

The Case for Fossil Fuel Divestment
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Abstract:

This paper provides a brief history of the fossil fuel divestment movement at Canadian academic institutions. I argue that academic institutions have a unique place in society and divesting their endowment fund from fossil fuel companies will not be against their fiduciary duty because of ethical and financial reasons. I argue that investing in fossil fuel companies goes against the objectives of an educational institution's endowment fund to promote environmental sustainability. I explain what a trustee's fiduciary duty entails and argue that it would be prudent to dump fossil fuel stock because the fossil fuel industry is highly unstable. Moreover, there is increasing evidence that investments in renewable sources of energy is more profitable. Fiduciaries have a legal obligation to take all beneficiaries' long-term moral and financial interests into account and not just short-term economic benefits. Not only is divestment consistent with one's fiduciary duty, but it might also be required because of the fossil fuel industry's financial risks.

Introduction:

Academic institutions in North America have vast amounts of money in their endowment fund¹. An educational institution's endowment fund plays a crucial role in creating scholarships, bursaries, hiring professors, building infrastructure, and creating more research opportunities. Many Canadian academic institutions hold billions of dollars in their endowment and have significantly increased their size in the past decade². The trustees of an academic institution have a fiduciary duty since they manage the wealth for students, professors and other beneficiaries. Fiduciary duty is an important legal obligation to act in the best interests of the beneficiaries³. Trustees have a duty of care and a duty of loyalty towards their beneficiaries. Trustees at an academic institution must balance the best long-term interests of both current and future beneficiaries. As universities expand their endowment funds, many have called universities to use the funds they hold to solve society's environmental challenges.

The climate crisis has put unprecedented pressure on academic institutions to take meaningful steps to promote environmental justice. Environmentalists have been advocating for structural changes to keep global average temperatures from rising by more than 2°C above preindustrial levels by the end of this century. Stabilizing the global climate requires vast amounts of recoverable fossil fuels to remain underground⁴. As governments try to reduce their dependence on carbon-intensive energy sources, there is pressure on both the public and private sectors to

¹ Brice, J, "Universities with the Highest Endowments in Canada", (2019, May 5), online: University Magazine <<https://www.universitymagazine.ca/universities-with-the-highest-endowments-in-canada-2019/>>.

² I compared university's endowment size from 2011 to 2019. For 2011 figures, see: Dehas, J, "Canada's Big Universities Ranked by Endowment" (2011, June 6), online: Macleans <<https://www.macleans.ca/education/uniandcollege/canadas-biggest-universities-by-endowment/>>. For 2019 figure, see Brice, *supra*, note 1.

³ The beneficiaries of an academic institution's endowment fund are primarily the students and professors.

⁴ McGlade, C, & Ekins, P, (2015), "The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2C", *Nature*, 517(7533), pp 187-190.

adopt environmental initiatives that promote ecological resilience. Of the many sustainability initiatives, the fossil fuel divestment (“divestment”) campaign is undoubtedly one of the most controversial campaigns to have swept institutions worldwide⁵.

Universities invest their endowment funds in a broad investment portfolio. They invest their funds in the stock market among many other areas to grow their endowment funds and have a steady income source. One of the many areas universities invest their funds is the fossil fuel industry. Students, professors, and environmental activists have called universities to divest their investments from fossil fuel companies; they ask universities to sell their investments from fossil fuel companies and instead invest in renewable energy sources. There is growing pressure from activists to make the investment funds carbon neutral. Many institutions, including Harvard, have resisted the call to divest from fossil fuel companies⁶. On the one hand, many academic institutions argue that it is against their fiduciary duty to divest for reasons other than financial considerations. On the other hand, activists believe that the refusal to divest has little to do with fiduciary duty and more to do with an institution’s lack of environmental leadership. An important question is whether divesting from fossil fuel companies is consistent with an institution’s fiduciary duty.

This paper explores various issues surrounding the fossil fuel divestment campaign at academic institutions in Canada and argues that it is not against an institution’s fiduciary duty to divest from fossil fuel companies. I will divide this paper into three parts. The first section provides a brief history of the fossil fuel divestment campaign at institutions of higher learning. I assess some of the major events that shaped the divestment campaign in this country. The second section

⁵ The fossil fuel divestment campaign is considered controversial for a wide number of reasons. One of the main reasons is that many countries still rely heavily on coal, oil, and natural gas to meet energy demands.

⁶ Richardson, V, “*Harvard Refuses to Carbon-neutral by 2050 While Refusing to Divest from Fossil Fuel Companies*”, (2020, April 22), online: Washington Times, < <https://www.washingtontimes.com/news/2020/apr/22/harvard-refuses-divest-fossil-fuels-seeks-reach-ne/>>.

examines the fiduciary duty of academic institutions. In this section, I parse out the roots of fiduciary duty and examine some of the concerns that trustees must keep in mind while deciding what to do with the funds they are supposed to manage. The third section advances the financial case for divestment.

Section 1: Background

A. History of divestment:

Although fossil fuel divestment is a relatively new phenomenon, divesting money from morally or socially unjust business is not. In the 18th century, Quakers (formally known as the Religious Society of Friends) prevented their members from investing in the slave trade⁷. Civil society has used economic sanctions against morally unjust businesses for a very long time. In the 1960s, Martin Luther King urged people to sell their investments and boycott products from white-owned businesses that supported racial segregation⁸. In the 1980s, many countries, particularly the United States, used divestment as a political tool to challenge the apartheid regime in South Africa⁹. The United States urged businesses to stop investing in South Africa because of institutionalized racial segregation. Similarly, religious organizations like the Methodist Church in the UK avoided investments in tobacco, alcohol, weapons, and gambling because of its adverse impact on society¹⁰. As people became more environmentally conscious, pressure increased on financial managers to adopt initiatives that exclude fossil fuel investments.

⁷ Quaker Activism, “*Find Out More About the Quaker Movement*”, (2013), online: PBS <<https://www.pbs.org/opb/historydetectives/feature/quakeractivism/#:~:text=In%201776%2C%20Quakers%20were%20prohibited,many%20other%20areas%20of%20society>>.

⁸ Weems, R, “*African-American Consumer Boycotts During the Civil Rights Era*”, (1995), *The Western Journal of Black Studies*, 19(1) at 72.

⁹ Harris, V, “*Divestment Hits Apartheid in the Pocketbook*”, (1985). *The Black Scholar*, 16(6), 12-17.

