for Trent University, 2010).

When investments in fossil fuels through pooled funds, administered by the Board of Governors, are juxtaposed with this statement, it becomes clear that Trent’s investment choices are not currently reflecting its mission statement. While the pension funds do not exist explicitly to support Trent’s academic mission, they are still operated by the University, which should in theory be accountable to its stated objectives. The strong language of fostering sustainability “in all aspects of our work” clearly includes investments, despite the fact that the Board can exercise “absolute discretion” over its investment choices. While there may not be a legal requirement or policy obligating the Board to apply Trent’s mission statement to its investment choices, there is no law or policy preventing this application. There is a compelling argument to be made that the mission and objectives of the University should be integrated into investment decisions.

b) Mission-Based Investing

One approach to fossil fuel divestment and to ethical investment more broadly at Trent is Mission-based investing (MBI), which is "the incorporation of an institution's mission into its investment decision making process" (Michael Jantzi Research Associates Inc., 2003, p. 11). A report published by the Canadian Council for International Cooperation identifies four pillars of MBI, which are Investment Screening, Shareholder Action, Community Economic Development, and Social Venture Capital (Michael Jantzi Research Associates). What this means is that a university could divest from fossil fuels, engage in shareholder advocacy with other companies, and also intentionally invest in projects and initiatives which support its mission. This approach to investments has a number of positive benefits for non-profit institutions, including shareholder value (environmentally proactive firms are shown to have favourable impacts on their value), reputation management, and consistency between an institution's mission and its investment decisions (Michael Jantzi Research Associates Inc., 2003). If an intitution's investments are contributing to factors which work against its vision and goals, then the organization as a whole will suffer, and its work will be less effective. If an institution's values are aligned with its investments, not only will it be acting ethically but it can also differentiate itself from other institutions (Michael Jantzi Research Associates Inc.). Trent University is in a position to become the first university in Canada to divest from fossil fuels, a move which would cast it into a reputation as a university that is bold, forward-thinking, and on the cutting edge of sustainability.

Divestment from fossil fuels is one way to mend the dissonance between the University's commitment to students and their future as engaged, global citizens on the one hand, and its investments in the industry driving climate change - threatening the future of those students - on the other. MBI would also allow Trent to develop a framework through which to select its investments in the future, beyond fossil fuel divestment.

Pathways to Divestment and Reinvestment

There are various approaches that Trent University can take should it choose to pursue divestment from fossil fuels. The student divestment proposal is requesting that the University remove investments within 5 years from funds which include the top 200 coal, oil and gas companies identified by the Carbon Tracker Initiative as carrying high levels of risk due to potential stranded assets. The choice to use this list must be scrutinized to see whether or not a larger or different list might be more effective. According to MSCI ESG Research (2013, p. 2), "Carbon Tracker is intended to raise awareness about stranded carbon assets that present risk to markets and the scale of 'unburnable carbion' listed on stock exchanges. It is not readily adaptable for use in a portfolio management system" because it is a static list, and due to mergers and acquisitions and other corporate restructuring, eight of the originally listed companies are no longer publicly traded (MSCI ESG Research). The Carbon Tracker list is a useful guide, but an evolving approach is needed to ensure a robustly fossil free portfolio.

There are a wide range of options available to the Board of Governors, from a bare minimum divestment approach which simply screens out the companies listed by the Carbon Tracker Initiative, to a comprehensive approach whereby both direct and indirect investments in fossil fuels, including banks and bonds which invest funds in the industry, would be removed. A proactive approach would seek to not only divest but reinvest in solutions to climate change such as renewable energy and public transport. This report recommends that the university take the most comprehensive approach possible, in order to strengthen the impact of fossil fuel divestment, while recognizing that such an approach is challenging. An ESG risk and opportunity assessment would assist with this process of deciding how to move forward.

a) Endowment Fund vs. Pension Funds: Key Differences in Approach

Due to the fact that the management structure of the pension funds is currently being renegotiated (TUFA, 2014), the Board of Governors will need to approach these funds differently than the endowment fund. The Board can immediately begin the process of divesting the endowment fund, which is smaller and less complicated. The endowment fund's objective is to support the University's academic mission through financial support for bursaries and scholarships among other benefits, which means that Trent could justify the implementation of a Mission-Based Investment policy to complement the process of divestment. If the pension funds remain with Trent's control, then the current restructuring could provide a timely opportunity for a change such as divestment. If not, Trent could potentially push for divestment within the larger pooled pension fund. The Board will also need to engage with staff and faculty to seek consent for fossil fuel divestment before going ahead with divestment of the pension funds.

