A TROJAN HORSE FOR CORPORATE CHANGE: A SOCIOLOGICAL EXAMINATION OF SHAREHOLDER ACTIVISTS' ABILITY TO MODERATE THE PROFIT MOTIVE

by

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THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

In the
Department of Sociology & Anthropology

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SIMON FRASER UNIVERSITY

Spring 2006

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Abstract

Resistance to the corporate pursuit of profit takes many forms, but this thesis examines the effectiveness of shareholders (owners of the corporation and beneficiaries of profit) in challenging the corporate belief that profit should prevail over non-financial concerns. Shareholders are privileged due of their location within the corporate structure and large shareholders are especially privileged. Using secondary sources (shareholder resolutions plus newspaper articles) and informed by Gramsci's notion of hegemony, this thesis examines the shareholders' discourse within the context of the legal environment. The legal environment is significant because it shapes the shareholder's discourse, influences the engagement process and supports the dominant hegemony. Though Canadian legal changes in 2001 provided shareholders with more rights, shareholders remain conservative when engaging companies. Yet, despite a hegemony that constrains shareholders and despite voluntarily operating within the hegemonic discourse, shareholder engagement can be effective in making corporations consider their social or environmental responsibility.

Keywords:

Shareholder activism, shareholder engagement, shareholder advocacy, Gramsci, hegemony, Canada, profit, corporate governance, Canada Business Corporations Act.

This Master's was both a joy and a personal, professional and academic challenge. It could not, nor would not, have been completed without my friends, family and fiancé.

My friends, who have stood by me during the ups and downs of this project as well as the path I have walked thus far, are the foundation that has kept me standing. My parents, who have always been there for me and have stood beside me with a torch when I haven't been able to see a light at the end of the tunnel, are an inspiration to me. Only with this support and beacon, during my darkest days, have I been able to complete this thesis.

And my fiancé. Like any long, dark, arduous night, dawn does break and a new day does begin. Except this dawn, was a light I had never before felt. The sunshine that has entered my life has allowed me to blossom.

It is to Buzz, Dave, Mom, Dad and Emily that I dedicate this accomplishment. Thank you.

Acknowledgements

There are several people who need to be thanked because without their guidance this project would not be the product it is.

I'd like to thank my supervisors Gary Teeple and Karl Froschauer for their guidance and direction. Whether it was larger issues or finer details, they have encouraged me to achieve my best while giving me the freedom in which to do so.

I'd like to thank all those who have taken the time and shown the interest in my work (especially Sylvia Parusel, Susan Cadell and Margaret Fulton). This unofficial committee has provided invaluable feedback to me.

I'd like to thank my fellow graduate students for their support and encouragement. Not only are my colleagues a wonderful group of supportive people, but also many selflessly gave up time in their studies for graduate student issues - negotiating a new Teaching Assistant contract or making the grad program better. Though these actions may not have contributed to the completion of my thesis, it must be acknowledged.

I'd like to thank the staff and 'regulars' at Seattle's Best Coffee on Granville and 11th for the welcoming environment and their quiet support. The café is a wonderful place to do schoolwork and was an unexpected place for me to meet my future wife.

And most importantly I would like to thank the recently retired Mickey Naisby. Neither the title graduate secretary nor the words 'unsung hero' adequately describes her contributions to the department, to my fellow graduate students or to myself. Without Mickey we all would be lost. Though you will be missed, enjoy retirement!!

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Glossary

Within this document's text, the first occurrence of these words are in **bold**.

Beneficial shareholder	The shareholder who has the benefits of ownership (such as receiving dividends) even if the shares are not registered to the shareholder. For shares an individual buys through a broker, the individual is the beneficial shareholder, whereas the broker is the registered shareholder.
CEO	Chief Executive Officer
CERES	Coalition for Environmentally Responsible Economies
Corporate social responsibility	The responsibility of a corporation to benefit society. However it is most often what the corporation believes to be its responsibility to society and is most often used for maximum corporate advantage rather than maximum societal benefit.
Discourse	Defined in many ways by many theorists, throughout this thesis discourse will refer to the way of representing knowledge on a topic. Discourse refers to the underlying meaning, rather than the literal content, of the text or mode of communication.
Fiduciary Duty	A duty to act with the highest degree of honesty and loyalty towards another person and in the best interest of the other person
Golden parachute	A lucrative severance package offered to corporate executives in the event of their termination. It is often triggered during a change of corporate ownership and meant to discourage unfriendly takeovers (as well as provide executives with a soft landing).
GHG	Greenhouse gas(es)
Gross Domestic Product	The value of all goods and services produced by a national economy during the specified period.
Hegemony	Hegemony has been defined in many ways. For this thesis, it will refer to the spreading of one group's beliefs throughout society such that it becomes 'common-sense'.
Hegemonic discourse	The discourse supporting the hegemony. It implies an ability by the dominant group to limit the expression of knowledge or ideas about an issue in a manner that supports or perpetuates the status quo of existing power relations.
Ideology	The world-view or collection of beliefs and attitudes held by a group of people.
Illiquid investment	An investment that cannot easily be sold.

Index fund	Index funds are investments that mirror a market index such as the Toronto Stock Exchange's composite index (once called the TSE300). If a company's shares make up X% of the market index, then the company's shares must also make up X% of the index fund.
Institutional shareholder	Large shareholders, including private and public pension funds, charitable foundations, endowments, mutual funds and public institutions such as hospitals and universities.
Management information circular	A document distributed by management to all shareholders prior to the annual general meeting. It usually contains matters of financial performance and corporate governance - such as the meeting agenda, audited financial statements and shareholder resolutions.
Poison pills	An anti-takeover device that makes the company unattractive to a potential bidder. It often includes the issuance of more shares thereby increasing the cost of acquiring the company.
Proxy circular	Same as management information circular
Registered shareholder	The shareholder that is listed in the official registry. For shares an individual buys through a broker, the individual is the beneficial shareholder, whereas the broker is the registered shareholder.
S.h.a.r.e.	Shareholder Association for Research and Education. A national non-profit organization providing education and information to pension funds and pension fund trustees.
Shareholder activism	The process by which shareholders approach a corporation in order to compel a change in corporate policy.
Shareholder advocacy	Same as shareholder activism.
Shareholder engagement	Same as shareholder activism.
Stakeholder	A group or individual that is affected by, or can affect, the company. Can include employees, government, suppliers, consumers, and the public.
TCCR	Taskforce on Churches and Corporate Responsibility
Trust agreement	The legal agreement between the trustee and the beneficiary specifying the manner by which the beneficiary wants the trustee to administer the trust.
Trust instrument	Same as the trust agreement.
Trusteed pension funds	The pension fund's investments can be administered by any one of several parties (employer, beneficiary, trustee), but are most often held in a trust and administered by a trustee.
VCR	Voluntary Challenge and Registry. A Canadian government initiative whereby companies voluntarily report greenhouse gas emissions as well as their efforts to reduce those emissions.

Introduction

Do not go where the path may lead,
go instead where there is no path and leave a trail
*- **Ralph Waldo Emerson***

The dominant corporate belief

The central belief of the business community is that the primary role of the corporation is to make a profit. In 1970, Milton Friedman said that businessmen not concerned with profit are practicing pure and unadulterated socialism. He argued that a corporation's only social responsibility is to make a profit for its shareholders (Friedman, 1970). More recently, Debora Spar, a professor at the Harvard Business School, states that corporations "are institutions which have really only one mission, and that is to increase shareholder value" (as cited in Bakan, 2004, p.35). In 2003, Tim Hearn the chairman, president and Chief Executive Officer (CEO) of Imperial Oil stated that the "final feature that makes Imperial an attractive investment, is a long-standing dedication to enhancing shareholder value" (Hearn, 2003, para.65). Though the language has changed from 'maximizing profit' to 'enhancing shareholder value' the corporate belief remains the same - the corporation's primary role is to benefit the shareholders financially.