¹⁰ Renneboog, L, Ter Horst, J, & Zhang, C, “*Socially Responsible Investments: Institutional Aspects, Performance, and Investor Behavior*”, (2008) *Journal of Banking & Finance*, 32(9), pp 1723-1742.

B. History of fossil fuel divestment:

To promote climate justice¹¹ and make an organization's investments more environmentally just, Bill McKibben's 350.org launched the *Fossil Free* divestment movement in 2012¹². The campaign's principal goal was to stigmatize the fossil fuel industry, and its stated goal was to “*revoke the social license of the fuel industry.*”¹³ The divestment campaign began with a handful of campus movements in the United States, where students pressured the university to divest from fossil fuel companies. The first institution of higher learning to divest from fossil fuel companies was Maine's Unity College, which divested their \$8 million endowment fund in the Fall semester of 2012¹⁴. Bill McKibben's initiative mobilized activists and college students worldwide to pressure academic, religious, and government institutions to divest their investment portfolios of fossil fuel industries¹⁵. Within a year of Bill McKibben's divestment campaign launch, it spread to hundreds of academic institutions across countries and continents. Although the divestment campaign began at institutions of higher learning, it spread across various institutions like sovereign wealth plans, charitable organizations, private wealth managers, and religious organizations¹⁶. The fossil fuel divestment movement became the fastest-growing divestment campaign in history¹⁷.

¹¹ Climate justice has many different meanings. In this paper, I used the term climate justice to describe the movement to combat climate change by reducing our dependence on fossil fuels.

¹² UBC 350, “*The divestment movement starts*”, (2019), online: Climate Justice UBC <<https://350.org/10-years/#timeline>>.

¹³ UBC 350, “*About 350*” (2019), online: Climate Justice UBC, <<https://350.org/about/>>.

¹⁴ Unity College, “*Unity is First in the Nation to Divest from Fossil Fuels*”, (nd), online: Unity College <<https://unity.edu/about/reinventing-college/sustainability-science/divestment-from-fossil-fuels/>>.

¹⁵ Nisbett, M, “*How Bill McKibben Changed Environmental Politics and Took On The Oil Patch*” (2013, May 1), online: Policy Options: <<https://policyoptions.irpp.org/magazines/arctic-visions/how-bill-mckibben-changed-environmental-politics-and-took-on-the-oil-patch/>>

¹⁶ Vaughan, A, “*Fossil Fuel Divestment: A Brief History*”, (2014, October 8), online: The Guardian <<https://www.theguardian.com/environment/2014/oct/08/fossil-fuel-divestment-a-brief-history>>.

¹⁷ Ibid.

Since the launch of the divestment campaign in 2012, the United States has seen many organizations adopt the divest campaign in some form or the other. One of the early victories came from Stanford University, which agreed to divest its \$18 billion endowment fund from coal companies¹⁸. Even the Rockefeller foundation that made its money through investment in the oil industry, announced its intention to divest in 2014¹⁹. The divestment campaign also spread to Europe. In 2015, the Norwegian Parliament instructed the Norwegian Sovereign Wealth Fund to divest from firms that made more than 30% of its revenues from the coal industry²⁰. Climate activists urged financial managers to sell their investments in fossil fuel companies and promote sustainability throughout the world. Twelve major cities, including New York City, Oslo, Berlin, Los Angeles, and Milan, have pledged to divest from fossil fuel companies²¹. As of October 2020, \$14 trillion worth of endowments and portfolios have been divested in part or in whole²².

C. Divestment in Canada:

Like the United States, student unions in Canada were quick to adopt the divestment campaign. More than thirty divestment campaigns mushroomed at Canadian universities and colleges within a few years of the divestment campaign launch²³. Students have primarily led

¹⁸ Wines, M, “*Stanford to Purge \$18 Billion Endowment of Coal Stock*” (2014, May 6), online: New York Times <<https://www.nytimes.com/2014/05/07/education/stanford-to-purge-18-billion-endowment-of-coal-stock.html>>.

¹⁹ Goldenberg, S, “*Heirs to Rockefeller Oil Fortune Divest from Fossil Fuels Over Climate Change*” (2014, September 22), online: The Guardian <<https://www.theguardian.com/environment/2014/sep/22/rockefeller-heirs-divest-fossil-fuels-climate-change>>.

²⁰ Carrington, D, “*Norway Pension Fund to Divest 8 bn from Coal a New Analysis Shows*”, (2015 June 5), online: The Guardian <<https://www.theguardian.com/environment/2015/jun/05/norways-pension-fund-to-divest-8bn-from-coal-a-new-analysis-shows>>.

²¹ White, K, “*These 12 Major Cities Have Committed to Divesting from Fossil Fuels*” (2020, October 1), online: Planetary Press, <<https://www.theplanetarypress.com/2020/10/these-12-major-cities-have-committed-to-divesting-from-fossil-fuels/>>.

²² The Allegheny Front, “*Bill McKibben on The Divestment Movement*”, (2020, July 9), online: The Allegheny Front, <<https://www.alleghenyfront.org/bill-mckibben-on-the-divestment-movement/>>

²³ The Sustainability and Education Policy Network, “*The State of Fossil Fuel Divestment in Canadian Post-Secondary Institution*”, (2018, August 8), online: SEPN, <<https://sepn.ca/wp-content/uploads/2018/09/Divestment-Research-Brief-2018-08-30.pdf>>.

divestment campaigns in Canada with support gained from university affiliates. For example, at the University of Manitoba, a student group named Divest Manitoba spearheaded the divestment campaign, which later received an official endorsement from the University of Manitoba Students' Union in 2015²⁴. Similarly, at Simon Fraser University, a student group called Sustainable SFU initiated the divestment campaign 'SFU350', which later acquired support from SFU Graduate Student Society, the Alumni Association, and various other departments on campus²⁵. Many campuses also had successful student referendums in support of divestment. In 2014, Concordia University became the first university in Canada to partially divest \$5million of its endowment fund from fossil fuel companies²⁶. Although many saw this decision as an essential first step towards divestment, Divest Concordia- the student group leading the divestment campaign termed this decision as a "flat-out rejection" of full divestment²⁷. They also argued that the partial divestment should not be seen as a win as it undermined the long-term commitment to divesting from fossil fuel companies²⁸

Students, faculty, and environmental activists in Canada have written open letters urging universities to show strong environmental leadership²⁹. The first major success for the divestment campaign came from the University of Ottawa, where the Board of Governors voted to 'shift'³⁰

²⁴ Williams, G, "*UMSU Moves Forward with Divestment Campaign*", (2019, November 28), online: The Manitoban <<http://www.themanitoban.com/2015/09/umsu-moves-forward-with-divestment-campaign/24866/>>

²⁵ The Sustainability and Education Policy Network, at 21.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Wood, S, "*Letter: Debunking UBC's legal position on fossil fuel divestment*". (2019, November 19), online: The Ubyyssey <<https://www.ubyssey.ca/opinion/letter-supra-debunking-ubcs-legal-position-divestment/>>.