b) Active vs. Passive Management

Both of Trent's investment policies adopt a passive management structure, "consisting of indexed portfolios in each of the asset classes" (Trent University, 2012b, p. 4). Active management involves "[m]anaging the investments of the funds with the objective of outperforming the return of a broad-based index or combination of broad based indices" (Trent University, 2012a, p. 23). The policies state that passive management was chosen by the university over active management based on theory and prior experience, and because passive management remains the more "prudent" approach (Trent University, 2012b, p. 4). This structure was also chosen to avoid the extra fees associated with active management. One of the key questions to be addressed when considering fossil fuel divestment in Trent University's context is whether or not it can be achieved through Trent's current passive management structure. It is desirable to implement fossil fuel divestment through passive management in order to avoid a major or complicated shift in the University's investment policies and management structure. Divestment will require the negative screening of fossil fuel companies, which could be achieved by actively managing the fund portfolios. This process could actively select investments which work toward climate change solutions, such as renewable energy companies, in addition to excluding fossil fuels. However, a passively managed fund could also eliminate fossil fuel companies. Impax Asset Management (2013) has identified a passively managed fossil free portfolio using the MSCI World Index which the Board could consider as an option.

c) A Diversified and Fossil Free Portfolio

Trent's investment policies state that in order to meet their required returns, the funds "must invest in assets that have uncertain returns, such as Canadian equities", but reduce overall risk by "diversifying among the asset classes and further diversifying within each individual asset class" (Trent University, 2012a, p. 4). Investments in Canadian equities, which are dominated by fossil fuels, are therefore considered essential both to meeting returns and reducing risk. This presents a significant policy complication related to divestment. However, the scope of Trent's investments in the fossil fuel industry is relatively limited. The percentage of US university endowments that is invested in fossil fuel related public equities is only 2%, while that of pension funds is 2-5%. Due to the prevalence of fossil fuels in the Canadian equity market (Rebetz, 2012), the percentage of Canadian university endowment and pension funds in fossil fuels is likely higher. However, it is still a very small percentage which can be redistributed with little effect on the overall investment portfolio. Additionally, the fossil fuel divestment proposal is requesting only that the top 200 coal, oil and gas companies be removed, which would have little to no impact upon diversification.

A fossil free investment portfolio would look identical to any other, except it would exclude the 200 fossil fuel companies identified by the Carbon Tracker Initiative, or a similar list. One of the complications with divestment is that Trent is invested in pooled funds, which are fixed and cannot be modified to remove fossil fuel companies at the request of the University. As noted by Cambridge Associates LLC (2013), divestment in this case requires full removal of all investments from the commingled pooled funds and the establishment of an alternative fund in which to invest the endowment and pension funds. This would likely require the creation of a segregated fund, as there are currently no existing pooled funds with fossil free portfolios (Tim Nash, personal communication, November 2013). Tim Nash, the Sustainable Economist, provides a model fossil free portfolio on his website (Sustainable Economist, 2014). Rather than investing in equities based on geography, as Trent's investment policies currently mandate, this portfolio is arranged based on global sectors, and stays as diverse as possible while excluding four fossil-fuel heavy sectors: energy, materials, utilities, and infrastructure. This is one example of how a new segregated fund could be structured to exclude fossil fuels and retain diversified assets, while also being passively managed.

d) Concrete Steps and Recommendations

This report has focused on the legal and policy issues related to divestment from fossil fuels. More research is needed to identify the best pathway forward for Trent in pursuing divestment. Below are some basic concrete steps that have been identified from the research in this report, which could guide the Board of Governors' approach to the fossil fuel divestment proposal.

1. Conduct an Environmental, Social & Governance (ESG) risk assessment of endowment and pension fund investments;
2. Integrate Mission-Based Investing into Trent University investment policies;
3. Remove “Resource Property” from “Permitted Investments” in Statements of Investment Policies and Procedures;
4. Make plans to remove endowment fund from TDAM Emerald Pooled Funds;
5. Hire an Investment Manager with experience in ESG investing;
6. Identify a fund which can be passively managed while excluding the top 200 fossil fuel companies or excluding the energy, materials, and utilities sectors;
7. Construct the Investment Manager to maximize investments in solutions to climate change and environmental issues;
8. Divest funds from current pooled funds and invest them in newly identified fund. Do the same with the pension funds under the appropriate circumstances.

Conclusion

Fossil fuel divestment is an investment decision that can satisfy the Trent University Board of Governors’ fiduciary duties as trustees, contingent upon the expressed consent of the beneficiaries of the funds in question. The two investment strategies of ESG risk assessment and MBI are both excellent ways to ensure that Trent’s pension and endowment funds are being managed with due diligence and prudence, and operating under a high standard of care. These strategies, while important for demonstrating that divestment is a prudent choice, are also essential for ongoing evaluation of investment decisions through the lens of environmental sustainability and the mission of the University. The potential threat of the carbon bubble, which could grossly overvalue fossil fuel companies, is enough evidence on its own to suggest that Trent should divest as soon as possible in order to act prudently to avoid undue risk of harm. This can be done without significantly changing Trent’s current investment policies or management structure, and without incurring loss to financial return. The legal issues related to fiduciary duties, ESG factors, and mission-based investing are evolving, and new factors such as climate change and environmental degradation must be considered by trustees in order to practice prudent fund management.

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