The effects of a corporate pre-occupation with profit

Underlying this dominant corporate belief is the assumption that all of society, from individuals to communities to countries, will benefit when corporations are left to earn a profit. However, that assumption must be questioned. Ford and Firestone provide one detailed case and the Multinational Monitor provides many brief cases whereby this assumption can be challenged.

In August 2000, Firestone recalled 6.5 million tires only after the United States National Highway Traffic and Safety Administration and the United States Senate began investigations into the accidents of Ford Explorers equipped with Firestone tires. While a very public campaign was waged between Firestone and Ford over blame for the accidents, privately both revealed that they knew their products were faulty and that they were culpable.

In 1990, the Ford Explorer was first offered for sale, but prior to its introduction Ford's engineers recommended design changes because tests showed the vehicle rolled over. Instead of changing the design of the Explorer, Ford simply reduced the tire pressure on the Firestone tires. In conjunction with Ford's design flaws, the design of Firestone tires was such that they "overheat with highway use, causing the tread to separate" (Claybrook, 2000, para.2). The combination of design faults was a vehicle that tends to roll over, equipped with tires that separate at high speeds.

As early as 1991, one year after introducing the Explorer, Ford and Firestone were in court for tire failures that resulted in crashes. In 2002, Firestone settled more than 700 cases resulting from Ford Explorer accidents (Moore, 2003). By 2003, the United States National Highway Traffic Safety Administration had linked the faulty tires to 271 deaths and hundreds of injuries (Moore, 2003).

As part of a court case on safety defects, companies usually complete a thorough internal investigation into the allegations. It was no different for these cases, yet when they were settled, the results of the investigation and the information disclosed in court were sealed to prevent competing companies from gaining access to the information (Claybrook, 2000; Crain, 2000). As a result, the public and public bodies such as the National Highway Traffic Safety Administration remained unaware of the issue. While people were dying in avoidable car accidents, Firestone was alleging the Ford Explorer was susceptible to tipping and Ford was alleging the Firestone tires were susceptible to separation.

Both companies knew their products were faulty because in Venezuela in 1998, two years before the North American recall, Ford improved the suspension of the Ford Explorer and it instructed Firestone to improve the strength of its tires. The same year, Ford recalled Firestone tires in various Middle Eastern, Asian, and South American countries (Claybrook, 2000).

Publicly the companies feigned ignorance and blamed others, while privately they knew they continued to make a defective product. As the court documents were sealed, the public remained unaware and its safety jeopardized. By maximizing profit

Ford/Firestone chose financial gain over human life. It is this emphasis on maximizing profit to the exclusion of other corporate goals which this thesis will challenge.

Every year the Multinational Monitor publishes its list of 'The 10 Worst Corporations'. The list documents corporate excesses. For example, in 2003 the Multinational Monitor documented Boeing for overcharging the United States government in the sale of airplanes and for collusion with the government procurement official[1]. The same year Bayer was cited for bilking Medicaid[2], paying students to consume pesticides as a test, and keeping its anti-cholesterol drug on the market despite evidence of its health danger. Halliburton, the company for which Dick Cheney (current U.S. Vice-President) was once CEO, made the list for its government contracting scandals. In 2004, Merck made the list of 'The 10 Worst Corporations' for continuing to ignore the risks of its drug Vioxx (Over 4 years it is estimated 88,000 to 139,000 people suffered Vioxx related heart attacks, killing 40% or 35,000 to 55,000 people.). Also in 2004, Walmart was cited for underpaying workers and externalising[3] costs such as state funded low-income housing, low income tax breaks, and low-income healthcare. The Multinational Monitor's list demonstrates that Ford/Firestone's excess and ignorance was not an isolated case, but rather that the harmful effect of exclusively pursuing profit is endemic and

[1] The same government official was later hired by Boeing.

[2] Medicaid is a government funded health insurance program in the United States for those with low income and low resources.

[3] 'Externality' is an economics term used to describe the impact a decision has upon a third party. In other words, the decision-maker does not bear all the costs (or gains) of their action. In this case, Walmart's decision to underpay its employees impacts state funded low income services.

pervasive. The damage inflicted by the corporate obsession with profit is not specific to an industry or a sector of the economy, but rather all encompassing and all too common.

The growing resistance

Whether it is a detailed case (Ford/Firestone) or the actions of many companies (Multinational Monitor), the unchecked pursuit of profit has serious negative consequences. The relentless pursuit of profit has decimated the environment, outsourced work to countries with the cheapest labour, driven down real wages[4] domestically and sacrificed human life and health. It is harmful to workers, harmful to the environment and harmful to the public. In response, countries are beginning to ban genetically modified foods, cities are refusing big-box stores, 'sweatshop' has entered the mainstream lexicon, and the corporate destruction of the environment has become a major global concern. If the sole role of the corporation is to make a profit, it is not benefiting all of society. There is a growing awareness that profit and corporatization has not brought about the social goals it was purported to produce, and that the unchecked pursuit of profit is too harmful. This raising of consciousness is counter to the dominant corporate belief.

[4] An economics term that refers to wages that have been adjusted for the effect of inflation.

Owner's resistance?

The corporate **ideology**[5] is that the primary role of the corporation is to earn a profit. Those espousing this ideology usually leave it unsaid that the profit is earned for the company's owners - shareholders. But what happens if shareholders are willing to sacrifice profit for a better society? As part of the larger resistance to the prevailing notion that a company's social contribution is profit, what if shareholders instructed those who manage the company on their behalf that the top corporate priority is not profit? Can shareholders, as corporate owners, beneficiaries of profit and corporate insiders, change the corporate focus?

Thesis statement

While there are theories that utilise outside groups to explain corporate change, the focus of this thesis is upon inside groups. Shareholders are already within the corporate structure and therefore are best positioned to instil change. Specifically, this thesis examines the use of shareholder resolutions to introduce non-financial criteria into corporate decision-making and thereby counter the corporate obsession with profit. This thesis show that as part of a larger counter-movement, shareholder resolutions provide a critical perspective that is effective in challenging the entrenched and widespread belief that profit alone should prevail.

The significance of this thesis will be established after examining what others have said on the topic of shareholders activism, as well as how other theorists have

[5] Terms in bold are defined in the glossary.

conceptualised when and/or how corporations change. In the 'shareholders' chapter, shareholders as individuals and institutions will be discussed followed by the importance of studying pension funds (an **institutional shareholder**) as a group. Though **socially responsible investing** (SRI) continues to gain more financial influence and three types of SRI exist, this study focuses upon the effectiveness of one type of SRI - **shareholder engagement**.

Informed by Gramsci's theory of **hegemony**, this thesis examines the cases of church and pension plan shareholder engagement at Imperial Oil and Petro-Canada on the issue of climate change. After retrieving publicly available corporate reports and supplementing them with interviews, this thesis will examine the position and rationale of each shareholder within the context of the legal environment. The legal environment is significant because it provides the means by which, and boundaries within which, shareholders can submit a resolution. In Canada, the legal environment was significantly altered in 2001 with amendments to the Canada Business Corporation Act (CBCA). The changes provided shareholders with more rights and make a natural division in the engagement history by the church and pension fund shareholders.

As will be demonstrated in the 'engagement prior to 2001' chapter, the legal environment effectively eliminated shareholder engagement and prevented shareholders from exercising ownership rights prior to that date. The legal environment re-enforced the corporate hegemony of profit. Not only does the legal

environment bolster the corporate belief, it also represents a site where this belief is contested.

In the 'engagement after 2001' chapter, changes to the CBCA will be examined. These changes allowed church and pension shareholders to engage Imperial Oil and Petro-Canada, yet it will be shown that shareholders continue to engage too conservatively. Although the larger resistance has made headway in re-interpreting legal duties and encouraging active shareownership, shareholders continue to consent to their own ruling. Despite a legal environment that continues to constrain shareholders (to a lesser degree) and despite consenting to their own ruling, shareholders nevertheless can be effective in leading some corporate change. The dominant corporate belief that profit alone should prevail is slowly being undermined.