³⁰ The University of Ottawa uses the term 'shift' away from fossil fuel companies. The University of Ottawa has not fully divested, but after relentless student activism, it started shifting its investments from fossil fuel companies. Using the term 'shift' allowed the University of Ottawa to say that they are committed to changing their investment practices. However, this still allows the University of Ottawa to keep some investments in fossil fuel companies.

the school's investments from fossil fuel companies but stopped short of full divestment³¹. In 2017, Laval University became the first university in Canada to divest from fossil fuel companies³². In 2019, Simon Fraser University agreed to slash fossil fuel investment by nearly half by 2025³³, while the University of British Columbia agreed to fully divest³⁴. Canada's divestment movement has seen sustained environmental activism from students, faculty, and environmental activists. Although Laval, Ottawa, SFU, and UBC have either fully or partially agreed to divest fossil fuel companies, most academic institutions have refused to divest from fossil fuel companies citing fiduciary concerns, and many have called the divestment campaign ineffective.

Despite vibrant environmental activism, Canadian universities have been slow in adopting the fossil fuel divestment movement. Most academic universities have said that it is against their fiduciary duty to divest from fossil fuel companies. However, I argue that the fossil fuel divestment movement has been less about fiduciary duty and more about Canada's socio-political environment. One can find a direct connection between the provincial government in power and how universities have responded to the fossil fuel divestment movement. I will elaborate this by discussing how the University of British Columbia agreed to divest from fossil fuel companies.

³¹ Crawford, B, "*UOttawa to Seek Ways to 'Shift' Fossil Fuel Investments; Rejects Full Divestment*", (2016, April 27), online: Ottawa Citizen, < <https://ottawacitizen.com/news/local-news/uottawa-commits-to-cutting-carbon-footprint-but-not-full-divestment-from-fossil-fuels#:~:text=The%20University%20of%20Ottawa%20Board,had%20pushed%20it%20to%20>>.

³² Cox, E, "*Laval Becomes First University In Canada to Divest From Fossil Fuels*" (2017, February 15), online: *ricochet Media*, <<https://ricochet.media/en/1684/laval-becomes-first-university-in-canada-to-divest-from-fossil-fuels>>.

³³ CBC News, "*SFU to Slash Fossil-fuel Investments by Nearly Half by 2025*", (2019, November 28), online: CBC < <https://www.cbc.ca/news/canada/british-columbia/sfu-board-to-vote-on-cutting-school-s-fossil-fuel-investments-in-half-by-2025-1.5376186>>.

³⁴ UBC, "*Update: Next Steps Following Climate Emergency Declaration And Commitment to Divestment*" (2020, January 10), online: UBC <https://vpfo.ubc.ca/2020/01/ubc-update-moving-toward-divestment/>.

The fossil fuel divestment campaign at the UBC started somewhere in 2013³⁵. From 2013 to 2018, UBC refused to divest from fossil fuel companies. They cited multiple legal opinions that claimed that it would be against the fiduciary duty of the Board of Governors to divest³⁶. Moreover, they argued that divestment might not be an effective tool to fight climate change. However, in 2019, UBC completely changed their position and said they could divest without significantly affecting the bottom line. Although student activism played a crucial role, another significant change happened at UBC, and that was the change in the Board of Governors. At UBC, the provincial government appoints 11 out of 21 Board of Governors³⁷. Since the BC-NDP government came to power with the promise of fighting climate change³⁸, they appointed Board of Governors who were relatively progressive³⁹. With a new Board of Governors, UBC declared climate change an emergency and eventually adopted the fossil fuel divestment pledge⁴⁰.

UBC's story is not unique. Most universities in Canada have a similar structure. Provincial governments in Canada directly impact a university's governance structure as they appoint generally over 50% of the Board of Governors in Canada⁴¹. Although the Board of Governors are considered independent, the provincial government can easily replace them if they do not follow the government's directive. Similarly, SFU and Laval's fossil fuel divestment story is very similar

³⁵UBC 350, "*Divestment at UBC*" (2020), online: Climate Justice UBC <<http://www.ubcc350.org/divestment-at-ubc>>.

³⁶ University of British Columbia, "*UBC Divestment Proposal*" (2015), online: UBC <<https://vpfinance.ubc.ca/files/2016/07/Memo-to-UBC-re-Divestment-Proposal.pdf>>.

³⁷ University of British Columbia, "*Appointed by the Province*" (2020), online: UBC <<https://bog.ubc.ca/board-members/board-members/appointed-by-the-lieutenant-governor/>>.

³⁸ Lee, M, "*Climate Change and Energy Issues in the 2017 BC Election Platforms*" (2017, April 18), online: Policy Note: <<https://www.policynote.ca/climate-change-and-energy-issues-in-the-2017-bc-election-platforms/>>

³⁹ I closely examined the backgrounds of the Board of Governors appointed by the provincial government in the past three years. Many of those appointed have social justice backgrounds.

⁴⁰ University of British Columbia, "*UBC Declares Climate Emergency and Moves Forward on Two Key Divestment Initiatives*". Retrieved December 10, 2020, online: UBC <<https://news.ubc.ca/2019/12/05/ubc-declares-climate-emergency-and-moves-forward-on-two-key-divestment-initiatives/>>.

⁴¹ I examined the website from U-15 universities. Most universities have a similar structure.

to UBC, as the change in government directly impacted the university's fossil fuel divestment pledge. In the next section, I discuss the roots of fiduciary duty and argue why institutions can divest from fossil fuel companies without violating their fiduciary duty.

