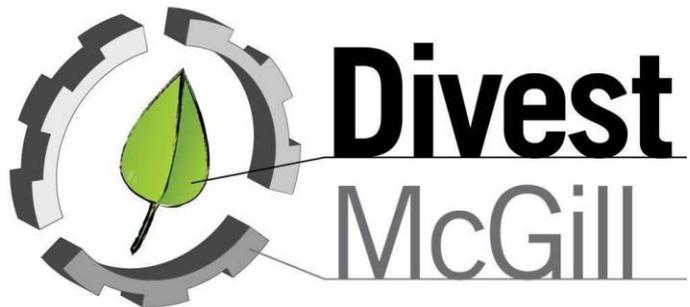


# Evidence of Social Injury for Enbridge, Inc. and Royal Dutch Shell

Supplemental Case Studies to Carbon at all Costs: The Fossil Fuel Industry and the Case for Divestment



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## **Case studies: evidence of social injury for two selected corporations**

Royal Dutch Shell and Enbridge, Inc. are prime examples of the harm fossil fuel corporations can cause. In addition to being contributors to climate change, each has a continuing history of social injury, both in Canada and around the world. Moreover, each company is involved in the tar sands, which this submission shows is unburnable and therefore irresponsible to extract.

Furthermore, by continuing to invest in these companies despite evidence of their social injury, the university indicates that it is supportive of extreme fossil fuel extraction and unconcerned about the legal and human rights records of the companies in which it invests. In contrast, divestment would send a positive message: that the university is committed to addressing climate change, and willing to start implementing that commitment by selling its holding in particularly problematic investments.<sup>1</sup>

### **Enbridge, Inc.**

Enbridge, Inc. is a 65 year old Canadian energy transport company based in Calgary, Alberta. Enbridge also owns a number of subsidiaries which we will include as part of our investigation into its socially injurious activities.<sup>2</sup>

Enbridge enables the top 200 fossil fuel companies as its pipelines and infrastructure are crucial to the continued social injury of the oil sands and of other fossil fuel exploitation projects. It also commits social injury through its own poor environmental and human rights record. Furthermore Enbridge has a clear intention to continue harm by transporting diluted bitumen, a significant threat to drinking water and corrosive to pipes. Although Enbridge does not have a carbon reserve, Enbridge is an aggressive lobbyist and because its pipelines pass throughout the country, is one of the main salesmen for inadequate action on climate change. Moreover, it has no intention of limiting its operations to the internationally agreed 2 °C limit, meaning Enbridge fully intends to subvert international agreements and efforts. Evidence for these assertions is found in the proceeding text.

### **Enbridge's continuing history of social injury**

#### **OSCENSA and Involvement in Colombian government's human rights' abuses**

Enbridge's fifteen year partnership in the Oleoducto Central S.A. (OCENSA) pipeline consortium implicates it in Colombian human rights abuses in the 1990s and 2000s.<sup>3</sup> OCENSA is a 519 mile (836 kilometer) pipeline<sup>4</sup> connecting the oil fields at Cusiana and Cupiagua, Colombia, to Coveñas, a port on the Caribbean coast of the country.<sup>5</sup> The pipeline transports 590,000 barrels of crude oil per day, about 60% of Colombia's crude oil

production, and 70% of its crude oil exports.<sup>6 7</sup> Enbridge was a major partner in the consortium from its beginnings in 1994 up to 2009, originally holding 17.5% interest in the projects, and moving up to 24.7% in 2000.<sup>8</sup>

In 1998 Amnesty International found that OCENSA had purchased military equipment from a particularly brutal brigade of the Colombian military.<sup>9</sup> Amnesty International further asserted that OCENSA engaged in spying on Colombian citizens, notifying the Colombian government of potential threats to its security, prompting assassinations and summary executions by the military and arranged ‘disappearances’ of civilians.<sup>10</sup> Assassinations and death threats from paramilitary groups met families, communities, and lawyers who attempted to fight back by suing the companies involved in OCENSA.<sup>11</sup>

Beyond the employment of paramilitary groups responsible for the deaths of thousands of innocent Colombian citizens, the construction and presence of the OCENSA pipeline has caused such rapid and extreme environmental degradation in the areas it runs through, that families and communities who used to support themselves on the land find themselves without clean water sources or soil that can support subsistence farming.<sup>12 13</sup> Though for the first two years of construction landowners were compensated for the loss of land through which the pipeline was built but this soon gave way to building without consent or compensation for landowners or for those affected by the pipeline.<sup>14</sup>

In light of these facts, Canadian shareholders responded in 2001 by filing a shareholder resolution, which was withdrawn about a year later at the pledge of Enbridge and OCENSA to adopt better human rights policies.<sup>15</sup> In spite of this, Amnesty International and Human Rights Watch, among others, “continue[d] to warn oil businesses in Colombia that voluntary protocols are not enough to avoid complicity in the systematic abuses ongoing against Indigenous Peoples, farmers, and trade union leaders.”<sup>16</sup> According to the Canadian Centre for Policy Alternatives (CCPA), these promises were lacking in both content and in a clear timeline over which they would be enacted and monitored.<sup>17</sup> The CCPA further noted that considering the atrocities it had already committed, the idea of providing human rights training to the Colombian army was completely unreasonable, as rights violations were the manner in which the army conducted its business and were inherent to its structure.<sup>18</sup>

In 2009 Enbridge sold its 24.7% interest in OCENSA to Colombian national oil company Ecopetrol for USD \$400 million.<sup>19</sup>

### **Oleoducto al Pacifico**

Regardless of its suspect history of business practice in Colombia and the vagueness of its response to human rights groups’ condemnations and shareholder resolutions, Enbridge has a new pipeline project in the works. As of Enbridge’s 2012 “Annual Investment Community Conference” the “initial development phase” of the project was completed for

what will be a heavy oil pipeline<sup>20</sup> going from Colombia and Venezuela to the Colombian Pacific coast for export to Asian markets.<sup>21</sup> The pipeline will move between 250,000 and 400,000 barrels of oil a day 760 kilometres through 35 Colombian municipalities and is set to begin construction in 2015.<sup>22</sup> The project, dubbed the Oleoducto al Pacifico, is in collaboration with Cenit (a subsidiary of Colombia's national oil company, to which Enbridge sold its interest in OCENSA in 2009), Pacific Rubiales, and Vitol (energy companies of Canada and the Netherlands, respectively).<sup>23</sup>

### **History of pipeline failures in the US and Canada; Kalamazoo River spill**

Enbridge was responsible for over 800 spills across its operations between 1999 and 2010,<sup>24</sup> including the spill of almost 4 million litres of diluted bitumen into the Kalamazoo River in Michigan.<sup>25</sup> In total these ten years of spills are estimated to have released 161,475 barrels (about 25.67 million litres) of oil, in various states, into the environment.<sup>26</sup> Enbridge has received fines and warnings for ignoring key safety standards, including pipeline pressure limits, maintenance requirements, employee training, and ignoring built-in warning systems.<sup>27</sup> Incidents of these negligent and irresponsible practices have led to spills and explosions responsible for environmental degradation, contamination of air and water, and even death of civilians and employees.<sup>28</sup>

Enbridge's response to emergencies has proved (thorough experience and experiment) to be poorly organized and slow. Aside from delayed or inadequate responses to actual pipeline failures, including the Kalamazoo River spill, a TéléQuébec documentary tested Enbridge's emergency response number posted at a valve less than two kilometers from a St. Lawrence tributary: after four and a half minutes on hold the journalist was told that an emergency technician would call back during normal business hours.<sup>29</sup> Moreover, Enbridge had claimed that all valves in Quebec are remote controlled from Edmonton whereas the valve in the documentary is clearly a hand-crank, as Enbridge later admitted. This matters because studies on US government spill data on Enbridge show that the general public still detects more spills than computer-based leak-detection systems.