Previous studies and theoretical explanations

You must be the change you wish to see in the world.
- Mahatma Gandhi

What others have said about shareholder activism

The literature on **shareholder activism** can be generally divided into two themes – legal and financial. Contributors to the legal literature have encompassed many aspects. For example, these authors have attempted to devise a common workplace language (O'Connor, 1997) and explored whether existing legal and market mechanisms adequately restrain opportunistic union behaviour (Schwab & Thomas, 1998). The authors have also assessed whether social investing is consistent with trust law (Langbein & Posner, 1980) and examined whether including environmental concerns in financial decisions is consistent with trust law (Goodman, Kron, & Little, 2002). In addition, the contributors have argued for including structures that provide an opportunity for ongoing proactive dialogue into the legal environment (versus amending the rules governing engagement after dialogue has failed) (Roth, 1998), and called for reforms that provide better information to **beneficial shareholders** thereby facilitating participation and a greater voice (Curzan & Pelesh, 1980). Regardless of the particular study's emphasis, authors within this body of literature use a legal lens to analyse shareholder's rights. Because the primary frame of

reference is the law, these studies focus on what the law allows rather than on what its impact is.

In addition to examining shareholders' legal boundaries, this literature almost always utilizes the United States' legal environment (Curzan & Pelesh, 1980; Goodman et al., 2002; Langbein & Posner, 1980; O'Connor, 1997; Roth, 1998; Schwab & Thomas, 1998), even when examining a significant case study such as Project GM (Schwartz, 1971a, 1971b). Rarely is the Canadian legal context examined (Manitoba Law Reform Commission, 1993; Yaron, 2002), and never, regardless of the country, are the studies empirical.

On the other hand, usually via American case studies, authors of the financial literature have examined different types of resolutions, different styles of engagement, and the effect of both upon share price. Studies by authors such as Pozen (1994), Chidambaran & Woidtke (1999), Smith (1996), Black (1998) and Waddock and Graves (1997) have examined governance proposals, including the number of outside directors and the existence of **'poison pills'**[6]. Many of the same authors [Freeman (1984), Pozen (1994), Chidambaran & Woidtke (1999), Smith (1996), Del Guerico & Hawkins (1998), Black (1998), and Windsor (2002)] use financial measures to determine the effectiveness of activism. The underlying belief of governance proposals is that shareholders can, or should, monitor the corporation and that this will have a positive financial effect. Thus far, studies have debated whether there is a financial impact, addressed board of directors' issues, and covered both public and

[6] A provision to make the company a less attractive target for take-over.

private negotiations. However, as argued by McLaren (2002b), the implementation of social or environmental policies by shareholders has not been examined.

Though financial and legal perspectives have been offered, a sociological perspective is absent. Theoretical perspectives have included business theories such as stakeholder theory and agency theory, but have not included a sociological examination using critical social theories. Sociology can contribute to the literature on this topic, because it incorporates notions of power. Whether it be the power that comes with greater finances or the power that comes with compelling ideas, explicit notions of power are lacking in the shareholder activism literature.

Theories on corporate change

In order to explain how or why corporations change, this thesis will examine typical business theories (free market) and a more 'ethical' business theory (stakeholder). Given the corporation's separation of ownership and management (due to the legal structure of the corporation) many academics use agency theory. As a sociological thesis, there will be an examination of a once accepted theory on popular social change (social movement theory) and its successor (resource mobilization theory). All theories on corporate change will be considered and discarded in favour of a critical theory that incorporates ideology and power in creating change - Gramsci's notion of hegemony.

Free market

Typical theories in business suggest that corporations change in reaction to public needs. Corporations that do not meet the needs of the consuming public, whether those needs be commodity needs or beliefs, will not be supported and will become unprofitable. For example, if the consuming public values protecting the environment, then corporations that do not have stringent environmental standards will become unprofitable. The belief is that market forces, such as competition and publicity, will align corporate interests with the interests of the public. Since the market will regulate itself, corporations demand fewer, rather than more, formal constraints. A study by Fisse and Braithwaite (1983) however, found the financial impact of publicity is short term and usually insignificant, while the long term loss of reputation is not sufficient to pro-actively prevent harmful corporate behaviour. That crises of the magnitude of Ford/Firestone occur, let alone the 17 cases Fisse and Braithwaite studied, demonstrates reputation and publicity are not effective pro-active deterrents for corporate abuses. The instances of corporate abuses are too frequent for it to be a 'few bad apples' and self-regulation is insufficient to prevent this harmful corporate behaviour[7]. Whether it is Ford/Firestone, Worldcom, Tyco, Enron, Halliburton or Merck adverse publicity and self-regulation do not work. Most importantly, these theories are not relevant to this thesis because the only group included is consumers and the only motive is financial.

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[7] In addition to the Multinational Monitor, there is a large body of literature on 'corporate crime'.

Stakeholder

Stakeholder theory, part of the business in society literature, suggests that because the corporation is affected by outside groups such as governments, suppliers and consumers, it needs to be responsible to more than just shareholders[8]. Though shareholders are also stakeholders, there is a legal obligation between shareholders and the company's management. As such, stakeholder theory often addresses, and attempts to overcome, the dilemma that results when not all stakeholders can be treated equally. The result however, is a normative theory that conjures up ideas as to what the company ought to do, or how it ought to act. The goals of stakeholder theory extend beyond mere corporate profit, but the mechanism for change is absent. Whether studies advocate a change in the corporate decision-making culture (Goodpaster, Maines, & Rovang, 2002) or the means by which 'quality management' is determined (Waddock & Graves, 1997) the process to achieve these changes is missing. In 1985 Ullmann described stakeholder theory as 'data in search of a theory' (as quoted in Waddock & Graves, 1997, p.250), but now it is a theory in search of a mechanism.

Although the groups encompassed by stakeholder theory are more inclusive, and the goal of stakeholder theory does extend beyond corporate profit, the process

[8] Edward Freeman's book Strategic Management: A Stakeholder Approach is the seminal source for stakeholder theory. His definition of a stakeholder includes "those groups without whose support the organization would cease to exist" (1984, p.31). Freeman's approach suggests that effective strategists deal with the groups that can affect you, while responsive and long-term strategists deal with those groups that you can affect. Therefore, as indicated in the glossary, stakeholders include a group or individual that is affected by, or can affect, the company.

by which corporations change is lacking, and the theory continues to grapple with the legal priority shareholders have.

Agency theory

An agency relationship is "a contract in which one person or more persons (the principals) engage another person (the agent) to take actions on behalf of the principals that involve the delegation of some decision making authority to the agent" (Jensen, 2000, p.137). Agency theory is the body of literature that examines the agency relationship. As the principal 'hires' the agent, not only is there delegation of decision-making authority, but also a need for the principal to ensure that the agent does not act in its own self-interest. Originally a legal concept, business researchers have employed this theory because the separation of ownership and management in a corporation creates an agency relationship. In this application, researchers have studied the relationship between shareholders (principals) and directors (agents) examining the cost of creating the contractual relationship, the cost of monitoring the agent and the loss to the principal of delegating decisions (Jensen, 2000; McLaren, 2002b). In general, the literature varies the relationship between principal and agent or varies the organization's structure (Jensen, 2000; McCormick & Tollison, 1981). Underlying the theory is the assumption that individuals act rationally in their own self-interest. As such, agency theory is "the study of the inevitable conflicts of interest that occur when individuals engage in co-operative behaviour" (Jensen, 2000, p.57).