Section 2: Fiduciary Duty

A. Academic institution's fiduciary duty:

Black's Law Dictionary defines fiduciary as: "A person having [a] duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking."⁴²

Fiduciary duty is not a new concept; it has been crucial to societies' functioning from ancient times. Fiduciary responsibility has existed in Hammurabi's Code⁴³, the Bible⁴⁴, and Plato's *Republic*⁴⁵. The origin of fiduciary concept in civil law dates to the principles of Roman Law⁴⁶. Fiduciary duty has existed in common law for over three centuries. The first major case to outline fiduciary principles in English law comes from *Keech v Sandford*⁴⁷ which established a trustee's principle of loyalty. Since *Keech*, many other cases have established other principles like duty of prudence, impartially treating the beneficiaries, and to act in the best interests of the beneficiaries.

In British Columbia, *The Trustee Act* governs how trustees must manage the financial matters of the trust they control. Section 15.2 of *The Trustee Act*⁴⁸ says that "a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making

⁴² "Fiduciary Duty." *Black's Law Dictionary*. 5th ed, p 563.

⁴³ See Pritchard, J B, (ed) "Ancient Near Eastern Texts Relating to the Old Testament with Supplement" (2016), Princeton University Press.

⁴⁴ See Matthew 6:24. online: Bible Hub <<https://biblehub.com/kjv/matthew/6.htm>>.

⁴⁵ Aikin, B. F., & Fausti, K. A. (2010). Fiduciary: A historically significant standard. *Rev. Banking & Fin. L.*, 30, 155.

⁴⁶ See Ernest Vinter, "A Treatise on the History and Law of Fiduciary Relationship and Resulting Trusts", 3rd ed, Cambridge: Heffer & Sons (1955) at 1-14;

⁴⁷ *Keech v Sandford*, [1726] EWHC J76.

⁴⁸ *The Trustee Act*, RSBC 1996, c 464.

investments.”⁴⁹ The trustees⁵⁰ of an academic institution or the sub-trust they establish are ultimately responsible for managing the vast amounts of money in an institution’s endowment and pension funds. To put it simply, fiduciaries have a legal obligation to act in the best interests of the beneficiaries of the funds they manage. The beneficiaries of an academic institution’s endowment fund are primarily the students and professors.

B. Are highest financial returns the sole goal of an academic institution’s trust?

Although I discuss at length how divestment can lead to the highest financial returns in Section III, I argue that even if it did not, it would still be reasonable for trustees to divest from fossil fuel companies. To better understand the fiduciary duties of a trustee at an academic institution, one must understand the difference between trusts created for the benefit of a private individual(s) and a trust with a large number of beneficiaries, like an academic institution. Privately held trusts are usually those that deal with the management and transmission of private wealth. Therefore, the best interests of an individual have primarily been about maximizing financial returns while prudently weighing the risks. However, a public trust is different; it must consider the objectives of a trust in determining where one must invest the funds.

Historically, the law of trusts has measured prudence strictly in terms of financial gains⁵¹. However, it is now generally accepted that a trustee can make ethical investments as long as it does not increase the financial risks of an endowment fund. It is also important to acknowledge that trustees may not make financial investments in areas that conflict with the goals of a trust. For example, asking the Catholic church to invest in birth control, condoms, or the tobacco and alcohol industry to maximize profits would go against the objectives of the trust, and would shock

⁴⁹ *The Trustee Act, supra*, note 48.

⁵⁰ Most academic institutions use the term Board of Governors. In this paper, both the terms have been used interchangeably.

⁵¹ Manitoba Law Reform Commission, “*Ethical Investments by Trustees*” (1993) at 1.

the conscience of the beneficiaries. Therefore, in many cases, the best interests of the beneficiaries are not necessarily served by just maximizing profits. Similarly, one can argue that investing in fossil fuel companies goes directly against the objectives of a university's endowment fund of promoting sustainability, fighting climate change, and promoting reconciliation.

I will now discuss cases that have helped shape a trustee's fiduciary obligation. I will first discuss case law that has focused on maximizing profits. I will then discuss newer cases that allow for a more holistic approach while dealing with public trusts. Finally, I will argue the unique position that allows Canadian academic institutions to divest from fossil fuel companies without violating their fiduciary duty.

C. Case law dealing with fiduciary duty:

i) Case law prohibiting ethical investments:

Organizations opposed to divestment have commonly cited *Cowan v Scargill*⁵², an English trusts case, as a reason to not divest from fossil fuel companies. This case dealt with a pension scheme for the coal mining industry in the UK. There were ten trustees, of which five were appointed by the employer and five by the union⁵³. The trustees appointed by the union proposed restrictions to reduce foreign investments and to eliminate interests that were in direct competition with coal⁵⁴. However, the employer's trustees refused to go along with the limits proposed by the union trustees⁵⁵. The trustees appointed by the employer commenced legal proceedings against the union trustees and claimed that the union trustees were in breach of their fiduciary duties. The judge ruled that the "*paramount duty of the trustees is to provide the greatest financial benefits for*

⁵² *Cowan v Scargill*, [1984] 2 ALL ER 750.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

the present and future beneficiaries.”⁵⁶ Although *Scargill* is an important case, legal jurisprudence has evolved significantly, and other cases provide a more robust understanding of fiduciary duty that allows organizations to consider social and ethical issues into account while deciding on their investment practices.

ii) Case law allowing ethical investments:

The leading case that directly challenged the obiter dicta in *Scargill* is another trusts case from England called *Harries v The Church Commissioners for England*⁵⁷. In this case, the Church Commissioners had an investment policy that prevented alcohol, gambling, and tobacco investments⁵⁸. Certain commissioners wanted an even stricter investment policy. Although the judge refused to direct the commissioner to follow a more stringent approach, the judge ruled that trustees may take the beneficiaries’ social and moral interests where they relate to a trust’s objectives⁵⁹. The judge said, “*Trustees may, if they wish, accommodate the views of those who consider that on moral grounds a particular investment would be in conflict with the objects of the charity, so long as the trustees are satisfied that course would not involve a risk of significant financial detriment*”⁶⁰. *Harries* affirms *Scargill* but allows exceptions to accommodate the views on moral grounds since certain investments might go against the objectives of a charity⁶¹.

An American case that goes even further than *Harries* is *Board of Trustees of Employee Retirement System of the City of Baltimore v Mayor and City Councillors of Baltimore*⁶². In this case, the City passed Ordinances that divested from companies doing business in or lending money

⁵⁶ *Cowan v Scargill*, *supra*, note 52.

⁵⁷ *Harries v The Church Commissioners for England*, [1993], 2 All ER 300.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Harries v The Church Commissioners for England*, [1993], 2 All ER 300.