### **Kalamazoo River Spill**

In 2010 Enbridge was responsible for the spill of 20,000 barrels (3.2 million litres) of diluted bitumen into Michigan's Kalamazoo River. The spill contaminated over 36 miles of the Kalamazoo River and two miles of one of its tributaries with diluted bitumen, sinking to the bottom of each river due to its high density.<sup>30</sup> Submerged bitumen in the two rivers and the nearby Morrow Lake was more difficult, time consuming, and expensive to clean up than any conventional oil spills.<sup>31</sup> In addition, a mixture of chemicals, including benzene, (used to dilute the highly viscous bitumen to a consistency that can be pumped through a pipeline) separated from the bitumen and were released into the air.<sup>32</sup> 30 to 50 homes near the site of the spill were evacuated due to the toxic fumes.<sup>33</sup> After the spill and in spite of

multiple alarms, Enbridge failed shut the pipeline down for 17 hours and did not notify authorities of the leak until nearly 2 hours after it was detected.<sup>34</sup> The pipeline was 41 years old at the time of the spill, and carrying a product known to be more corrosive than natural gas or crude oil.<sup>35</sup> Enbridge's internal assessments showed six "crack-like defects" in 2005 which went unrepaired.<sup>36</sup> Enbridge was also warned of possible problems with Line 6B seven months prior to the spill, in a letter from the Pipeline and Hazardous Materials Safety Administration (PHMSA) that also stated the company's corrosion monitoring was not up to federal standards.<sup>37</sup>

In total the spill cost over \$1 billion and upwards of four years to clean.<sup>38 39</sup> In July 2012 the U.S. National Transportation Safety Board found that Enbridge "poorly maintained"<sup>40</sup> the section of pipeline responsible for the spill. In addition, the company was fined \$3.7 million for the spill by the US government.<sup>41</sup> Though the EPA made Enbridge's responsibility for the cleanup of the spill clear, the company stalled and resisted orders to dredge parts of the river that remained contaminated two and a half years after the original spill.<sup>42</sup>

Line 6B, built in 1969, is a 293 mile section of the Lakehead System, the United States portion of the Enbridge Pipeline System, which transports crude oil and diluted bitumen between Canada and the United States.<sup>43</sup> The Lakehead System is 1900 miles long and is owned by Enbridge Inc. through Enbridge Energy Partners, LP.<sup>44</sup> This line transports Alberta tar sands diluted bitumen from Griffith, Indiana to Sarnia, Ontario, where it is refined.<sup>45</sup> In 2014 Enbridge began to replace Line 6B, with plans for the new pipeline to follow the same path as the old one, but have more than double the capacity (500,000 barrels per day).<sup>46</sup> The pipeline will continue to transport diluted bitumen.

### **Enbridge's notable spills and pipeline failures, 2000-present**

In 2001 a leak in the Energy Transportation North Pipeline spilled almost 24,000 barrels of crude oil near Hardisty, Alberta. The Transportation Safety Board of Canada had previously identified wear on the pipeline, but Enbridge ignored the warning.<sup>47</sup>

In 2002 a pipeline owned by Enbridge Energy Partners (an affiliate of Enbridge, Inc. which owns the company's U.S. mainline, the Lakehead System) ruptured and 6,000 barrels (953,923 litres) of crude oil spilled near Cohasset, Minnesota.<sup>48</sup>

In 2003 over 715,400 litres of crude oil spilled from the Enbridge Energy Terminal in Superior, Wisconsin into the Nemadji River.<sup>49</sup>

In 2003 a pipeline owned by Enbridge Gas Distribution, Inc. exploded, killing seven people, injuring four others, and destroying a two-story strip mall in Etobicoke, Toronto.<sup>50</sup> Enbridge pleaded guilty to two charges, one under the Occupational Health and Safety Act and one under the Technical Standards and Safety Act, ultimately paying \$875,000 in fines.<sup>51</sup>

In January 2007, about 189,270 litres of crude oil leaked into a Wisconsin farmer's field in the Town of Curtiss.<sup>52</sup>

In February 2007, a pipeline burst while crews worked to extend new pipeline, spilling 666,232 litres of crude oil in Rusk County, Wisconsin, contaminating the local water table. The pipeline under construction, also a project of Enbridge's, runs 320 miles from Superior, Wisconsin to near Whitewater, Wisconsin.<sup>53</sup>

In November 2007 an Enbridge pipeline exploded in Clearbrook, Minnesota, while under repairs.<sup>54</sup> The explosion killed two workers.<sup>55</sup> In 2010 the PHMSA found Enbridge Energy Partners guilty of failing to hire properly trained workers and of practicing unsafe and inadequate maintenance and repair, and was fined over 2.4 million dollars.<sup>56</sup>

In 2009 4,000 barrels spilled at an Enbridge terminal near Anzac, Alberta, from a leak that remained undetected for 3 hours.<sup>57</sup>

In January 2010 the Line 2 pipeline (part of the Lakehead System) leaked nearly 3,800 barrels of crude oil in North Dakota.<sup>58</sup>

In September 2010 Line 6A spilled 7,538 barrels near Romeoville, Illinois, causing nearly 47.4 million dollars in property damage.<sup>59</sup>

In 2012 more than 1,000 barrels (about 189,270 litres) of oil spilled from Enbridge affiliate-owned the Lakehead System's Line 14 in Wisconsin.<sup>60</sup>

In 2013 about 1,300 barrels leaked from Enbridge's Line 37 near Cheecham, Alberta. The pipeline was only five years old at the time.<sup>61</sup>

In 2014 Enbridge's Line 4 pipeline spilled 1,350 barrels of oil in 2 minutes and 26 seconds at a pumping station in Regina, Saskatchewan.<sup>62</sup>

## **Clear intent to continue threats to human rights, environmental well-being, and international law**

### **Northern Gateway Pipeline**

Members of human and environmental rights groups and dozens of First Nations, among other groups and individuals, have opposed the Northern Gateway pipeline project due to its projected harm to the land that it will travel through and its inhabitants. In May 2014, James Anaya, former United Nations Special Rapporteur on the Rights of Indigenous Peoples published a report titled "The Situation of Indigenous peoples in Canada."<sup>63</sup> This report, which received praise and agreement from the Canadian Human Rights Commission,<sup>64</sup> held that Enbridge's proposed Northern Gateway pipeline was at the top of

a list of Canadian projects potentially harmful to Indigenous peoples.<sup>65</sup> Through their signing of the Save the Fraser Declaration, over 130 First Nations declared their opposition to this project, which would cut through Indigenous territories.<sup>66</sup> In addition, the Yinka Dene Alliance, in a meeting with Anaya, allege that the United Nations Declaration on the Rights of Indigenous Peoples is violated by both Canada and British Columbia (the province through which much of the pipeline would run) because of their lack of willingness to meaningfully consult with and seek approval from the Indigenous occupants of the territory, and for the want of recognition given to Indigenous peoples in the over 200 stipulations for the pipeline's construction and operation.<sup>67</sup>

The risk of an oil spill causing serious ecological and economic harm looms large in the case of the Northern Gateway pipeline. First, there is the potential for spills from the pipeline itself, which will carry 525,000 barrels of oil per day over 1,170 kilometers. As Enbridge's history of pipeline incidents suggests, this risk is significant. Gunton and Broadbent's (2013) extended sensitivity analysis of spill data for Enbridge's pipeline system projects 776 oil and condensate spills from the Northern Gateway pipeline over a 50 year period, or about 15-16 spills every year.<sup>68</sup> Alarming, this is 31 times higher than Enbridge's own estimate.<sup>69</sup> As Marc Lee notes in a Policy Alternatives report on the project: "Crossing mountainous terrain, afflicted by wide swings in natural weather patterns, and transporting an inherently flammable and explosive substance, the question is not if the pipeline will leak, but when, how much, and how often."<sup>70</sup>

Also worrying is the vastly increased risk of tanker spills off the BC coast that the Northern Gateway project engenders. Tanker spills are notoriously destructive as well as notoriously difficult and costly to clean up; recovering 15 percent of the oil from a significant tanker spill is considered successful.<sup>71</sup> The Northern Gateway project will increase tanker traffic in the Douglas Channel by about 225 tankers per year.<sup>72</sup> The OSRA model, an industry standard that the US government uses to estimate spill risk, projects 4 to 10 tanker spills greater than 1,000 bbl over a 50 year period as a result of the pipeline.<sup>73</sup> Disturbingly, this number is again much larger than Enbridge's estimate, in this case 20 to 50 times larger.<sup>74</sup> Gunton and Broadbent (2013) note: "Despite its widespread use, the OSRA model was not used or referenced by Enbridge. Enbridge provides no justification for not using the OSRA model."<sup>75</sup>

Indeed, Enbridge has demonstrated inadequacy in assessing and considering the potential for spills from the project. Gunton and Broadbent (2013) undertake a detailed examination of Enbridge's risk assessment methodology and conclude: "Enbridge's oil spill risk assessment contains methodological deficiencies and does not therefore provide an accurate assessment of the degree of risk associated with the ENGP."<sup>76</sup> The authors outline twenty-eight serious inadequacies in Enbridge's risk assessment methodology, including "reliance on tanker incident frequency data that under-report incidents by between 38 and

96%,” “failure to effectively consult with stakeholders to determine a level of acceptable risk for tanker, terminal and pipeline spills,” and review of the company’s estimates by experts who “lack independence and third party status.”<sup>77</sup> In 2012, Enbridge was the subject of public outcry and an official complaint under the Competition Act when they were accused of “false or misleading advertising and deceptive marketing practices” because of an ad they released to promote the pipeline.<sup>78</sup> In the ad, a video animation depicts a tanker moving unimpeded through an open Douglas Channel, from which the animators have erased more than 1,000 square kilometers of islands.