Though this thesis does examine the relationship between directors and shareholders and therefore, could be considered an application of agency theory, it is neither concerned with the impact of the firm's structure, nor with the financial aspect of monitoring or motivating. This thesis examines the conditions under which shareholders (owners or principals) can affect, rather than merely monitor, the directors' (agents') decision-making criteria. The goal of this study exceeds monitoring and ignores the financial cost of exerting ownership rights.

Social movement theory

Although there continues to be much debate within social movement theory as to what constitutes and characterizes a social movement, there is a common belief the 'social order' needs to be changed (Wilkinson, 1971; Wilson, 1973). Social movement tactics may change according to the situation, but underlying all is a belief in "the legitimate supremacy of the popular will" (Wilkinson, 1971, p.35). Social movements have some structure (but not as much as a political party), are more long lasting than a fad, use non-institutionalized means to achieve goals (unlike a political party, but not like a mob) and are purposeful (unlike a mob). They seem to be defined more by what they are not - a mob, a political party, a fad. Due to the lack of internal consistency, social movement theory is notable for its historic ability to determine the difference between a fad, a mob, a political party and a social movement after the fact. The theory however, provides poor proactive explanations. Past events are verified and confirmed to be, with certainty, social movements, but the same cannot be said for current events. Most importantly, social movement

theory applies more to affected or disaffected outside groups, such as stakeholders, rather than groups that are within the corporate structure.

Resource mobilization theory

Social movement theory, while initially popular, was unable to account for the organized, rational and professional protests of the 1960s. In its stead, resource mobilization theory (RMT) rose to become the dominant model for collective behaviour. RMT sees social movement activity as purposeful behaviour. It focuses on how the resources are acquired and organized rather than the resources themselves. Rather than theorizing group organization and group movement as separate, the two are viewed as embedded (McCarthy & Zald, 1987). With RMT, the focus changed from 'why people want change' to 'how can people organize and pool their resources' (Pichardo, 1988, p.98). RMT suggests resources are the central factor shaping the development and success of a movement. Conceptualised broadly, resources include any social, political, or economic asset. They could be tangible assets (such as money and facilities) and intangible assets (such as solidarities, and identity networks that facilitate the pooling of resources) (Jenkins, 2002). As a theory, RMT has both a micro and macro focus. Not only does it focus upon the individuals within a movement and the resources of those individuals, but also upon the group's impact on policy or social institutions.

Though RMT incorporates a variety of resources, both economic and ideological, it is lacking for several reasons. Not only does RMT pertain to aggrieved

outside groups, but also underlying the theory is the assumption that the state is a neutral, unbiased party mediating the interests of many groups. Moreover, though RMT may include ideology, it does so as a group's resource rather than a means to unify groups.

Gramsci

Antonio Gramsci (an editor, leader of the Italian Communist Party and elected member of the Italian Parliament) developed his theory in the period after the Russian Revolution but before World War II. Imprisoned by Benito Mussolini, Gramsci is best known for his writings on power - how it is maintained, who holds it, and how it can be challenged[9]. Gramsci's social theory is extensive and though he wrote to facilitate a worker-led revolution, many of his ideas provide a framework useful to understanding corporate change in general and shareholder activism in particular. Unlike Karl Marx who focused on economic power, Gramsci focused on social relations and the diffusion of power throughout society. He suggested that power is held not only in the state but also it is diffused throughout society. Writing specifically on working class struggles to change and challenge state power, many of Gramsci's ideas (particularly hegemony) are relevant to corporate change because the corporate ideology that profit prevails has become such an accepted notion in society

[9] Much of Gramsci's writing occurred during the period he was imprisoned. Prison censors impacted what Gramsci could write as well as what he could read. Due to this author's inability to read in the language Gramsci wrote (Italian), the works of Gramsci have not been consulted directly. Due to prison censors, there is no one authoritative interpretation of Gramsci's writings; consequently several sources have been consulted for this thesis.

that state institutions, such as the courts, protect it. Shareholders may be demanding a change in corporate direction, but they are constrained by state laws.

Gramsci argued that society is composed of three spheres of intertwined social relations - the spheres of production, civil society and political society. Civil society consists of all the

> organisations such as churches, trade unions, political parties and cultural associations which are distinct from the process of production and the coercive apparatuses of the state. All the organisations which make up civil society are the result of a complex network of social practices and social relations. (Simon, 1982, p.69).

In civil society, dominance is established and maintained by creating and diffusing ideas and beliefs through institutions such as the media, churches, theatres and schools.

Political society refers to the coercive relations embodied in the state apparatuses. It includes "the armed forces, the police, law courts, and prisons together with all the administrative departments concerning taxation, finance, trade, industry, social security etc, which depend in the last resort for their effectiveness on the state's monopoly of coercion" (Simon, 1982, p.70). Political society establishes dominance and maintains it directly through a variety of instruments ranging from force to legislation.

In emphasizing social relations, Gramsci recognized that there was not a strict division between civil and political society – there was overlap between these spheres. For example, the law is part of both civil and political society in that it has both

coercive and non-coercive elements. The law is both a weapon of class domination and aids the ruling class in winning the consent of the subordinate classes. Firstly, the legal apparatus "operates coercively to maintain hegemony, and directively in periods of ideological and political crisis. Secondly, the legal enactments educate and adapt the masses to the goals of civil society (as defined by the system through its ruling class), to the realms of morality and custom" (Sumner, 1979, p.257). The law not only establishes what is common sense and the bounds of morality (as per the dominant group) but also it is backed by the power of the state.

Theorists prior to Gramsci believed that power rested in the state and that groups ruled by force or the threat of force. Gramsci however, suggested that a society ruled solely by force was bound to fail. Consequently, he believed power could not rest just in political society, but must rest in both civil and political society. Lasting societies, he felt, ruled through 'moral and intellectual leadership' - or hegemony. Hegemony is the economic structure, the political society and the civil society all operating under one ideology, thereby allowing a group to rule without using force. Hegemony is important for maintaining power because it confines the masses within one world-view. It is attained "through the myriad of ways in which the institutions of civil society operate to shape, directly or indirectly, the cognitive and affective structures whereby men [sic] perceive and evaluate problematic social reality" (Femia, 1981, p.24). Moreover, hegemony is active rather than passive because Gramsci recognized that where there is unequal power, there is resistance. As such, hegemony could not be taken for granted but rather is "continually fought

for afresh. This requires persistent activities to maintain and strengthen the social authority of the ruling class in all areas of civil society" (Simon, 1982, p.37).

Though hegemony has been defined in many ways, it will be understood as "an order in which a common social-moral language is spoken, in which one concept of reality is dominant, informing with its spirit all modes of thought and behaviour. It follows that hegemony is the predominance obtained by consent rather than force of one class or group over other classes" (Femia, 1981, p.24). Simply put, hegemony will be defined as the spreading of one group's beliefs throughout society such that it becomes 'common-sense' for all of society. Today, our 'dominant concept of reality' and 'common social-moral language' is profit. Social decisions affecting the lives of people are constantly made on the basis of profit. The pre-eminence of profit, with all its harmful effects, has become an integrated part of civil society. The corporate ideology that profit should prevail has become such an accepted notion in society that schools teach it, the media disseminates it, and state institutions such as the courts protect it.

According to Gramsci, societies change in one of two ways. In societies where civil society is underdeveloped, opposing forces can be successful by simply capturing political society (Gramsci's war of movement), but in advanced capitalist countries, those with a developed civil society, opposing forces must first capture civil society (Gramsci's war of position). The war of position takes two variations. First, society can change if, through internal conflict, the dominant group loses its social authority - hegemony is dissolved from within. If the dominant group's

ideology has become stagnant and can no longer appear to represent the masses, then those in power lose their legitimacy and are able to rule only by force. Second, change can occur as a result of a counter-hegemony. Counter-hegemony has been referred to as countervailing criticism in the ideological realm. Gramsci believed that in countries with a developed civil society, the dominant group would rule more effectively and more subtly because they could integrate their interests into more sophisticated agents of socialization (schools, churches media and even trade unions). What was needed was an ideological war requiring steady penetration and criticism of the institutions of ideological diffusion. A counter-hegemony requires conquering the agencies of civil society (the schools, universities, publishing houses, media, trade unions etc.). The ideological revolution is needed in order for the change to be lasting. The counter-hegemony requires revolutionizing people's way of thinking. By "uniting the masses and channelling their spontaneity, [it would be possible to] command majority assent and hence overcome definitively the power" of the dominant group (Gramsci, 1971, p. xl).