⁶¹ *Ibid.*

⁶² *Board of Trustees of Employee Retirement System of the City of Baltimore v Mayor and City Councillors of Baltimore*, 562 A 2d 720 (Court of Appeals of Maryland), 1989.

to companies doing business in South Africa⁶³. The court explicitly ruled that if the financial implications of investing with social considerations are minimal, then the fiduciaries will not be violating their duty of prudence or loyalty⁶⁴.

D. Unique place that academic institutions hold in society:

Academic institutions hold a unique place in society. Institutions of higher learning are crucial national assets that promote innovative thinking, create and nurture talent, and promote social justice, among many other goals. Academic institutions use their endowment fund to fulfill their academic mission. For example, the primary goal of UBC's endowment fund is to "*support the university's academic mission in perpetuity and to ensure that current and future generations of UBC students and researchers are able to benefit from the foresight and generosity of those who establish endowments*"⁶⁵. Similar to UBC, other academic institutions have similar missions⁶⁶. Students and professors have argued that investments in fossil fuel companies directly go against the objectives of a university's endowment fund since benefiting from fossil fuel companies goes against the academic institution's mission to fight climate change and promote reconciliation with Indigenous peoples⁶⁷.

Unlike many private trusts that act primarily to benefit a few individuals, academic institutions must act in the best interests of the beneficiaries, which are primarily the students and professors. The beneficiaries of an academic institution, mainly students and professors, argue that

⁶³ *Board of Trustees of Employee Retirement System of the City of Baltimore v Mayor and City Councillors of Baltimore*, *supra* at 62.

⁶⁴ *Ibid.*

⁶⁵ The University of British Columbia, "*The University Endowment*", online: UBC <<https://finance.ubc.ca/budgeting-reporting/endowment>>.

⁶⁶ Most academic institutions have similar goals. One can check the website of any university, and they will notice that the goals that are very similar.

⁶⁷ See, for example, Wood, Stepan. "*Letter: Debunking UBC's Legal Position on Fossil Fuel divestment.*", (19 Nov 2019), online: The Ubyyssey <www.ubyssey.ca/opinion/letter-debunking-ubcs-legal-position-divestment/>.

investments in fossil fuels directly go against the objectives of a university's academic missions; this is analogous to a religious institution that prevents investments in tobacco and alcohol because beneficiaries believe that it goes against their morals. The trustees of an academic institution must understand that they have a duty of care and a duty of loyalty to the beneficiaries of an academic institution, which are primarily the students and professors. Therefore, one can argue that the duty of care and loyalty is best served when the collective wisdom of students and professors to divest is considered in deciding where to invest; it also puts the trustees of an academic institution on strong legal footing should they choose to divest.

Although one can argue that the moral reasons are sufficient for universities to divest from fossil fuel companies, there is increasing evidence that universities will maximize their profits in the long run if they divested from fossil fuels. In the next section, I discuss some of the issues that makes the fossil fuel industry unstable and unprofitable.

Section 3: Financial Case for Divestment

One important requirement of a trustee's fiduciary obligations is the duty of prudence. A trustee must consider the long-term financial risks of fossil fuel investments. In this section, I argue that divestment is not just consistent, but it might also be required under one's fiduciary obligations. I argue that the long-term financial risks attached to the oil industry requires trustees to dump fossil fuel investments.

A. Fossil fuel investments are not as profitable as it used to be:

Trustees must understand that investments in fossil fuel companies are extremely unstable in the long run. Historically, fossil fuel industries led the stock markets⁶⁸. However, that is not the

⁶⁸ Institute for Energy Economics and Financial Analysis, "*The Financial Case for Fossil Fuel Divestment*" (2018, July), online: IEEFA, <http://ieefa.org/wp-content/uploads/2018/07/Divestment-from-Fossil-Fuels_The-Financial-Case_July-2018.pdf>.

case anymore. In the past few years, stock indexes without fossil fuel holdings have outperformed similar holdings that have fossil fuel companies⁶⁹. To put it simply, alternatives to fossil fuels are providing more financial returns on average. Incremental restrictions introduced by policymakers on carbon emissions have further aggravated the woes of the fossil fuel industry. Capping carbon emissions requires most fossil fuel reserves to stay in the ground⁷⁰. However, the ability to extract the entirety of fossil fuel reserves determines a company's value⁷¹. If one recognizes the reserves as unburnable/unextractable, it could have a massive impact on the companies; it could potentially lead to a significant devaluation in the share prices of fossil fuels⁷².

As society moves towards a low carbon economy, financial managers are also acknowledging that climate change is an essential factor that one must consider in defining the long-term prospects of a company⁷³. Larry Fink, the Chief Executive Officer of Black Rock, the world's largest money manager that has more than \$7 trillion in assets under management, published an annual letter where he said, "*Climate change has become a defining factor in companies' long-term prospects... But awareness is rapidly changing, and I believe we are on the edge of a fundamental reshaping of finance*"⁷⁴. Fink also said that he anticipates a significant

⁶⁹ Institute for Energy Economics and Financial Analysis, *supra*, note 68.

⁷⁰ McGlade, C, & Ekins, "*The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2 C* (2015), *Nature*, 517(7533), pp 187-190.

⁷¹ Grantham Research Institute on Climate Change And Environment, "Unburnable Carbon 2013: Wasted Capital And Stranded Assets" (2018, July), online: < <http://carbontracker.live.kiln.digital/Unburnable-Carbon-2-Web-Version.pdf>>.

⁷² *Ibid*.

⁷³ Lee, A H, "*Big Business's Undisclosed Climate Crisis Plans*" (2020, September 27), online: New York Times <https://www.nytimes.com/2020/09/27/opinion/climate-change-us-companies.html?referring_source=articleShare>.

⁷⁴ Meredith, S, "BlackRock CEO says the climate crisis is about to trigger 'a fundamental reshaping of finance'" (2020, January 14), online: <<https://www.cnbc.com/2020/01/14/blackrock-ceo-larry-fink-says-climate-change-will-soon-reshapemarkets.html#:~:text=In%20an%20annual%20letter%20to,of%20finance%2C%E2%80%9D%20he%20added>>.

reallocation of capital because of the climate crisis⁷⁵. The reallocation of financial resources directly impacts the prices of fossil fuel stocks, which affects the company's bottom line.