The pipeline would have significant adverse impacts on the Gitga’at first nation and their economic interests, and as a result of “the large role the Gitga’at Territory plays in the regional economy,” these adverse impacts would extend to the “broader public interest.”<sup>79</sup> *Even without a spill*, negative impacts on the Gitga’at first nation would result from the project; the potential for the project to negatively affect fishing and traditional harvesting activities (in both of these areas even relatively small effects would be significant for the Gitga’at) as well as to undermine ecosystem service and conservation projects involving the Gitga’at already places the project at odds with the Gitga’at’s well-being even before considering the effects of a spill.<sup>80</sup> The Gitga’at have declared their opposition to the Northern Gateway pipeline and along with the Coastal First Nations recently launched a court challenge against the provincial government, under the contention that the province did not consult them before approving the project.<sup>81</sup>

Even more serious and detrimental impacts—on First Nations, the broader public, and the ecosystems of the BC coast—would be realized in the event of a spill.<sup>82</sup> A spill as small as 233 m<sup>3</sup> (1500 barrels (bbl)) could cause serious ecological and economic harm, yet Enbridge has failed to even consider spills of less than 10,000 m<sup>3</sup> in their analysis of potential impacts.<sup>83</sup> The area of the BC coast potentially affected by the Northern Gateway project is part of the Pacific North Coast Integrated Management Area (PNCIMA), an extremely diverse and ecologically sensitive area; 44% of the zone is recognized as “ecologically and biologically significant,” and it makes up 22% of the ocean area included in Canada’s exclusive economic zone on the West Coast.<sup>84</sup> According to a 2013 UBC Fisheries Centre study, a major tanker spill off the coast of BC could come with a cleanup cost of \$9.6 billion, and also put a \$300 million dent in BC’s ocean-based industries such as tourism and fishing.<sup>85</sup> Considering that thirty percent of the population of BC’s North Coast is directly or indirectly employed through ocean-based industries,<sup>86</sup> this damage could significantly affect the livelihood of a large portion of the province. Additionally, impacts could prove irreversible: an oil spill into the Fraser or Skeena watersheds, which the pipeline would cross, could wipe out already vulnerable salmon populations forever.<sup>87</sup> Disturbingly, in 2011 Enbridge successfully lobbied the conservative government to pull out of a \$8.3 million deal with an American environmental trust that would have provided funding and organization for marine planning in the PNCIMA.<sup>88</sup> The government had

previously approved the deal after extensive consultation with conservation groups, BC's ocean-based industries, First Nations, and scientists, and the deal was poised to make Canada a world leader in oceans management.

Through inadequate assessments and flawed methodologies, Enbridge has failed to adequately consider the effects of a spill and examine potentials for mitigation. In assessing a potential spill in Wright Sound, for instance, Enbridge has not considered the effects of spills smaller than 10,000 m<sup>3</sup> (even when much smaller spills are more frequent and have been shown to have significant impacts), has not considered the effects of a worst-case scenario involving a high-volume tanker spill, and has shown "insufficient baseline knowledge of traditional marine use by First Nations in the PNCIMA region," among other inadequacies.<sup>89</sup> Enbridge's analysis also reveals "deficiencies in compensation plans to mitigate damages of impacted parties."<sup>90</sup>

Finally, in addition to the substantial ecological and economic harm that the Northern Gateway project would bring about, the pipeline would significantly exacerbate greenhouse gas emissions.<sup>91</sup> This alone makes the project harmful and out of line with avoiding dangerous climate change.

### **Line 61 expansion**

Although it does not receive the same public interest as TransCanada's Keystone XL pipeline—thanks to the Wisconsin Department of Natural Resources lack of public hearings and publicity keeping the project out of the spotlight—the Line 61 expansion project will far exceed Keystone XL's capacity and impact.<sup>92</sup> Enbridge aims to increase the capacity of the existing pipeline from 560,000 barrels per day to 1.2 million.<sup>93</sup> Line 61 transports Alberta oil sands crude oil from Superior, Wisconsin to either Chicago-area refineries or to pipelines headed for the Gulf Coast.<sup>94</sup> The Wisconsin DNR conducted a single hearing on air quality in 2006—four years before the Kalamazoo's spill—and claims the project's safety concerns have been sufficiently addressed.<sup>95</sup> No environmental impact study was carried on beforehand, with the DNR standing by to claim an impact study is not necessary, evidence indicates that diluted bitumen spills pose tremendous risk to the natural environment and human health.<sup>96</sup> This unusual action (or rather lack thereof) is strikingly inadequate and some argue that the exaggeratedly large payments made by Enbridge to public agencies and individuals for the right to host the pipeline on their lands may have had a hand in its seamless approval.<sup>97</sup>

Wisconsin's Dane County Zoning Committee alone stalls Line 61 becoming fully operational by delaying approval for the pipeline's 12th and final pumping station.<sup>98</sup> The committee lacks the authority to deny Enbridge a permit outright, but can demand that Enbridge prove it is prepared and insured for a spill on the level of the disastrous Michigan's Kalamazoo River spill.<sup>99</sup> Enbridge has no insurance on the pipeline and little money

reserved to cope with cleanup and environmental and property damage in the event of a large spill.<sup>100</sup> Some critics of the project believe that taking out the insurance necessary to cover Line 61 in a Kalamazoo-level failure would be more than the company is willing to pay.<sup>101</sup> Indeed, the company obtained insurance that would be inadequate for a disaster on the scale of Kalamazoo, but justified this with the eyebrow-raising argument that U.S. local, state, and federal governments could pay for the rest of the cleanup cost. Both the Dane County Zoning Committee and the Sierra Club are now pressuring Enbridge to take this extra step before going ahead, risking legal action from the corporation in their attempt to hold it accountable for future disasters.<sup>102</sup>

### **Line 9 reversal and expansion**

As it exists Line 9 is a 76.2-cm pipeline that carries approximately 240,000 barrels of oil per day from Montreal, QC to Sarnia, Ontario.<sup>103</sup> The pipeline is 39 years old (built in 1976) and its direction has already reversed once, in 1998, to bring imported crude from West Africa and the Middle East to refineries in Quebec and Ontario.<sup>104</sup> Enbridge reversed Line 9A, extending from North Westover, Ontario to Sarnia, between 2012-2013; the pipeline currently flows eastward.<sup>105</sup> Enbridge's proposed project now is to reverse the rest of Line 9 (Line 9B) and expand its capacity from 240,000 barrels per day to 300,000 barrels per day.<sup>106</sup> Enbridge states that this 20 per cent increase in capacity will not entail replacing any existing pipeline, but rather will involve installing Drag Reducing Agent (DRA), a polymer intended to reduce friction of the light and heavy crude pumped through the pipes.<sup>107</sup>

Line 9, the twin of the line 6B pipeline that burst in Kalamazoo, crosses creeks and rivers in heavily populated areas (including the Greater Toronto Area, 60 centimetres above a subway station)<sup>108</sup> that drain into Lake Ontario, which is a water source for millions of people.<sup>109</sup> In addition, the pipeline (which, again, is 39 years old and not built to carry the corrosive diluted bitumen intended with the pipeline reversal) will cut through "ecologically sensitive area" around the Rouge River and pass a tributary of the St Lawrence River.<sup>110</sup>

The NEB initially approved the project, hinging on 30 conditions, in March 2014, in spite of strenuous objection by communities along Line 9B's path and environmental groups.<sup>111</sup> The approval notably lacked requirement of a hydrostatic test for the existing pipeline to test for leaks and to determine if it could contain the predicted pressure.<sup>112</sup> Also lacking was an independent, third-party review of Enbridge's research on the effects of the proposed reversal and expansion. Though for many groups the NEB's conditional approval of the Line 9 project was insufficient, Enbridge managed to evade the few requirements demanded of them. In October 2014 Enbridge requested that the NEB altogether drop the requirement for shut-off valves near waterways.<sup>113</sup> The NEB delayed permission to open the newly reversed and expanded Line 9B in November 2014 due to Enbridge's inadequate

information on valve placement near the 104 waterways the pipeline crosses,<sup>114</sup> only to allow the company's alternative plan with little change to the number and placement of valves along the pipeline in February 2015.<sup>115</sup>

### **Coderre protest**

Denis Coderre—the mayor of Montreal and president of the Montreal Metropolitan Community—protested Enbridge's Line 9B project citing concerns about safety to drinking water, Enbridge's lack of an emergency response plan, and a lack of sizeable insurance in case of a spill. Since the mayor does not have the legislative tools to block this project he used political and public pressure and got the NEB and Enbridge to comply. In September 2014, in addition to expressing concern about the pipeline he expressed dissatisfaction with the NEB process—a dissatisfaction echoed by the recent call for the government of British Columbia to withdraw from NEB hearings.<sup>116,117</sup> He also sees Line 9B as the chance for the National Energy Board to show that it can actually challenge oil companies and that the conditions it sets are more than mere recommendations.<sup>118</sup> As of November 2014 Coderre and the MMC were dissatisfied with Enbridge's response.<sup>119</sup> That said, the NEB's announcement an office opening in Montreal as well as requiring significant new conditions for the Line 9B project does seem to have satisfied Mr. Coderre with respect to the NEB for the moment. However the implications of a spill to Montreal's drinking water would still be disastrous—a distinct possibility that Enbridge and the NEB are clearly not prepared for.