The counter-hegemony cannot simply substitute one set of ideas for another. It must supersede the social situation such that the state apparatus is "isolated and helpless, its ideological and institutional supports eroded" (Femia, 1981, p.55). A counter-hegemony dismantles the foundation supporting the hegemony by building alliances with all the social movements striving to transform civil society. The hegemonic power exercised by the dominant group "through the organisations of civil society has to be increasingly undermined by the countervailing power of the

social movements based on the growing activity of the members of these movements" (Simon, 1982, p.74). Lasting change required not only a change in the structures of society but also a change in the attitudes that legitimised those structures. With respect to this thesis, a change in the corporate emphasis away from profit requires a new set of values integrated into both individuals and social institutions. To undermine the corporate ideology of profit, people need to place less emphasis on the financial interests of an issue and schools, courts, media etc. need to reinforce these new ideas. Social or environmental decisions need to be made with more social or environmental (rather than solely financial) criteria.

Gramsci suggested a successful counter-hegemonic group is one that succeeds in combining the interests of other classes with their own interests so as to create a national-popular collective will. There is an ideological dimension to the building of alliances since ideology acts as cement or as an agent of social unification. "A collective will can only be forged by a process of intellectual and moral reform that will create a common conception of the world. There must be a cultural-social unity through which a multiplicity of dispersed wills, with heterogeneous aims, are welded together with a single aim, as the basis of an equal and common conception of the world" (Simon, 1982, p.60). In the creating of alliances and the incorporating of another group's interests, elements of an ideology are re-arranged and combined in different ways around a nucleus or central principle. An opposing group does not have to completely revise the existing ideology but it must transform "existing ideologies by preserving and rearranging some of the most durable elements in a new

system" (Simon, 1982, p.64). Consequently, when engaging a company, the shareholder's ideology is crucial in the process of corporate change. As the dominant corporate ideology is financial, shareholders may include elements of the financial ideology but must be flexible and adaptive in their ideology in order to include the support of other groups.

There are two important points to remember about ideology. First, ideology cannot be reduced to a single group or class. A group cannot simply impose its outlook on others. Second, the ideology cannot be pre-fabricated by the leaders of a political party. It needs to be gradually built through political and economic struggles. A successful counter-hegemony integrates others' interests in such a way that the ideology is constantly amended and improved. In the war of position, alliances are formed and cemented by a common conception of the world that is spread and integrated throughout civil society. As this common conception is more accepted than the dominant group's ideological system, the dominant group becomes isolated and deprived of the support it once had. For Gramsci, social change was a process of constant struggle requiring the building of alliances and the integration of a new ideology throughout civil society before obtaining political society.

In short, Gramsci believed societies are ruled by force and consent. By shaping the values, ideas, beliefs and what is deemed common-sense in civil society, a group can achieve lasting dominance. Dominance, however, is active rather than passive. The alliances must constantly be fought for and the ideology constantly adjusted. To Gramsci, the state is "political society plus civil society, in other words,

hegemony protected by the armour of coercion" (SPN 262 as cited in Simon, 1982, p.71). The state and state institutions (such as the courts) represent the balance of forces in civil society. Because the state reflects the group that has succeeded in spreading its ideology throughout civil society, it is not a neutral arbiter of interests but will protect the interests of this dominant group. Consequently, an opposing force that is successful in advancing a better, more cohesive, ideology representing and including the interests of other groups can be successful in capturing civil society - then political society.

To encourage social change, Gramsci examined the location of power in society. Because this thesis encourages corporate change, examining the location of power within the corporation is necessary. With the rise of the publicly traded corporation, ownership and control of the business became separated. This separation challenges the notion of elites, as well as power within, and control of the corporation. In other business structures (such as sole proprietorships and partnerships), the location of power is self-evident. In the past, rich nobles founded, funded and operated their business. They were a privileged group both owning and operating their business. Compared to other business structures or past corporate owners, as will be demonstrated, the location of power in the modern public corporation is not as apparent.

In the field of business, it is common knowledge that the board of directors oversees the general affairs of the corporation and the executives manage the day-to-day affairs. Given directors' long-term role, there is a continuum of involvement in

corporate affairs. The board of directors can passively rubber-stamp the executives' initiatives, or it can be actively involved in the corporation's strategic direction. Regardless of the particular board of director's style, there are several basic tasks that the business community suggests are the responsibility of directors, including: initiate strategic paths and options, evaluate or influence corporate decisions, and monitor corporate activities (Wheelen & Hunger, 1989). Within these general responsibilities are more specific duties such as establishing executive compensation, ensuring the corporation adheres to the law, and liasing with stakeholders such as government and shareholders. In this manner, the common business conception is of power being shared between owners (shareholders), long-term corporate managers (directors) and short-term corporate managers (executives). Executives are accountable to the directors, and directors must be responsive and accountable to groups such as the owners.

Alternatively, others see the separation of ownership and management as problematic. Bakan (2004) cites Adam Smith's Wealth of Nations in warning about the 'recipe for corruption and scandal' because managers cannot be trusted to steward other peoples' money. For Bakan (and Smith), power is located with the directors and corporate executives. Clement and Myles (1994) are concerned with the separation of ownership and management as it leads to a separation of formal ownership from real economic ownership. Formal ownership may be legal and passive (limited to collecting dividends), whereas real economic ownership is the

control over production and the direction of where to use productive assets. With this perspective, power rests with those who have real economic control.

From a legal perspective, directors have a **fiduciary duty** to act in the 'best interests of the corporation'. While common law states directors owe the fiduciary duty to 'the corporation', and not to shareholders (*Roberts v Pelling*), the corporation is a separate legal fictitious creation of the shareholders. Shareholders initially set the corporation's guidelines by passing the corporate by-laws. They grant directors power and task them to manage the corporation. They, if unanimous in agreement, can reorder who is entrusted with managing the corporation. Power is not housed solely with directors, for shareholders, through by-law amendments, can initiate (not just approve) changes in the corporate structure. In this way, power flows from shareholders to directors. It is granted or passed from one party to another.

As a result of these different perspectives, the location of power within the corporation is contentious[10]. In many ways, this thesis is about shareholders exercising ownership rights or recapturing power within the corporation. The corporation has become a site of struggle between those who legally have power (shareholders) and those who actually exercise it (any group other than shareholders).

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[10] To suggest that shareholder have no power is to suggest that large shareholders such as Bill Gates and Kenneth Thompson have no power. And to suggest that directors have no power is to ignore case law.

Assessment of the reviewed theories

Gramsci's theory is relevant and applicable to corporate change via shareholder engagement. Free market theories included two groups (consumers and corporations) to explain change, but Gramsci's three spheres are more inclusive. Stakeholder theory does not provide a mechanism for change and cannot account for privileged groups, but Gramsci's notions of hegemony and counter-hegemony are particularly instructive. Agency theory focuses on the financial cost of monitoring agents and sees collective behaviour as inherently problematic, but Gramsci focuses on social relations and suggests collective behaviour is positive and liberating. Social movement theory's lack of internal consistency provides a poor analytical framework, but Gramsci's theory is complex and comprehensive. Additionally, social movement theory focuses upon groups, especially outside groups, but this thesis is concerned with the effectiveness of resolutions used by groups within the corporate structure. Furthermore, resource mobilization theory conceptualises ideology as a group's asset and the state as neutral, but Gramsci suggests ideology is an element of change in its ability to unify diverse interests and that the state reflects the dominant interests of society. With respect to shareholder activism, where other theories on corporate change fail, Gramsci does not. Gramsci's comprehensive theory on social change will be the framework from which to examine how groups within the corporate structure can effect a change in corporate priorities.