B. Lawsuits against the fossil fuel industry:

i) Analogous to tobacco legislation:

The trustees of a university's endowment fund must consider the long-term financial risks attached to lawsuits that the fossil fuel industry faces. One of the main reasons why fossil fuel stocks are economically unstable is because of lawsuits it currently faces and could potentially face in the future. Many have drawn comparisons between lawsuits that tobacco companies face and the oil industry. Litigation against tobacco companies failed for thirty years before people found the right legal strategy to hold tobacco companies accountable. From 1954 to 1996, tobacco companies did not pay a penny to their victims⁷⁶. It was only when Brooke Group Ltd., the parent company of Liggett & Myers Tobacco Company, settled with several suing states did other tobacco companies come rushing to settle lawsuits filed by attorney generals from each state in the United States⁷⁷. States accused tobacco companies of violating state consumer protection and antitrust laws⁷⁸. Since 1996, governments in Canada and the United States have successfully claimed billions of dollars in tobacco-related healthcare costs. Similarly, many believe that the fossil fuel industry could be liable for environmental damages caused by climate changes. The tobacco lawsuits were partly successful because whistleblowers divulged information that tobacco companies knew and tried to hide the link between smoking and cancer⁷⁹. Similarly, many argue

⁷⁵ Meredith, S, *supra*, note 74.

⁷⁶ Daynard, R A, Bates, C, & Francey, N, "Tobacco Litigation Worldwide" (2000). *Bmj*, 320(7227), pp 111-113.

⁷⁷ *Ibid*.

⁷⁸ Michon, K (nd), "Tobacco Litigation: History & Recent Developments", online: Nolo.com <<https://www.nolo.com/legal-encyclopedia/tobacco-litigation-history-and-development-32202.html>

⁷⁹ Walburn, R B (1999), "The Role of the Once-Confidential Industry Documents", *William Mitchell Law Review*, 25, 431, online: <<https://www.desmogblog.com/2020/09/28/wave-climate-lawsuits-exxon-api-fossil-fuels>>

that fossil fuel companies are misleading the public about the harms of greenhouse gases. For example, the Koch Brother spent millions of dollars to organizations that attacked climate change science⁸⁰.

One example of litigation against fossil fuel companies similar to tobacco comes from Minnesota. Minnesota's Attorney General, Keith Ellison, filed a case against Exxon Mobile and other companies for violating the state's consumer fraud protection laws⁸¹. The Attorney General accused fossil fuel companies of carrying out a campaign of deception⁸². Similarly, District of Columbia's Attorney General Karl Racine also filed a lawsuit against the world's four largest oil companies for "*systematically and intentionally misleading consumers in Washington, DC about the central role their products play in causing climate change*"⁸³. There is also evidence that some fossil fuel companies understood their impact on climate change and spent millions of dollars to spread misinformation⁸⁴. Although there are many other lawsuits in the United States, most have not been successful. However, as legal jurisprudence evolves, fossil fuel companies could eventually be held liable for environmental damages. When lawsuits start becoming successful against fossil fuel companies, it could significantly affect the financial returns of the oil industry.

ii) **Climate attribution science:**

Traditionally, fossil fuel industries focused heavily on nuisance claims; however, these days, many claims are about the companies misleading the public and downplaying the risks

⁸⁰ Green Peace, "*Koch-funded Climate Denial Front Groups*", (nd),online: GreenPeace

<<https://www.greenpeace.org/usa/global-warming/climate-deniers/front-groups/>

⁸¹ McDonnell, T, "*In New Lawsuits Against Big Oil, Prosecutors Borrow from the Fight Against Big Tobacco*" (2020, June 25), online: Qz.com <<https://qz.com/1873594/climate-lawsuits-against-big-oil-follow-the-big-tobacco-playbook/>>

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Savage, K, "*Why a Tidal Wave of Climate Lawsuits Looms Over the Fossil Fuel Industry*", (2020, September 28), online: <<https://www.desmogblog.com/2020/09/28/wave-climate-lawsuits-exxon-api-fossil-fuels>>

attached to fossil fuel companies⁸⁵. Holding fossil fuel companies liable for environmental damages is challenging, as it can be hard to prove causation. However, climate attribution science helps resolve causation between fossil fuel emitters and environmental damages through technological advances⁸⁶. Science has allowed claimants to increasingly identify and quantify the damages caused by specific projects effectively⁸⁷.

There is widespread consensus that humans are partly responsible for climate change. Climate attribution science has also allowed scientists to draw connections between extreme weather events and fossil fuel emissions⁸⁸. One could even argue that extreme weather events are reasonably foreseeable, and fossil fuel companies fail to address them. Although it is incredibly challenging to prove causation, more robust evidence linking fossil fuel companies with extreme weather events is emerging; this could make fossil fuel companies liable for damages.

iii) Evolving jurisprudence:

Trustees must also consider the impact of lawsuits in other parts of the world as it has a direct impact on fossil fuel profits. Many oil companies operate internationally and legal battles in one country has a direct impact on the bottom line of that company. As science advances, environmental activists have filed lawsuits against fossil fuel companies in many parts of the world. The separation of powers between the judiciary and policymakers have prevented many courts in North America to explicitly dictate governments to enact policies to fight against climate

⁸⁵ Hasemyer, D H, *"Fossil Fuels on Trial: Where the Major Climate Change Lawsuits Stand Today"*, (2020, January 17), online: Inside Climate News, <<https://insideclimatenews.org/news/04042018/climate-change-fossil-fuel-company-lawsuits-timeline-exxon-children-california-cities-attorney-general>>.

⁸⁶ Harvey, C H *"Scientists Can Now Blame Individual Natural Disasters on Climate Change"* (2018, January 2), online: Scientific America <<https://www.scientificamerican.com/article/scientists-can-now-blame-individual-natural-disasters-on-climate-change/>>.

⁸⁷ Auffhammer, M, *"Quantifying Economic Damages from Climate Change, Journal of Economic Perspectives, 32(4), (2018), pp 33-52.*

⁸⁸ Harvey, *supra* note 86.

change. For example, in *Juliana v US*, the Ninth Circuit Court of Appeals dismissed a case brought by *Our Children's Trust* that sought relief for the government's inaction in regulating pollution⁸⁹. The court acknowledged that fossil fuel consumption could wreak havoc but ruled that it did not have the necessary powers to dictate the US government to phase out fossil fuel companies⁹⁰. However, recent lawsuits in Europe have motivated activists to continue with legal challenges.