### **Safety concerns of reversal and expansion**

Line 9B currently carries Sweet, Light Sour, and High Sour crude.<sup>120</sup> Sweet crude contains less than .5% sulfur and is considered less corrosive than sour crudes, which contain over .5% sulfur.<sup>121</sup> After reversing Line 9B, Enbridge intends to transport bitumen from Alberta's oil sands through the existing pipeline without replacement or modification to protect the pipeline from a much thicker, abrasive, and corrosive material.<sup>122</sup> The viscosity of bitumen requires higher pressure and temperature to move it through pipes.<sup>123</sup> Undisclosed mixtures of chemicals (some highly toxic)<sup>124</sup> are also added to dilute the bitumen to a consistency liquid enough to be pumped through pipelines. The high acidity and abrasiveness of diluted bitumen will further wear on an already aged pipeline, not built even in its younger years to carry such material, causing greater threat of spill.<sup>125</sup> One pipeline expert with over forty years of pipeline safety experience found that the probability of a spill from Line 9B is over 90% due to its age, wear, and the stress of carrying diluted bitumen.<sup>126</sup> This means greater danger to all those living along the pipeline's highly populated right-of-way, including the McGill community.<sup>127</sup>

As detailed above under "Kalamazoo River Spill," when a pipeline carrying diluted bitumen fails the consequences are graver, more dangerous, and much more costly than

conventional oil spills. When diluted bitumen is released the cocktail of chemicals used to thin evaporate into the atmosphere creating health problems for inhabitants of the area, as happened in Kalamazoo.<sup>128</sup> Meanwhile, the dense, sticky bitumen sticks to everything it touches, making it much more difficult to clean. The pipeline has 104 major water crossings,<sup>129</sup> 36 of which drain into Lake Ontario, endangering the water source of millions of people if a spill occurs near those streams and rivers.<sup>130</sup> Also mentioned above, Enbridge refused to install safety shut-off valves on either side of each water crossing, and has managed to persuade NEB regulators to agreeing to no additional safety valves.<sup>131</sup> A spill in or near a water source could lead to sunken bitumen rather than floating conventional oil, requiring drastic, nearly untested, and further harming tactics to clean the water bodies and sources.<sup>132</sup> Wintry conditions could complicate or delay clean-up efforts. A delay of hours could mean disaster for the environment.<sup>133</sup> If Enbridge's response history, particularly with regards to the Kalamazoo River spill, predicts anything we would expect a slow, stalling, and inadequate care and clean-up for a heavily populated area and vulnerable environment.

While Enbridge may boast of employing high-tech monitors and leak detection systems, only 19.5 per cent of reported leaks from pipeline companies from 2010-2014 were detected by this technology; most leaks were detected by personnel or local residents.<sup>134</sup> Aside from this unsafe and unsatisfactory figure, as of January 2014, there was no governmental standard for the speed at which pipeline operators must identify leaks, and monitors and detectors are only required in areas deemed environmentally sensitive or populated.<sup>135</sup> The spills that are detected by high-tech machinery are sudden and forceful, creating sudden drops in pressure, which is why they trigger alarms.<sup>136</sup> While this does account for many of the larger and more destructive spills (about two-thirds), it does not account for spills that start out small and steadily release oil.<sup>137</sup> In July 2010 Enbridge claimed it could detect and shut down a spill within 8 minutes, less than two weeks before the Kalamazoo River spill took them 17 hours to detect.<sup>138</sup>

In June 2014, a US government report stated that Enbridge has no proven clean-up method, no way of ensuring safe drinking water in the event of a spill, and that "we need more information on dilbit toxicity and on how quickly plants and animals can recover from disturbance."<sup>139</sup> Moreover, Enbridge's claim that diluted bitumen floats is contradicted by the Canadian federal government and experience.<sup>140</sup>

What this adds up to is an increased risk of pipeline failure due to the contents and construction of the pipeline, a failure to implement safety measures, a poor history of response in past pipeline failures involving bitumen. None of this is reassuring when considering the safety and health of both human and non-human inhabitants of and around the pipeline's path.

### **Infringement of First Nations' rights**

First Nations groups living on and near the land through which Line 9 travels have raised protests against the project. Grand Chief of the Kanesatake Mohawk band council, Serge Simon, has adamantly protested the Line 9 reversal project, calling it a participant in the “irresponsible development of resources.”<sup>141</sup> The band council’s official position on the Line 9 project, articulated in a “strongly worded” Band Council Resolution submitted to the NEB, invoked inherent rights of indigenous peoples as provided for by international law and treaties, and stated on no uncertain terms that the council was “totally against this type of development in our [Kanesatake] territory.”<sup>142</sup> A representative of the Chippewas of the Thames First Nation testified in an NEB hearing that pipeline failure would adversely affect fishing, hunting, and harvesting lands on which many people are largely dependent.<sup>143</sup> A representative of the Algonquin to Adirondacks Collaborative raised concerns about the potential effects on drinking water, wildlife, and vulnerable ecosystems in the area in the same hearing.<sup>144</sup> First Nations groups and their supporters further criticised and called into question the legal processes in assessing and approving the project for not consulting First Nations properly and in good faith, neglecting First Nations’ rights.<sup>145</sup>

In 2013-2014 UN Special Rapporteur James Anaya found that while Canadian government officials profess a goal of reconciliation, cooperation, and partnership with self-governing First Nations and indigenous groups, “indigenous leaders have expressed concern that progress towards this goal has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them.”<sup>146</sup> Though many indigenous groups reside or have title to resource-rich lands, their quality of life is very low and “resources in many cases are targeted for extraction and development by non-indigenous interests.”<sup>147</sup> In addition, indigenous peoples “face the highest risks to their health, economy, and cultural identity from any associated environmental degradation.”<sup>148</sup> This further demonstrates that the intention and the action of Canadian government and corporations do not align on the issue of respecting indigenous rights. In his conclusion, the Special Rapporteur recommends:

“In accordance with the Canadian Constitution and relevant international human rights standards, as a general rule resource extraction should not occur on lands subject to aboriginal claims without adequate consultations with and free, prior, and informed consent of the indigenous peoples concerned. Also, Canada should endeavor to put in place a policy framework for implementing the duty to consult that allows for indigenous peoples’ genuine input and involvement at the earliest stages of development.”<sup>149</sup>

Not only were obligations to consult indigenous groups only nominally fulfilled, the greater population was also only passingly consulted. Applications to participate in the NEB hearings on Line 9B reversal for the entire population along the pipeline’s route were open for only two weeks, from April 5-19, 2013.<sup>150</sup> Under the federal omnibus bill C-38 of 2012

only a few people selected through the application process are invited to speak at public hearing, and only those whose qualifications are deemed acceptable and who stand to be “directly affected” by the project could make their concerns known before the NEB.<sup>151</sup> Neither the NEB nor Enbridge were required to spread word of the application through advertisement.<sup>152</sup> This shows a clear lack of dedication of the part of both the NEB and Enbridge to be sincerely mindful and considerate of the views of citizens, both indigenous and otherwise, in making this hugely consequential decision.

### **“Benefits” of Line 9 reversal are not for Quebec and Ontario**

Enbridge claims in its Line 9 project outline that the reversal to bring Albertan oil sands products eastward will “bolster the security of Canada’s energy supply,”<sup>153</sup> however, the reality is that Canadian markets, including those in Ontario and Quebec (through which Line 9 travels), are not those that will receive the bulk benefits. The reversal will force Ontario to rely entirely on oils sands by cutting it off from foreign imported oil. Having only one source will make the province more vulnerable to price fluctuations and shortages that could result from problems with production or transportation of western Canadian crude.<sup>154</sup> Further, “the project is driven by demands to get more tar sands oil to the U.S., not by the needs of Ontario,” meaning provinces which undergo the risky and unsafe project are not even intended to be primary recipients of its benefits.<sup>155</sup>

In addition, the “resource curse” theory, observed both in developed and developing nations, holds that developing natural resources (especially oil) tends to cause significant risks to the quality of democratic government (because of lobbying and decreased accountability of politicians) and other sectors of the economy such as manufacturing (because of an unfavourable exchange rate). This submission certainly details the deleterious impact of fossil fuel companies on Canada’s democracy. As predicted, oil sands development has contributed to the collapse of manufacturing in Canada, particularly in Ontario and Quebec, a net loss of jobs.<sup>156</sup>

### **Lobbying**

In Canada, the fossil fuel industry’s political power is steadily increasing as companies are spending more money on their lobbying efforts and gaining steadier access to public officials.

The high frequency of meetings and communications between oil companies and the Canadian Government demonstrate the relative ease of access that Enbridge and fossil fuel companies have to high-level bureaucrats and elected officials. This access gives the companies and their lobbyists invaluable opportunities to influence the contents and potential enactment of public policy.<sup>157</sup>

A study by the Polaris Institute in 2012 calls attention to the increase in lobbying by the fossil fuel industry in between 2010 and 2012, when omnibus Bill C-38 was being drafted and reviewed.<sup>158</sup> Formally known as the Jobs, Growth, and Long-Term Prosperity Act, Bill C-38 changed over 70 laws, radically altering environmental policy in Canada and creating a more favourable regulatory environment for fossil fuel companies.<sup>159</sup> Collectively, the six most active organizations lobbying for the fossil fuel, of which Enbridge is part, had a total of 760 documented communications during these months.<sup>160</sup>

During this time, Enbridge's Northern Gateway pipeline project was also pushing forward, in part explaining Enbridge's increased and focused lobbying efforts in particular. Their lobbying for this project has been similarly successful.