Significance of this study

Given previous shareholder activism studies and competing theoretical explanations, this thesis fills a gap in the shareholder activism literature, provides new insight and opens a new area of study for sociology. The study is important for three reasons: it is non-financial, it is Canadian, and it is sociological. While previous studies have empirically examined the effect of the resolution on share price, this study examines shareholders' ability to affect corporate priorities. While past studies have predominantly examined American laws and American shareholders, this study is Canadian in its perspective. Finally, earlier studies have been informed by various legal or business theories, but this study will employ a sociological (specifically Gramscian) approach to explain corporate change. This thesis is not concerned with shareholder means to monitor corporate activity or increase 'market efficiency', but rather with shareholders' ability to temper or diminish the profit motive by including non-financial criteria into corporate decisions.

Shareholders

Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has.
- Margaret Mead

Shareholders as individuals or institutions

Though shareholders are often thought of as individuals, shareholders also include institutions such as mutual funds, pension funds and churches. Institutional shareholders are larger investors utilizing more administrative parties. For institutional shareholders the investments are typically held 'in trust' and another party makes all investment decisions. Although the institution (church or pension fund) is the beneficial shareholder, this complex arrangement usually includes both a trustee and an investment manager.

Pension funds

Pension plans, an institutional shareholder, are interesting to study because they have amassed large holdings, they are becoming aware that seeking maximum profit harms labour, and they have a long-term investment philosophy. As of 2000, pension funds amounted to US $10 trillion globally (Carmichael & Quarter, 2003, p.193). As of 1994, pension funds controlled 47% of all equities in U.S. stock markets, while in Canada pension funds controlled 35% of all Canadian equities (Carmichael & Quarter, 2003, p.16). In 2001, Canadian **trusteed pension** plans

amounted to over $600 billion. Second only to the combined financial assets of the major Canadian banks, trusteed pension funds have become the second largest pool of capital in Canada (Carmichael, 2000; S.h.a.r.e., 2001).

The size of pension funds is important for two reasons. First, a large shareholder is needed to oppose large corporations. According to an Institute for Policy Studies' report in 2000, 51 of the largest 100 economies in the world are companies (Anderson & Cavanagh, 2000). To put that into perspective, Exxon Mobil's sales are ¼ of Canada's **gross domestic product**. More striking, Shell Oil's sales are larger than Nigeria's gross domestic product, yet oil is Nigeria's largest export. Second, the size of pension funds limits how they can respond to corporate mismanagement. Based on Hirschman's (1970) seminal book Exit, Voice and Loyalty, investors have the choice of selling their shares (exit), not selling (loyalty) or expressing dissatisfaction (voice). Clark and Hebb (2002) suggest that pension funds' growing use of passive **index funds**[11] prevent them from 'exiting' the firms with which they are dissatisfied[12], while Carmichael states that "given the size of their investments and the limited range of their alternatives, Canadian pension funds have little choice but to maintain and improve their corporate investment" (Carmichael, 2000, p.60). The ability to affect change within large transnational corporations requires shareholders of equivalent size, and whether it is due to the choice of

[11] Passive index funds are an investment that mirrors a market index such as the Toronto Stock Exchange's composite index (once called the TSE300).
[12] Index funds prevent the pension from selling holdings in a company with which it is dissatisfied because the index fund must reflect the composition of the market index. If company X makes up 12% of the market index, then company X must make up 12% of the index fund.

investment (index fund) or simply the number of shares, pension funds cannot sell their shares (exit) and need to engage (voice).

As well as being large investors, labour unions are becoming aware that maximizing pension fund profit hurts workers, thereby making labour complicit in the movement of jobs to low wage countries. Labour pension funds are becoming more active owners in order to overcome this inconsistency. As Richard Trumka, the AFL-CIO[13] Secretary Treasurer said at the 1996 Heartland Labour Capital conference, "there is no more important strategy for the Labour Movement than harnessing our pension funds and developing capital strategies so we can stop our money from cutting our own throats" (as cited in O'Connor, 1997, p.1348). Similarly, a 1986 Canadian Labour Congress convention "endorsed the goal of organized Canadian workers achieving greater control and direction of the investment of pension funds" (Carmichael & Quarter, 2003, p.15).

The final reason why pension funds are interesting to study is their long-term focus. While corporations may focus on short-term profits, pension funds seek to benefit both current <u>and</u> future beneficiaries. As such, they have a much longer time horizon. In 1993, Dale Hanson, the chief executive of the California Public Employees Retirement System[14] (CalPERS) said, "our entire investment philosophy is based on the premise that we are long term investors. Our average holding period is between 8 and 10 years" (as cited in Sparkes, 2002, p.220). As long-term investors,

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[13] American Federation of Labour - Congress of Industrial Organizations

[14] As of December 31, 2005 CalPERS' investments totalled US $200 billion. It is the United States' largest public pension fund and the third largest pension in the world.

some argue pension fund's interests are better aligned with society's long-term interests (Monks, 1998; Yaron, 2002). Whether or not this is actually the case, the long-term focus of pension funds is contrary to the myopic short-term focus of corporate management.

Given that pension funds are large, **illiquid** holdings with a long-term investment horizon and a newfound awareness of profit's impact on labour, they may be best positioned to challenge the corporate hegemony that is profit.

Shareholder resolutions as a tool for change

Socially responsible investing (SRI)

Generally, there are three types of socially responsible investing - targeted investments, ethical screening and shareholder engagement. Targeted investment is providing funds only to whom or what you believe. Ethical screening is choosing to invest (or not invest) in those who meet (or do not meet) your principled screening criteria. And shareholder engagement (or shareholder activism or shareholder advocacy) is trying to change the companies whom the shareholder has invested, but cannot or will not divest from their investment portfolio.

It was not until the 1980s, in conjunction with the anti-apartheid movement, that socially responsible investing (SRI) became prominent and influential (Social Investment Forum, 2003). In Canada, the history of SRI began in 1975 when the Taskforce on Churches and Corporate Responsibility (TCCR) was formed by a number of Canadian churches that wanted to make corporate policies more socially

responsible. One of the TCCR's first campaigns was to assist churches, as shareholders, in their efforts to influence Canadian banks lending to apartheid South Africa (Kairos, n.d.).

Since 1975, SRI has continued to grow. In Canada, as of June 2004, the Social Investment Organization estimates that $65 billion is managed according to socially responsible guidelines - a 27% increase from 2002 (Boshyk & Ellmen, 2005). In the United States, the SRI movement has increased such that by 2003 it accounted for 1 out of every 9 dollars under professional management (totalling $2.18 trillion dollars) (Social Investment Forum, 2003). In Europe, by 2001 socially responsible investing included 280 green, social and ethical funds totalling 11.1 billion Euros and representing a 78% increase from 1999 (Michael Jantzi Research Associates Inc., 2003). Finally in Japan, from 2000 to 2003 SRI has grown from 0 to 11 funds totalling US $1 billion in assets (Michael Jantzi Research Associates Inc., 2003).

The continued increase of SRI in North America and internationally make it a growing economic force that cannot be ignored. While SRI includes targeted investments and ethically screened funds, this thesis focuses only upon shareholder engagement and shareholder's use of resolutions.