Although North America has not seen cases where courts have directed the government to enact policies to fight climate change, environmental activists have found major success in cases from cases in Europe. One case that made major international headlines is the *State of the Netherlands v Urgenda Foundation*⁹¹. In this case, 900 Dutch citizens sued the government to do more to combat global climate change. The Supreme Court of Netherlands affirmed the decision from lower Dutch courts that ruled that the Netherlands must reduce its carbon emissions by at least 25% compared with 1990 levels by the end of 2020⁹². The Supreme Court ruled that the Dutch government owed a duty of care to protect its citizens from climate change under the *European Convention for Protection of Human Rights and Fundamental Freedoms* (ECHR)⁹³. Although *Urgenda* is not the first climate change litigation, it is the first major successful climate justice case. The judgment from *Urgenda* has led to similar climate justice lawsuits in many other countries, including Belgium, Germany, and Ireland⁹⁴.

Another major success in climate justice lawsuit comes from the Philippines in a major climate justice case called *Re Greenpeace Southeast Asia and Others*⁹⁵. The Philippines launched

⁸⁹ *Juliana v US*, 339 F Supp 3d 1062 (D Or 2018).

⁹⁰ *Ibid.*

⁹¹ *State of the Netherlands v Urgenda Foundation*, Supreme Court of the Netherlands [*Urgenda*], online: <https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf>.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Schwartz, J, "In 'Strongest' Climate Ruling Yet, Dutch Court Orders Leaders to Take Action", (2019, December 20), online: New York Times<<https://www.nytimes.com/2019/12/20/climate/netherlands-climate-lawsuit.html>>.

⁹⁵ *In re Greenpeace Southeast Asia and Others (Philippines)*, Case No CHR-NI-2016-0001.

a three-year investigation to determine if major oil companies like Shell, British Petroleum, and Chevron, among many others, are liable for human rights harms caused by climate change⁹⁶. In 2019, The Commission on Human Rights of the Philippines ruled that the country's laws allowed for carbon polluters to be held liable for the human rights implications of climate change⁹⁷. The court also ruled that one could hold fossil fuel companies criminally accountable, "*where they have been clearly proved to have engaged in acts of obstruction and willful obfuscation.*"⁹⁸

Environmental activists have filed climate justice cases in several countries. In Germany, a lawsuit primarily led by Greenpeace Germany challenged the government's failure to reduce greenhouse gas emissions by 40% below 1990 levels by 2020⁹⁹. The plaintiffs alleged that the governments violated their human rights by not reducing carbon emissions by 40%¹⁰⁰. Although the court ruled that the government had broad discretion in shaping government climate policy, it ruled that the policies are subject to judicial review, and they must be compatible with the constitution that safeguards fundamental rights¹⁰¹. Many other countries have filed lawsuits, and as more substantial evidence emerges, it will add to the legal pressure that governments face to combat climate change. Moreover, it pressures universities to acknowledge the legal challenges in investing in fossil fuel companies.

⁹⁶ Mandel, K, "*It May Have Just Gotten A Lot Easier To Sue Exxon And Shell For Climate Change Devastation*" (2019, December 12), online: Huffington post <https://www.huffingtonpost.ca/entry/philippines-commission-on-human-rights-fossil-fuel-companies-liable-climate-change_n_5df1698de4b01e0f29597ad8?ri18n=true>.

⁹⁷ Ibid.

⁹⁸ Lamb, H, "*Fossil Fuel Firms Could Be Found Guilty for Human Rights Violations*" (2019, December 10), online: Engineering and Technology <<https://eandt.theiet.org/content/articles/2019/12/fossil-fuel-firms-could-be-found-guilty-for-human-rights-violations/>>.

⁹⁹ *Family Farmers and Greenpeace Germany v Germany* (2018), Case no 00271/17/R/SP, online: <http://climatecasechart.com/non-us-case/family-farmers-and-greenpeace-germany-v-german-government/>

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

iv) Protests by environmental activists and Indigenous people in Canada:

In Canada, fossil fuel companies have faced widespread protests from Indigenous communities, which have delayed projects and increased litigation costs¹⁰². Lawsuits and protests have caused significant delays in approving pipeline projects and have even caused some major projects to shut down¹⁰³. There are many examples where protests and the failure to consult and adequately accommodate the needs of Indigenous people in Canada have shelved pipeline projects. One example of successful activism that led to the shutting down of a major project was the Energy East pipeline; this pipeline aimed to deliver bitumen from Western Canada and the North Western United States to Eastern Canada¹⁰⁴. Indigenous communities protested the pipeline for failing to adequately consult and accommodate the needs of Indigenous peoples, and many environmental activists urged the National Energy Board to consider carbon emissions per year before approving the project¹⁰⁵. Widespread protests, delays, and other energy industry's economics forced Trans Canada to cancel the Energy East Pipeline.

The oil industry's financial viability is increasingly becoming uncertain. Widespread environmental activism has led to severe delays; this has hit many oil companies' bottom lines. These protests are becoming more robust and have highlighted how the fossil fuel industry fails to accommodate the concerns raised by Indigenous peoples.

¹⁰² Harder, A, "Protests Slow Pipeline Projects Across U.S., Canada", *The Wall Street Journal*, (2014, December 9), online: WSJ <<https://www.wsj.com/articles/protests-slow-pipeline-projects-across-u-s-canada-1418173235>>.

¹⁰³ The Canadian Press, "TransCanada Cancels \$15.7B Energy East Pipeline Project" (2017, October 5). In *calgaryherald.com*, online: The Canadians Press <<https://calgaryherald.com/business/energy/transcanada-cancels-energy-east-pipeline-project>>.

¹⁰⁴ Canada Energy Regulator, "Energy East and Eastern Mainline Projects" (2020, September 29), online: <https://www.cer-rec.gc.ca/en/applications-hearings/view-applications-projects/energy-east/index.html>.

¹⁰⁵ Tucker, B, "Social Movements Played a Huge Part in Derailing Energy East" (2017, October 12), online: CBC <<https://www.cbc.ca/news/opinion/social-movements-energy-east-1.4344080>>.