Between 2010 and 2011, Enbridge's documented lobby communications increased by 44%.<sup>161</sup> However, as the study also notes, both the frequency and the scope of lobbying communications increased during these months, as lobbyists for Enbridge were now reaching more public officials per communication. In 2010, 27 documented communications reached 40 public officials, whereas in 2011, 48 communications reached 106.<sup>162</sup>

Furthermore, the "revolving door" nature of lobbying politics, wherein public officials rotate between public service and lobbying for the private sector, exacerbates the level of access and influence that these companies can attain, as these lobbyists can use their prior connections and relationships to the advantage of their clients.

In fact, former chief of the Canadian intelligence agency CSIS, Chuck Strahl, registered as an Enbridge lobbyist while still working for the federal government, to public outcry. In addition, significant intelligence information about domestic advocacy groups opposing the pipeline was given to the private company.<sup>163</sup>

Several sources, including one from Enbridge (see below), openly stated that the federal government had changed regulations in order to facilitate approval of the project—also removing any consideration of climate impacts in the approval process—in response to Enbridge's lobbying, despite the unpopularity of the pipeline and the popular will for action on climate change.

The federal registry of lobbyists shows Enbridge officials and consultants had dozens of meetings with ministers, deputy ministers, policy directors and MPs as plans for the Northern Gateway pipeline moved from the proposal stage to public hearings in 2012.

It is important to note, however, that the transparency measures in Canada's Lobbying Act only require the registration of communications with lobbyists and high-level public officials, and completely disregard the lobbying of lower level government employees, who can be equally important and potentially influential in policy-making.

They also had communication with the Chiefs of Staff for the Prime Minister and the Opposition NDP and met with the clerk of the Privy Council on the day the Conservative government tabled the Bill C-38, which changed the environmental laws and review process that govern the project.

We quote from a CBC article:

“Enbridge is the perfect example of a success story from lobbying,’ said Roger Harris, a former Liberal member of the B.C. legislature and former vice-president of aboriginal and community partnerships for Enbridge Northern Gateway Pipelines.

“The federal registry shows 12 different lobbyists at work for the pipeline proponent in 2011 and 2012. A search of the five years prior to that, from the beginning of 2006 to the end of 2010, produces a list of 27 different lobbyists and 10 different consultant companies...

“Enbridge's proposal for a 1,700-kilometre pipeline that would deliver bitumen from the Alberta oil sands to a tanker port on the B.C. coast is incredibly complex, involving three government jurisdictions, 50 First Nations, an oft-maligned industry and a vocal public campaign against tanker traffic off the West Coast.

“I can't imagine a project that's more complex, yet it (Enbridge) was able to convince the federal government, the Conservatives, of its value to the point that the federal government, who puts in place the regulatory process by which projects are independently evaluated ... [Enbridge] had them shamelessly out there supporting the project before their own process was even completed,’ Harris said.

“The Conservatives even changed the environmental regulations that affect the project, he said.

“If they don't like the outcome of that science, they can change it themselves, anyway,’ he said of the Conservative government.

“I suggest that that is an incredibly good success story of what lobbying can do for you: take something that is not well liked and actually get a government to literally shamelessly support it at the federal level, almost to change the regulations to make it work.”<sup>164</sup>

### **Enbridge produces little “renewable” energy**

Enbridge claims to be committed to being a leader in renewable energy production and to fostering a “responsible” relationship with fossil fuels, while its actions communicate that it is firmly dedicated to its role in the fossil fuel industry.<sup>165</sup> It boasts of over 4 billion dollars of investments in renewable energy and technology since 2002, with plans to double its production capacity by 2018.<sup>166</sup> However, 4 billion dollars over the course of thirteen years

is insignificant, a token investment, compared to what the company invests in new pipelines and expansion projects. Of 25 projects detailed on petroleum products transportation and storage projects, over 18 involve the construction of new pipeline, either exclusively owned, constructed, and operated by Enbridge or in collaboration with other companies and subsidiaries of Enbridge.<sup>167</sup> The 18 which reported the length of new construction, total new pipeline that is proposed, planned, in production or recently complete is approximately 5,697 km.<sup>168</sup> It is worth noting that these only represent those projects that are progressed enough in planning to be declared to the public. Of the 18 pipeline construction projects only 6 report the estimated cost or investment. Those six total 12.3 billion dollars.<sup>169</sup> Additional projects are intended to replace or expand existing pipeline. Replacing 458 km of Line 6B and 1,660 km of Line 3 will cost Enbridge another 2.63 and 7.5 billion respectively.<sup>170</sup> Even this partial data, based on what is made readily available to the public, is enough to unequivocally state that Enbridge's commitment remains with fossil fuels and not with more sustainable alternative energies. Enbridge invests in a fossil-dependent future through its vast expansion of the pipeline system.

### **Divestment from Enbridge would not significantly affect the university financially**

Enbridge is one of the university's larger Canadian holdings at \$3,327,518 as of December 31st, 2014.<sup>171</sup> This represents .025% of McGill's endowment and less than 3% of its Canadian investments. McGill owns less than 0.007% of Enbridge—hardly a position of strength for negotiating directly with the company. When the university divested from the tobacco industry its holdings in the industry were calculated at 0.5 percent of the endowment. CAMSR concluded in 2007 that selling tobacco stocks would not adversely affect the university's portfolio. Given that the university's investment in Enbridge is 1 per cent of its previous tobacco investments, it is likely that divestment in this case will also not significantly impact the university financially.<sup>172</sup>

Because divestment as proposed here only involves selling direct stock holdings, it will not be necessary to identify or divest from pooled holdings that include Shell or any of the other 200 listed fossil fuel companies.

An Access To Information request covering January 1st, 2007 through December 31st, 2013 showed that McGill University has no research contracts with Enbridge. Divestment would therefore not significantly impact internships and job opportunities for McGill students.<sup>173</sup>

### **Enbridge furthers society's fossil fuel dependence**

If one were to disregard Enbridge's poor environmental and human rights records, and concerted action to influence government and society on climate change, the company

would still be an irresponsible investment because it is persistently pursuing new and large-scale fossil fuel infrastructure in an era when society must be transitioning towards other sources of energy.

Alongside Kinder Morgan and TransCanada, Enbridge is facilitating such a large-scale expansion of Canada's oil sands that it has become the country's most rapidly growing source of greenhouse gas emissions.<sup>174</sup> Currently at 7.8% of Canada's total greenhouse gas emissions, the emissions from the Athabaskan oil sands are projected to triple from 2010 levels by 2030 from the expansion allowed by pipeline companies.<sup>175</sup> This increase heavily outweighs all emissions reductions Canada is projected to achieve by this time.<sup>176</sup>

The well-to-wheel emissions impact of Enbridge's proposed Northern Gateway Pipeline is at least 82 million tonnes of CO<sub>2</sub> equivalent per year.<sup>177</sup> For perspective, this means that combined, these projects are the equivalent to 17.5 million cars on the road.<sup>178</sup> Even if only accounting for "upstream emissions," those involved in the extraction and refining of the oil itself, the project is responsible for 6.5 million tonnes of CO<sub>2</sub> equivalent.<sup>179</sup> No similar reliable estimates exist for Enbridge's west-east Line 9B reversal project, but using estimates for the Keystone XL pipeline and scaling for the fact that this project has two-thirds the capacity, the project will contribute in the order of 72 million tonnes well-to-wheel.<sup>180</sup>

Both of these projects are significant investments that will only be profitable over a period of decades.<sup>181</sup> This means Enbridge is executing a business plan with the knowledge that it can be only successful if Canada is to continue to make outsized contributions to dangerous levels of climate change.

## **Royal Dutch Shell**

The fourth largest company in the world, Royal Dutch Shell, contributes directly to the harmful effects of climate change.<sup>182</sup> Shell owns a number of subsidiaries which we will include as part of our investigation into its socially injurious activities. Shell also illustrates the typical behaviors of the top 200 fossil fuel companies for five main reasons related to the operations of the company:

1. Shell's investments in the Canadian tar sands and the Arctic are in direct conflict with climate science.
2. Shell is an aggressive lobbyist
3. Shell represents a financial risk to investors, with even growing shareholder uncertainty in the medium- and long-term owing to proposed projects that are costly and high-risk.
4. Shell has repeatedly carried out acts resulting in social injury, including conduct in Nigeria and Alberta that violates domestic and international law.

5. Divestment from Shell will not adversely affect the university's portfolio. The decision to divest from Shell would also signal McGill's progressive spirit to other academic institutions, as well as to prospective students, faculty, and staff members. It would be a concrete case of the university applying its values in its key decision-making.