Shareholder resolutions

Benjamin Graham and David Dodd said in 1934 that "the choice of a common stock is a single act, its ownership is a continuing process. Certainly there is just as much reason to exercise care and judgement in being a shareholder as in

becoming one" (as cited in CalPERS, 2004, para.5). Shareholder engagement exemplifies this. In the past, shareholder resolutions have been used by individuals, by churches (through the Interfaith Center for Corporate Responsibility), by environmental groups (through the Coalition for Environmentally Responsible Economies) and by pension funds (through the Council of Institutional Investors) on a broad range of topics that has included decreasing corporate investment in Burma, determining a firm's contribution to global warming, and increasing the accessibility and affordability of prescription drugs. Especially since the Canadian Business Corporations Act was amended in 2001, the use of shareholder resolutions has increased in Canada.

Table 1 Shareholder resolutions in Canada

	1999	2000	2001	2002	2003	2004	2005
Canada	10	39	63	37	99	108	134

Source: Shareholder Association for Research and Education (or S.h.a.r.e.).
Note: Data is the number of shareholder proposals filed and includes withdrawn or disqualified proposals not presented at an AGM.

Though shareholders include those who own a single share, it is large institutional shareholders, such as pension funds, who command the most attention and respect from corporate management. Shareholders, as owners of the corporation, are insiders that are offered several rights and opportunities that other stakeholders are not. As corporate insiders, institutional shareholders and their use of resolutions are interesting to study because their size and their status may make them best positioned to challenge the dominant corporate hegemony of profit.

Engagement prior to 2001

Obstacles don't have to stop you.
If you run into a wall, don't turn around and give up.
Figure out how to climb it, go through it, or work around it.
- Michael Jordan

Significance of 2001

In 1975, the Canada Business Corporation Act (CBCA) was first passed into legislation. It is the primary legislation governing federally incorporated companies with the dual objectives of providing a model for uniformity across Canada and permitting efficient administration that balances competing interests. In June 2001, Bill S-11 amended the CBCA and the Canada Co-operatives Act. The amendments were designed to enhance corporate governance, enhance global competitiveness, clarify responsibility and eliminate duplication with provincial securities legislation. The changes in 2001 were significant because they provided shareholders with more rights - specifically more rights to file shareholder resolutions.

Engagement at Petro-Canada and Imperial Oil

The cases of Petro-Canada and Imperial Oil illustrate the constraining legal environment that impacts shareholders exercising ownership rights. These companies and the shareholders that engaged them are the focus of this study.

As part of a larger international church campaign that started in 1995, the Taskforce on the Churches and Corporate Responsibility (TCCR) began an education and advocacy campaign on climate change in Canada. The TCCR held public workshops, lobbied the federal government and approached three companies in the fossil fuel industry, namely Suncor, Imperial Oil, and Petro-Canada. Suncor was in the midst of a corporate restructuring and receptive to the TCCR's concerns; however, shareholder engagement at both Imperial Oil and Petro-Canada was more enduring.

Petro-Canada

When Petro-Canada was approached by, and met with, TCCR representatives in 1997, the company initially took the issue of climate change very seriously and endeavoured to reduce its greenhouse gas emissions. In 1998, a TCCR representative made a statement from the floor at Petro-Canada's annual general meeting. During the same meeting, James Stanford, the company **CEO** "stated that Petro-Canada would move forward and demonstrate leadership by both reducing its own greenhouse gas emissions, and by actively participating in the debate as to how Canada can best reduce its overall emissions" (TCCR, 2000b, para.3). However in January 2000, Ron Brenneman became the new CEO of Petro-Canada. He came to Petro-Canada after working for 31 years in companies opposed to the Kyoto Accord (Imperial Oil and ExxonMobil) and though Petro-Canada had reduced its greenhouse gas emissions, its public stance changed with the new CEO. At the 2000 annual general meeting, a TCCR representative spoke from the floor asking for "a

commitment from Mr. Brenneman that Petro-Canada will continue to take positive steps towards greenhouse gas reductions and that it [the company] not adopt the position of his [Mr.Brenneman's] former employer" (TCCR, 2000b, para.4). At the same annual general meeting, with respect to climate change, Mr Brenneman stated "Kyoto[15], in my opinion, is really the wrong answer to this whole issue" (Jang, 2000, p. B12).

Imperial Oil

While dialogue was initially positive at Petro-Canada, the process of engagement at Imperial Oil has constantly been adversarial. Imperial Oil was approached by the TCCR at the same time as Suncor and Petro-Canada, but the company initially refused to meet with the TCCR and refused to circulate a proposal in the 1999 **proxy circular**. It was not until 1999, a year after the Petro-Canada meeting, that TCCR representatives finally met with Imperial Oil's management. At the 2000 Imperial Oil annual general meeting, a TCCR representative made a statement from the floor. However, unlike Petro-Canada's annual general meeting, at Imperial Oil's annual general meeting the TCCR representative spoke not only about the churches' concern on climate change, but he also singled out Imperial Oil for its vocal opposition to the Kyoto Accord in particular and climate change in general. During the meeting, the CEO of Imperial Oil, Bob Peterson, described the Kyoto Accord in particular as "bad science and flawed public policy ... [and climate change in general as] ...too many theories chasing not enough facts" ("Imperial Oil boss

[15] Refers to the Kyoto Accord, an initiative addressing global climate change.

defiant as protesters hurl pennies," 2000, p. B4). The following year, at the 2001 annual general meeting, he maintained "not everyone believes global warming is occurring" (Spears, 2001, p. E6) and suggested "one might characterize the science at this point as providing a warning - not a signal of impending or certain catastrophe. We need to learn much more before we will have a sound basis for policy actions" (Erwin, 2001, p.39). By 2002, when relinquishing his reign as CEO, Peterson was quoted in the Globe and Mail as describing the Kyoto Accord as "an economic entity. It has nothing to do with the environment. It has to do with world trade. This is a wealth transfer scheme between developed and developing nations. And it's been couched and clothed in some kind of environmental movement. That's the dumbest-assed thing I've heard in a long time" (Jang, 2002, p. B9).

Shareholder rights prior to 2001

The corporation is a unique business arrangement in that it separates ownership and management. While this arrangement does provide its owners (the shareholders) with limited liability[16], it also requires a strict division of duties. The specific division of duties is laid out in the corporate by-laws (Hebenton & Getz, 1982) and the general division of duties is laid out in the appropriate business corporation act. The statute governing companies incorporated federally is the

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[16] Limited liability for shareholders means that shareholders' financial liability is limited to the cost of the shares. Unlike sole proprietorships or partnerships, shareholders (as owners) cannot be personally liable beyond the cost of the shares.

Canada Business Corporation Act[17] (CBCA) and for companies incorporated provincially it is the provincial business corporation act. Whether the company is incorporated provincially or federally, the statutes are substantially the same.

When enacted in 1975, the CBCA sought to be "flexible enough to permit management to conduct the corporation's business with the public, but restrictive enough to constrain management from arbitrary or oppressive use of its powers" (Wainberg & Wainberg, 1981, p. v). The Act aimed to reduce administrative discretion through clear rules and standards - backed by the courts in the event of failing to abide by the rules.

To constrain management, the CBCA provides shareholders (owners) with rights, such as the right to nominate directors (Section 137(4)), the right to remove a director (Section 109), the right to stop a shareholder meeting (Section 154) and the right to file a shareholder resolution (Section 137). With respect to ownership rights, the CBCA states that shareholders can compel binding change only through a unanimous shareholder agreement (Section 146(2)) or an amendment to the corporate by-laws (Section 103(5)). However, since directors are also shareholders, a shareholder agreement is unlikely to ever become unanimous, and because shareholders are a minority amending the corporate bylaws (which requires a resolution get more than 50% of shareholder's votes) is improbable. Utilizing Sections 146(2) and 103(5), shareholders may be legally able to bind executives to a

[17] Of the 211 companies in the Toronto Stock Exchange composite index, 105 or 49% are incorporated federally and governed by the CBCA. Both Imperial Oil and Petro-Canada are incorporated federally and fall under the jurisdiction of the CBCA.

new corporate direction, but the barriers to overcome are daunting. As such, most shareholders utilize Section 137 and file a non-binding resolution.