C. Oil prices:

The profits of a fossil fuel company are dependent on the prices of oil. Fossil fuel companies want oil prices to rise; however, there are a wide number of reasons that are keeping the prices of oil much lower than what fossil fuel companies want. Paradoxically, one of the reasons why oil prices have seen a major decline is due to technological advances in the oil and gas sector, which has increased the supply of cheap oil and gas¹⁰⁶. Oil prices have also gone down because of an excess supply of oil. The average oil prices in 2008 peaked at \$99.67 per barrel. The average oil price in 2020, has been around \$39.23¹⁰⁷. To make problems worse for oil companies, countries like Saudi Arabia have launched a price war to consolidate a wider share of the oil market by supplying excess oil¹⁰⁸.

The fossil fuel industry's share in meeting the world's energy needs has been on a steady decline. There is also a strong probability that the value of fossil fuel holdings will deflate in the future for a wide diversity of reasons. It is important to note that even small losses in terms of market share significantly impact the prices of oil and profits.

D. Costs of Producing Renewable sources of energy is decreasing:

The desire to fight climate change has led to an increase in investments in renewable sources of energy. As technology advances, the costs of producing renewable sources of energy has reduced significantly¹⁰⁹. The most significant increase has come in terms of solar energy. As technology advances, solar energy is becoming increasingly more efficient. The costs of producing

¹⁰⁶ *Institute for Energy Economics and Financial Analysis*, *supra* note 68.

¹⁰⁷ Macrotrends, "Crude Oil Prices- 70 Year Historical Chart", (2020), online: Macrotrends <<https://www.macrotrends.net/1369/crude-oil-price-history-chart>>.

¹⁰⁸ Raval, A, Sheppard, D, & Bower, D, "Saudi Arabia Launches Oil Price War after Russia Deal Collapse", (2020, March 8), online: Financial Times <<https://www.ft.com/content/d700b71a-6122-11ea-b3f3-fe4680ea68b5>>.

¹⁰⁹ Tierney, S, "Setting the Record Straight About Renewable Energy", (2020, May 12), online: World Resources Institute <<https://www.wri.org/blog/2020/05/setting-record-straight-about-renewable-energy>>.

solar energy have reduced significantly, and at these low prices, it costs less to produce solar energy than coal power plants.¹¹⁰ A recent report from Lazard measured the total production cost of building and operating an electricity-generating plant¹¹¹. Lazard reported that in 2017, it cost \$102 per megawatt-hour to produce coal, whereas solar cost \$50 to produce one megawatt-hour¹¹². From 2009 to 2017, the costs of producing solar energy has decreased by 86%¹¹³. The cost of producing wind energy has decreased significantly, and many expect that the production costs will fall further¹¹⁴.

Many regions worldwide, including India, have shelved fossil fuel projects because it is now more financially profitable to invest in renewable energy sources¹¹⁵. Two coal-producing states, Gujarat and Chhattisgarh, have announced that they will not be building any new coal plants going forward¹¹⁶. Instead, many Indian states plan to meet the growing energy demands through solar energy¹¹⁷. Both India and China have invested large amounts of money in renewable sources of energy. Since 2004, the world has invested \$2.4 trillion in renewable energy sources¹¹⁸. Governments all over the world continue to provide incentives to invest in solar and wind energy.

¹¹⁰ Lazard's Levelized Cost of Energy Analysis- Version 11.0, *"Setting the Record Straight About Renewable Energy"* (2017, November), online: Lazard, <<https://www.lazard.com/media/450337/lazard-levelized-cost-of-energy-version-110.pdf>>.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Berke, J, *"One Simple Chart Shows Why an Energy Revolution is Coming — and Who is Likely to Come Out on Top"* (2018, May 8), online: Business Insider <<https://www.businessinsider.com/solar-power-cost-decrease-2018-5>>.

¹¹⁵ Rathi, A, & Singh, K, *"One of India's Largest Coal-mining States says it will not Build New Coal Power Plants"* (2019, May 30), online Qz.com <<https://qz.com/india/1709483/after-gujarat-indias-chhattisgarh-wont-build-coal-power-plants/>>.

¹¹⁶ Ibid.

¹¹⁷ Dvorak, P, *"Can Solar Power Compete With Coal? In India, It's Gaining Ground"* (2020, February 17), online: The Washington Street Journal, <<https://www.wsj.com/articles/solar-power-is-beginning-to-eclipse-fossil-fuels-11581964338>>.

¹¹⁸ Frangoul, A, *"China becomes a 'driving power' for Solar Energy with \$86.5 billion Invested Last Year"*, online: CNBC <<https://www.cnbc.com/2018/04/06/china-becomes-a-driving-power-for-solar-energy-with-86-point-5-billion-invested-last-year.html>>

For example, the government is heavily subsidizing the rooftop solar system in India¹¹⁹. Similarly, China has invested millions of dollars in subsidizing new solar projects¹²⁰. These subsidies and incentives make renewable energy sources even more lucrative as they increase financial profits that investors can make.

¹¹⁹ Prateek, S, “*Rooftop Solar Projects to be Heavily Subsidized in Uttar Pradesh*”, (2018, January 9), online: Mercom Media <<https://mercomindia.com/up-to-subsidize-rooftop-solar/>>

¹²⁰ Reuters Staff, “*China to Allocate \$435 million Subsidies for Solar Projects in 2019*” (2019, May 30), Reuters: <<https://ca.reuters.com/article/idUSKCN1T0109>>.

Conclusion:

As society becomes more environmentally conscious, there is pressure on all sectors to become more environmentally sustainable. Divestment is an essential tool that stigmatizes the fossil fuel industry and creates a more environmentally sustainable society. The divestment campaign gained steam in 2012 and has shown no signs of stopping. Although the movement started at a few college campuses, it has now spread worldwide.

Some academic institutions have cited fiduciary duty as a reason to not divest from fossil fuel companies. Many believe that an academic institution citing fiduciary duty as a reason not to divest have either misunderstood what fiduciary duty entails or have other motivations not to divest. Two critical reasons allow academic institutions to divest without violating their fiduciary duty. Firstly, there is a strong financial case for divestment. Fossil fuel industries are not as profitable as it used to be, and stocks without fossil fuel companies yield excellent financial profits. Moreover, fossil fuel projects are facing significant delays and opposition. Secondly, academic institutions hold a unique place in society as they aim to promote innovation and social justice. Many believe that investing in fossil fuel companies goes directly against the objectives of a trust.

Fighting climate change requires strong environmental leadership that prioritizes social and environmental sustainability. Divestment is the first step that one can take to promote environmental sustainability. Moreover, it is hypocritical for academic institutions to talk about reconciliation and environmental sustainability while profiting from fossil fuel companies that build pipelines on sacred Indigenous lands.