### **Shell explores for fossil fuels but cannot burn its reserves**

Shell has approximately 11 years of proven reserves left at current rates of exploitation (which must decrease), not counting reserves defined as "unproven" by the U.S. Security and Exchange Commission definition of proven reserves. Yet Shell is still investing \$35 billion per year in capital expenditure, of which \$7 billion—the highest in the industry—is exploration to develop more production.<sup>183</sup> This is harmful considering that estimates show Shell already must keep a portion of its reserves underground—which the company has not pledged to do.<sup>184</sup>

### **Shell uses lobbying, campaign financing, and PR campaigns to influence public policy to prevent action on climate change**

In the 2014 U.S. election cycle Shell contributed \$127,000 USD in campaign contributions and averaged \$8.7 million per year in lobbying over 2013-2014. In the presidential election of 2012, Shell contributed \$233,848 and spent an average of \$14.6 million USD per year on lobbying—one of the highest in the industry.<sup>185</sup> This is in addition to supporting membership of groups attempting to prevent action on climate change such as ALEC, the U.S. Chamber of Commerce, and the American Petroleum Institute.

In Canada, for instance, a report based on government documents notes that: "While environmental group requests for meetings are routinely ignored, Shell lobbyists met 100 times with senior federal officials between January 2009 and December 2011, according to the federal Registry of Lobbyists. This included 18 meetings with federal Ministers within a 15-month period. This does not include any of the lobbying done by industry associations or organizations which Shell is a member of, such as the Canadian Association of Petroleum Producers (CAPP), which has been lobbying against greenhouse gas regulations for the oil industry. Shell is, however, represented on CAPP's Oil Sands CEO Communications Task Group, which has worked with the federal and Alberta governments to coordinate lobbying efforts in the US and Europe.

"Government documents show that Shell played a key role in the Harper government's 'Pan-European Oil Sands Advocacy Strategy,' by organizing workshops, hosting lobbying events, and participating in the government's advocacy training sessions for Canadian diplomats."<sup>186</sup>

Shell's lobbying of the UK government has also led to significant action against the Fuel Quality Directive [a move to ban the high-carbon oil sands] within the European Union (EU).<sup>187</sup>

### **Shell's continuing history of social injury**

Royal Dutch Shell also causes social injury as a result of activities that:

1. Directly conflicted with national and international law, and
2. Infringed on governmental regulations or on international health and safety or environmental standards.

The following list of legal actions taken against Shell demonstrates that the company has repeatedly inflicted harm as a consequence of a number of its global operations.

#### **Legal offences in Nigeria**

Shell has a long history of human rights and environmental abuses in the Niger Delta region, where it has operated since 1958. In 2012 alone, 198 oil spills took place at Shell facilities in Nigeria, releasing 26,000 barrels of oil.<sup>188</sup> A U.N. report in 2011 determined that cleaning up mangroves contaminated by Shell would take 30 years and cost at least \$1 billion.<sup>189</sup> The same report concluded that some families in the area were consuming water with benzene levels 900 times higher than those considered safe by the World Health Organization.<sup>190</sup>

Shell is in the midst of a number of litigation processes at various stages, as documented in Shell's 2011 Annual Report:

*Shell subsidiaries and associates operating in Nigeria are parties to various environmental and contractual disputes. These disputes are at different stages in litigation, including at the appellate stage, where judgments have been rendered against Shell. If taken at face value, the aggregate amount of these judgments could be seen as material.*<sup>191</sup>

Since the publication of their report, Shell has been found responsible for oil pollution and ordered to pay compensation by a Dutch court in (detailed below).<sup>192</sup> The parties are in the process of negotiating compensation. The full financial impact of the company's "environmental and contractual disputes" in Nigeria is not yet known and could have a material effect on the company.<sup>193</sup> In 2011, *The Economist* argued that "[l]egal pressures on the company are increasing" and that Shell has "paid out \$1.7m in compensation to groups in the delta affected by spills".<sup>194</sup>

The following is a partial list of legal challenges to Shell's activities in Nigeria over the span of approximately fifteen years:

### **Bodo vs. Shell:**

In advance of a trial in the High Court in London in January 2015 Shell agreed to an \$85 million settlement for two oil spills in the Niger Delta in 2008-2009, for which it at one point offered the entire community as little as \$6,000.<sup>195</sup> Moreover, internal documents show senior employees at Shell were aware “that Shell's pipelines in the area had reached the end of their lives and needed replacing to avoid danger to lives, the environment, and the economy.”<sup>196</sup>

### **Niger Delta Farmers vs. Shell Oil Company:**

A verdict for this case was reached in January 2013. Shell Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd. (SPDC), was sued in a Dutch court by four farmers and the environmental organization Friends of the Earth on October 10th 2012. SPDC was found responsible for oil spills in Niger Delta on one of five counts and ordered to pay compensation to Nigerian farmer Friday Akpan for incidents occurring in 2004, 2005, 2007.<sup>197</sup> Compensation is being negotiated. *The Economist* argued that “[t]he ruling could open a flood-gate to legal complaints against oil companies”.<sup>198</sup>

### **Wiwa v. Royal Dutch Shell Co.:**

In 1993, Ken Saro-Wiwa took part in a march by 300,000 Ogoni people, demanding a clean-up, a share in oil revenues, and increased political autonomy. In the presence of Shell’s lawyer, witnesses were bribed into framing Saro-Wiwa for inciting the murder of four Ogoni elders. Following a widely criticized trial by a military tribunal (in which many lawyers quit in protest), Saro-Wiwa and eight other Ogoni leaders were hanged in 1995. The repeatedly tortured Saro-Wiwa was identified as a “prisoner of conscience” by PEN Canada and Amnesty International, and international appeals and global outrage took place in response to the tribunal’s decision. Nigeria was also partly suspended from the Commonwealth in response to the hangings.<sup>199</sup>

Less than a year after Saro-Wiwa’s murder, Shell reacted to this news by investing \$3.8 million USD in Nigerian operations.

Under the *Alien Tort Statute*, the *Torture Victim Protection Act* of 1992, and *Racketeer Influenced and Corrupt Organizations Act* (RICO), the Wiwa family has brought three lawsuits against Royal Dutch Shell, its Nigerian subsidiary, and the CEO of that subsidiary in the United States District Court for the Southern District of New York. These cases involved the hanging of Saro-Wiwa and eight others, the detention and torture of Owens Wiwa and Michael Tema Vizer, and the shooting of Karololo Kogbara while she peacefully protested the bulldozing of her crops to permit the construction of a Shell pipeline. The plaintiffs alleged that the executions were carried out with the “knowledge, consent and/or support” of Shell.<sup>200</sup> They also alleged that Shell was paying soldiers involved in human rights abuses

in the region.<sup>201</sup> Shell settled legal action out of court with a payout of \$15.5 million dollars.<sup>202</sup> The New York Times called this “a striking sum given that the company has denied any wrongdoing.”<sup>203</sup> The settlement is one of the largest payouts by a multinational corporation charged with human rights violations to date and speaks to the company’s complicity in these activities.

Notably, four years after the execution of his father, Ken Saro-Wiwa Jr. was a Visiting Fellow and Senior Resident at University of Toronto’s Massey College. The college possesses the final handwritten letter Saro-Wiwa Sr. wrote to his son prior to his execution, along with a handmade chair crafted by Saro-Wiwa Sr. and inscribed with a poem criticizing Shell.<sup>204</sup>

#### **US Dept. of Justice vs. Panalpina, Shell, et al.**

In 2010, Shell was implicated in a case brought against Panalpina, a Swiss-based company that provides international air and ocean freight, by the U.S. Department of Justice. Panalpina was implicated in foreign bribery charges by U.S. regulatory bodies and settled on a total of \$85 million over these allegations. Royal Dutch Shell and five other oil companies were also implicated and charged along with Panalpina, paying a total of \$246 million in penalties altogether. As stated by Robert Khuzami, the Director of Enforcement for the U.S. Securities and Exchange Commission (SEC): “These companies resorted to lucrative arrangements behind the scenes to obtain phony paperwork and special favors, and they landed themselves squarely in investigators’ crosshairs”.<sup>205</sup> The case is significant for setting a potential precedent of vigilance for global companies that employ external contractors in parts of the world “where resources are plentiful but the rule of law is shaky.”<sup>206</sup>

With respect to Shell’s role, the company was implicated in corrupt activities that took place in Nigeria and included the expedited services such as clearing drilling rigs and other equipment through customs (more specifically, using a customs broker to pay officials to acquire special treatment for a project conducted in Nigeria).<sup>207</sup> Shell consented to pay a disgorgement of \$18.15 million and a criminal fine of \$30 million.<sup>208</sup> Shell was subjected to a Deferred Prosecution Agreement (DPA) with the U.S. Department of Justice (DOJ) for violations of the bribery and bookkeeping provisions of the Foreign Corrupt Practices Act (FCPA).<sup>209</sup> Shell also consented to a Cease and Desist Order from the U.S. Securities and Exchange Commission (SEC) on account of record keeping violations and internal control provisions of the FCPA. As a result, the DPA outlined an ethics program designed to prevent and identify any breach of the FCPA as well as any other applicable anti-corruption laws corresponding to all aspects of Shell’s operations. The program also calls for Shell to immediately report any evidence of questionable activity to the DOJ. As stated in Shell’s 2011 annual report, such activity could have a significant impact on the

company: “Any violations of the DPA, or of the SEC’s Cease and Desist Order, could have a material adverse effect on the Company”.<sup>210</sup>

### **Gas flaring**

In November 2005, a Federal High Court of Nigeria found that “continuing to flare gas in the course of their oil exploration and production activities in the applicants’ community is a gross violation of their fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution”.<sup>211</sup> The court ordered that Shell “take immediate steps to stop the further flaring of gas in the applicant’s community.”

Since 2005, Shell has refused to comply with the court order to end gas flaring in the Iwherekan community in Nigeria. Shell is also avoiding payment of \$1.5 billion in compensation to the Delta’s Ijaw ethnic group for decades of pollution.<sup>212</sup>

### **Kiobel v. Royal Dutch Petroleum Co.:**

This case was first brought before the United States Supreme Court and granted petition on October 17th 2011. Nigerian plaintiffs accuse Royal Dutch Shell and its affiliate Shell Transport and Trading Company PLC of providing transportation and payments to government forces who committed crimes against humanity in the Ogoni region, including the arrest, torture and murder of protesters challenging Shell operations.<sup>213 214</sup> In 2013 the U.S. Supreme Court decided that it did not have jurisdiction over the case, without denying the atrocities in question.

### **Oil spills**

Going forward, Shell faces thousands of claims related to oil spills in Nigeria, and charges in the most recent case (“Niger Delta Farmers vs. Shell Oil Company”) opens doors for further legal actions.<sup>215</sup>

### **Possible corrupt practices**

In 2011, along with the oil company ENI, Shell purchased a block of offshore oil rights in Nigeria from a corporation called Malabu. Malabu was established days before it acquired the offshore block, and had no employees or other assets. The corporation was controlled by Dan Etete, a former Nigerian oil minister who was convicted of money laundering in France in 2007 and 2009.<sup>216</sup> Court documents show that Shell representatives met directly with Etete.<sup>217</sup> *The Economist* claims that the deal created “reputational and legal risks” for Shell, and that the company “might conceivably face action under [its] home countr[y]’s anti-corruption laws”.<sup>218</sup> Global Witness — an American non-governmental organization (NGO) that focuses on natural resource exploitation — has called the deal “a lesson in corruption”.<sup>219 220</sup>

### **Infringements on governmental regulations and international health and environmental standards with respect to operations in Nigeria**

The release of the *Assessment of the Environment of Ogoniland* by the U.N. Environment Programme on August 4th 2011 confirmed the devastating extent of pollution in the minority Ogoni region. The estimated time required for clean-up is between 25 to 30 years. The U.N. condemned Shell for failing to comply to its own operating standards and for under-reporting pollution.<sup>221</sup> The same U.N. report also confirms that all water bodies in Ogoniland have become unsafe for drinking because they have been contaminated with hydrocarbons and carcinogens from Shell's activities.

Shell has repeatedly ignored Nigerian federal law (and its own internal policies) calling for regular inspection and maintenance and upgrading of pipelines and production facilities, as well as and prompt and effective response to oil spills.<sup>222</sup> Recent NGO reports indicate that Shell also has been ignoring the U.N. Environment Programme recommendations and even the sites Shell "cleaned" still contain significant pollution.<sup>223</sup>

### **Legal offences in Alberta**

Shell is one of the biggest players developing the Athabasca oil sands, with 249,000 barrels per day of production from its Scotford upgrader.<sup>224</sup> Shell Canada operates the Alberta Oil Sands Project (AOSP), which consists of the Albian Sands Mine, Muskeg River Mine, Jackpine Mine, and the Scotford Upgrader. In July 2013, a major expansion of the Jackpine Mine was authorized, despite the expectation that this will "involve the permanent loss of thousands of hectares of wetlands, which would harm migratory birds, caribou and other wildlife and wipe out traditional plants used for generations" and that "Shell's plans for mitigation are unproven and... some impacts would probably approach levels that the environment can't support".<sup>225 226 227</sup> The Athabasca Chipewyan First Nation expressed its disappointment about this decision.<sup>228</sup> In 2014 they filed for the court to overturn this decision in a case that began in October, 2014.<sup>229</sup>

The AOSP is close to a number of First Nations communities who claim that the project adversely affects their health, livelihood, and lands.<sup>230</sup> Under Canadian constitutional law, there is a duty to consult and accommodate aboriginal people on development projects that affect them. First Nations have launched a series of legal proceedings related to tar sands development that could impact the viability of Shell's current and future operation plans:

#### **Ongoing — ACFN vs. Shell Canada**

In continuing legal battles throughout 2011—2012, the Athabasca Chipewyan First Nations (ACFN) sued Shell Canada for breach of terms of agreements made in 2003 and 2006 regarding the company's existing tar sands mines.<sup>231</sup> The ACFN alleges that Shell has not honoured these agreements and that these breaches have allowed Shell's operations to

continue damaging the surrounding environment and the infringing upon the rights of ACFN peoples. Affected First Nations communities continue to seek legal options to delay or halt Shell's operations in the AOSP.

### **2009 — Ecojustice vs. Shell Canada**

Ecojustice, an environmental NGO, took Shell to the Alberta Court of Appeal after Shell breached signed commitments with the government of Alberta to reduce carbon emissions for the Jackpine and Muskeg River mines. Alberta courts instructed regulators to ignore the breach. However, the ruling has prompted both residents and elected officials in Alberta to demand an overhaul of regulatory approval processes in the province.<sup>232</sup>

### **Cases related to groundwater contamination**

As described in their 2011 Annual Report, Royal Dutch Shell (including subsidiaries), has been sued repeatedly by public and semi-private water purveyors, as well as governmental bodies, who insist that Shell take responsibility for groundwater contamination in various instances.<sup>233</sup> As outlined in the Annual Report, at the end of 2011, fewer than 10 of these cases remained open, with the remaining cases in various stages of litigation. The number of allegations made by numerous public and private entities, including governmental agencies, speaks to Shell's consistent negligence in ensuring environmental safety. While groundwater cases remain ongoing, a study published by Alberta Health in 2008 confirmed a 30 percent rise in the number of cancers between 1995 and 2006 in the community of Fort Chipewyan,<sup>234</sup> providing scientific evidence supporting the allegations of First Nations residents that AOSP activities were polluting the surrounding environment.<sup>235</sup> An internal government memo, obtained by virtue of access to information legislation, confirms groundwater toxins related to bitumen mining and upgrading are seeping from tailings ponds and contaminating groundwater. These toxins are not naturally occurring, contrary to statements made by government and industry.<sup>236,237</sup>

Alongside the promise of future legal conflicts as a result of the company's activities in Nigeria, more legal challenges are almost certain to arise as First Nations communities continue to oppose Shell's operations.

The International Finance Corporation's (IFC) implementation of a new Sustainability Framework, which requires clients of Equator Principle banks to obtain the free, prior and informed consent of indigenous communities impacted by mining projects, poses a significant obstacle to the company going forward where they conflict with the interests of various First Nations communities.<sup>238</sup> In addition, the International Covenant on Civil and Political Rights states that: "In no case may a people be deprived of its own means of subsistence."<sup>239</sup> Shell violates this obligation by making the waters of the Niger Delta

unsafe to drink, and threatens to do so further by contaminating the food and water of aboriginal communities in Alberta and the Arctic.

### **Shell's Oil Sands Projects are Unburnable**

Recent studies have shown that most oil sands oil is essentially unburnable in any scenario where international climate goals could be realistically met.<sup>240</sup> Shell owns several sites in Alberta at varying stages of readiness—all of them equally harmful to the climate.<sup>241</sup>

### **Fossil fuel extraction in the Arctic is a particularly high-risk and unpredictable endeavour**

The Arctic is experiencing some of the most profound and rapid effects of climate change. World renowned physicist and oceans expert Peter Wadhams calls the situation in the Arctic a “global disaster,” observing that ice is disappearing at a faster rate than previously predicted.<sup>242</sup> The IPCC has observed that: “Average Arctic temperatures have increased at almost twice the global average rate in the past 100 years”.<sup>243</sup> The rapid warming of the Arctic has global consequences, as vanishing sea ice is replaced with darker water and more energy and heat are absorbed by the Earth from the sun.

Despite the growing body of accepted scientific facts that point towards the significant and unpredictable consequences of a melting Arctic, Shell has spent over \$4.5 billion on operations and lease purchases in the far north, taking advantage of the climate impacts in the Arctic to advance further exploration and drilling.<sup>244</sup> Because Shell's production has been decreasing for the past 10 years — with the exception of a 5 percent increase in 2010 — booking new reserves is of primary importance for the company. This is driving Shell to invest in more pollution-intensive forms of oil, such as those in Canada's oil sands, as well as oil reserves that are riskier to extract, such as those in the Arctic. Shell's Alaskan project alone accounted for about one-seventh of Shell's total exploration spending in 2011. Before even beginning to drill for oil, the New York Times reports that Shell has:

1. Accidentally grounded a drill ship after setting it adrift for five days in stormy weather
2. Violations of air quality permits by both of Shell's drilling rigs
3. Another rig nearly ran aground and was dragging its anchor
4. Four months later, this rig was damaged by an explosion and fire in its harbor—both incidents in waters well below the Arctic Circle (also filling its engines with seawater and rendering it unusable for months).
5. An oil response barge failed Coast Guard inspections and was fined for four illegal fluid discharges, and a faulty containment device (forcing the company to put off deep-water drilling for a year).

Moreover, the broken laws in question are not designed for the specific and fragile Arctic ecosystem, about which we know far too little.<sup>245</sup>

Although Arctic extraction projects represent a new branch of growth for the company, these projects are also risky for shareholders for four reasons:

### **High costs**

Unconventional methods of extracting oil, especially in harsh and isolated regions such as the Arctic, are extremely costly because of technological requirements, human resources, costs of spill cleanups, and other related expenses. For example, Shell's Sakhalin-2 project in Russia saw an unexpected cost overrun from \$6 to \$22 billion in 2006.<sup>246</sup>

Moreover, recent incidents have cast doubt on Shell's capacity to undertake Arctic operations safely. Sixteen distinct and serious safety and environmental violations were discovered on the Noble Explorer — a Shell drilling rig anchored in the Arctic waters off Alaska. The UK Coast Guard inspected the rig and reported findings of "systematic failure and lack of main engine preventative maintenance".<sup>247 248</sup> These findings have been turned over to the U.S. Department of Justice and U.S. federal prosecutors have been asked to take legal action over these violations as of late February, 2013.

### **Arctic projects are dependent on a favourable political climate**

An interaction of soaring costs, uncertainty related to project completion, and popular resistance against drilling in sensitive regions such as the Arctic may lead to difficulties securing subsidies or tax breaks from governments. Shell has "spent several years on an intensive lobbying campaign to persuade federal officials that it could drill safely" in the Arctic.<sup>249</sup> The credibility of this claim is diminished by Shell's inability to operate drilling rigs safely in the region. Furthermore, the Deepwater Horizon disaster in the Gulf of Mexico has raised awareness among policy-makers and the general public about the risks involved in oil extraction within extreme environments, as well as the inability of major oil firms to rapidly contain serious spills when they occur.

### **Lack of oil spill plan**

There is no proven method to clean up an oil spill in the remote and extreme Arctic landscape, nor are there many resources available for such an event. A 2011 report from top scientists at the U.S. Geological Survey confirm that not enough is known about the Arctic's unique marine environment to ensure an adequate or sufficient cleanup plan in the case of an oil spill. As asserted in this survey, this lack of knowledge presents a "major constraint to a defensible scientific framework for critical Arctic decision making".<sup>250</sup>

Shell's inability to operate drilling equipment safely in the Arctic is highlighted by the damage suffered by the company's two drilling ships — Kulluk and Noble Discoverer —

which were attempting to operate in the region.<sup>251</sup> As a result of these incidents, Shell has canceled its Arctic drilling plans outright through 2013, though it has stated its intention to resume Arctic drilling in future seasons.

### **Funding challenges**

The social and environmental responsibility guidelines of international financial institutions (IFIs) and signatories to the Equator Principles—the voluntary set of standards for assessing and managing social and environmental risk—have delayed or halted funding for frontier extraction projects in the past. For example, the European Bank did not solicit funds in 2003–2006 for the Reconstruction and Development (EBRD) of Shell’s Sakhalin-2 because of serious breaches of their environmental and sustainability guidelines. Growing frustration and resistance from First Nations communities and the implementation of new IFC guidelines promise more delays on account of legal challenges raised by affected communities.<sup>252</sup>

### **Supporting industry-based evidence of risks to Shell’s current and proposed projects**

1. On March 8th, 2013, Norwegian state-owned oil company, Statoil, announced that it is slowing plans to drill for oil in U.S. Arctic waters after Shell’s most recent string of incidents in the Arctic.
2. German bank WestLB announced it would not invest in any company drilling in the Arctic because the “risks and costs are simply too high”.<sup>253</sup>
3. Total, the French oil company, has disavowed drilling in the Arctic; CEO Christophe de Margerie claims that “Oil on Greenland would be a disaster ... A leak would do too much damage to the image of the company”.<sup>254</sup>
4. Growing resistance around production of oil sands puts operations there at risk, as Shell has already faced shareholder resolutions demanding greater clarity over the risk of oil sands investments.
5. The Carbon Bubble: Latest climate science tells us that approximately 80 percent of reserves owned by fossil fuel companies cannot be burned. As policy-makers and the financial industry absorb this information, the business case for drilling in extreme environments and exploiting unconventional reserves may be undermined.<sup>255 256 257</sup>

### **Continued threats to human rights, environmental well-being and international law**

Court rulings in cases brought against Shell over the past fifteen years have resulted in determinations of guilt, out of court settlements, and case dismissals based on technicalities. In Shell’s case, the sheer volume of allegations against the company is demonstrative of Shell’s history of causing social injury and often refusing to desist even when ordered by courts. Shell’s record of being the target of lawsuits raises the question of

whether this investment represents the values of the McGill University, in addition to being a material risk to McGill's investment going forward. Moreover, a review of Shell's most recent activities and the projects it has slated for the immediate future suggests that Shell will continue to engage in activities that constitute human rights abuses and environmental degradation. For instance:

1. In the summer of 2011, Shell supported Syrian President Bashar al-Assad's regime, despite the crackdowns on protesters already under way, by purchasing \$55 million in oil, even as sanctions were being prepared.<sup>258</sup> Moreover, Shell continued drilling and exporting crude oil from Syria throughout the first year of the popular revolt and did not halt operations until Western-imposed oil sanctions and global outrage forced them to withdraw from the country on the December 2nd 2011.<sup>259</sup>
2. Both Shell's current activities and its proposed projects in the Arctic will threaten local First Nations communities such as the Inupiat who live around the Beaufort and Chukchi Sea and who practice a subsistence culture, both by tradition and by necessity.<sup>260</sup>

In May 2013, members of the Native Village of Port Hope, Alaska and the ACFN participated in Shell's Annual General Meeting and confronted Shell's chairman about the risks of drilling in the Arctic.<sup>261</sup> In addition to the direct threat posed to people living in the region, Arctic drilling risks adding to the already dangerously large reserves of fossil fuels being exploited globally, which contributes further to the threat of climate change.

### **Shell represents financial risk**

Royal Dutch Shell and its subsidiaries are a risky investment for two main reasons:

1. Previous violations of human rights and environmental regulations may ultimately have a material effect on the company; the same activities can also manifest in decreased shareholder confidence.
2. High-risk ventures going into the medium and long term introduce uncertainty on a number of levels.

### **Poor reputation for social responsibility lowers shareholder confidence**

Shell's reputation for complicity in human rights and environmental degradation has resulted in reduced shareholder confidence and has prompted socially conscious investors to avoid holding Shell stock. For instance, the Dow Jones Sustainability Index, which integrates assessment of economic, environmental and social criteria with emphasis on long-term shareholder value, excluded Shell from the index since 2010 following concerns about the company's activities in Nigeria (which include continuing human rights and environmental abuses).<sup>262</sup> Shell's European Universe was included in the 2012 Index, but

all others remain excluded (including the North American, Asia Pacific, Aussie, Emerging Markets, Korean Universes).

In February of 2012, 28 Right Livelihood Award Laureates, including conservation scientists and professionals, petitioned the Norway Government Pension Fund to divest all its holdings in Royal Dutch Shell. The petition was made after this group, in collaboration with Nigerian scientists and communities, found the Delta to be “one of the most severely oil-impacted ecosystems in the world”.<sup>263</sup> This collaboration between scientists and Nigerian residents led to the 2011 U.N. Environmental Programme assessment discussed above. As stated in their petition, the argument for divestment is based on the company’s “willful negligence” which resulted in the extensive environmental harm found in the Niger Delta region.<sup>264</sup>

In an era where mass media coverage surrounds environmental disasters and human rights abuses, the reputational risks of conduct like Shell’s are magnified. If McGill continues to invest in Shell, McGill will need to answer for Shell’s continuing abuses and threats.

### **Divestment from Shell would not significantly affect the university financially**

Shell is far from the university’s largest holding at approximately \$619,317 as of December 31st, 2014.<sup>265</sup> This represents less than 0.05% of the endowment and means that McGill owns less than 1/100,000th of one percent of Shell. When the university divested from the tobacco industry its holdings in the industry were calculated at 0.5 percent of the endowment. CAMSR concluded in 2007 that selling tobacco stocks would not adversely affect the university’s portfolio. Given that the university’s investment in Shell is 10 percent of its tobacco investments, it is likely that divestment in this case will also not significantly impact the university financially.

Because divestment as proposed here only involves selling direct stock holdings, it will not be necessary to identify or divest from pooled holdings that include Shell or any of the other 200 listed fossil fuel companies. The social injury imposed through tobacco and fossil fuels is also similar. For more information, see: [Why fossil fuels are like tobacco](#).

An access to information request covering January 1st, 2007 through December 31st, 2013 showed that McGill University had no research contracts from Royal Dutch Shell.

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