According to the CBCA, it is a right of the shareholder to be able to discuss corporate affairs at a shareholder meeting. As the **management information circular** represents just the view of management, Section 137 provides shareholders with the right and a forum to communicate amongst themselves on issues of common concern. Consequently, the company must distribute, at its own expense, shareholder resolutions in the annual management circular. The regulation surrounding shareholder communication balances several issues. Though shareholders may not solicit other shareholders in order to influence them, they do have the right to communicate with one another on issues relating to the company. Shareholder proposals need to be specific enough to be within the realm of the corporation, but not specific enough to be encroaching upon the duties of management. Consequently, Section 137 attempts to balance these interests by legislating when a shareholder is eligible to propose a resolution and when the corporation can refuse to distribute that proposal.

Specifically, Section 137 states that a shareholder entitled to vote at a meeting of shareholders may

> a) submit to the corporation notice of any matter that he [sic] proposes to raise at the meeting, hereinafter referred to as a 'proposal'; and
>
> b) discuss at the meeting any matter in respect of which he [sic] would have been entitled to submit a proposal. (Section 137(1))

Shareholders may have the right to include a resolution in the management information circular, but corporate management can exclude the resolution in certain circumstances. As per the CBCA, the company must include and distribute a shareholder resolution in the annual management information circular, unless

> a) the proposal is not submitted to the corporation at least 90 days before the anniversary date of the previous annual meeting of shareholders (Section 137(5)(a));
>
> b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation or its directors, officers, or security holders or primarily for the purpose of promoting general economic, political, racial, religious, social, or similar causes (Section 137(5)(b));
>
> c) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years and the shareholder failed to present the proposal, in person or by proxy at the meeting (Section 137(5)(c));
>
> d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years and the proposal was defeated; (Section 137(5)(d))
>
> e) or the rights conferred by this section are being used to secure publicity (Section 137(5)(e)).

Naturally all these sections and sub-sections have been challenged and interpreted through case law.

In the 1996 case of *Verdun v. Toronto-Dominion Bank* it was decided in Ontario provincial courts that only **registered shareholders**, those 'entitled to vote' under Section 137(1), could submit a proposal. In the 1989 Ontario case of *Capuccitti v.*

Bank of Montreal, the Bank of Montreal succeeded in arguing that under Section 137(5)(b) it should not distribute a shareholder proposal by Capuccitti because Capuccitti's pending litigation against the bank made the proposal a personal grievance. With respect to the affairs of a corporation, it was decided in the 1984 Ontario case of *Greenpeace Foundation of Canada v. Inco Limited* that Greenpeace's proposal for Inco to reduce acid rain by limiting its sulphur dioxide emissions should not be included in the circular, because the purpose of the proposal was to advance an environmental cause contrary to Section 137(5)(b). Moreover, Greenpeace's proposal in 1984 to reduce emissions to 274 tonnes per day was 'substantially similar' under Section 137(5)(d) to the previous year's proposal to reduce emissions to 43 tonnes per day (Gray, 2000). An equally defining legal challenge was the 1987 case of *Varity Corporation v. Jesuit Fathers of Upper Canada.* The Jesuit Fathers proposal laid out specific steps for Varity Corporation to divest from apartheid South Africa. Though the Fathers argued that by providing steps particular to that corporation the purpose of the proposal was 'specific' rather than 'general', the court disagreed finding the resolution's purpose was still a prohibited general cause.

As interpreted by case law, the ability for shareholders to effect the direction of a corporation via proposals was severely limited due to the breadth of Section 137(5). The 'general economic, political, racial, religious, social, or similar causes' phrase effectively eliminated **shareholder advocacy** in Canada. Though a shareholder could apply to the courts for the meeting's delay and the proposal's

inclusion, throughout this expensive ordeal the onus resides with the shareholder, the owner, to show the proposal does not fall under this very broad category.[18]

Before the CBCA amendments in 2001, corporate management could too easily exclude a shareholder resolution. It effectively limited shareholders to only asking pointed questions at the company's annual general meeting. As seen in the cases of Imperial Oil and Petro-Canada, the TCCR spoke at each company's annual general meeting. The TCCR may have submitted a proposal to Imperial Oil in 1999, but it was excluded. Presenting at the annual general meeting was a result of the limiting legal environment.

Director's rights prior to 2001

Although case law limited shareholder rights, director's rights were interpreted to be complete and unlimited. The duties and responsibilities of the company's directors are laid out in Part X of the CBCA (Section 102 to Section 125). These sections spell out the director's responsibilities, duties and liabilities. For example, Section 122 of the CBCA specifies that the director is responsible to the corporation and Section 102 specifies the director's duty is to 'manage the affairs of the corporation'.

The director's duty has been determined to be a right. That is, as long as directors act in the best interests of the corporation they may manage the affairs of

[18] In the United States, when a shareholder resolution is excluded, shareholders first appeal to the Securities Exchange Commission (SEC) for the resolution's inclusion. Canada does not have a similar jurisdictional body, hence shareholders must appeal to the courts.

the corporation in any manner they wish. The two significant cases which demonstrate this are *Teck v Millar* (1973) and *Canadian Jorex Limited v 477749 Alberta Limited* (1991). In *Canadian Jorex*, it was ruled that the duty to manage the affairs of the corporation is a basket clause - if the power is not specified it does not mean directors lack the authority. Moreover, director's powers may be limited only by a unanimous shareholders agreement or by amending the corporation's by-laws (as previously discussed a unanimous agreement is unattainable and amending the by-laws improbable). In addition to unlimited power, the case of *Teck v Millar* suggested that the director's power to manage the affairs of the corporation is complete. This legal right means an agreement between shareholders is not binding, because directors are agents of the corporation not of the shareholders. "A majority of shareholders do not by reason of such majority acquire any legal right. A majority can pass resolutions and elect new board of directors at shareholder meetings, but it does not, by virtue of such a majority, enjoy any proprietary right" (Gray, 2002, p.141). It is the role of directors to manage according to their best judgement until removed from office.

Shareholders could only present at the AGM

As a result of the legal environment, shareholders were unable to exercise their ownership rights. Though case law deemed director's rights to be all encompassing and unlimited, case law effectively eliminated shareholder engagement in Canada. Case law insists directors acting in the 'best interests of the corporation'

have unlimited rights, whereas shareholder rights are severely restricted. Shareholders, the corporate owners, were legally silenced. Though shareholders have the ability to contest a decision that excluded a proposal, it must be done through the courts, and this requirement financially prevents most shareholders from pursuing such issues. In Canada prior to 2001, the legal environment was a barrier to shareholders. As Gramsci suggested, the law became a weapon of class domination. The interests of one group became integrated into both case law and statutes such that the law supported, perpetuated and bolstered one worldview - that profit prevails. Shareholders, including the TCCR, had no means to contest the corporate hegemony of profit because prior to 2001 the legal environment constrained shareholders. As will be seen in the next section however, where there is unequal power there is resistance.

Engagement after 2001

All truth passes through three stages.
First, it is ridiculed. Second, it is violently opposed.
Third, it is accepted as being self-evident.
*- **Arthur Schopenhauer***

Context for amending the CBCA

In 1993, in response to a number of high profile corporate failures (Confederation Life, Royal Trust, and Campeau), the Toronto Stock Exchange (TSE) established a Committee on Corporate Governance in Canada. The 1994 report, entitled 'Where were the Directors? Guidelines for Improved Corporate Governance in Canada' (often referred to as the 'Dey Report' after the Chair Peter Dey) made 14 recommendations to improve corporate governance. The TSE adopted all 14 recommendations as voluntary guidelines. In 1999, the TSE formed a committee to determine the extent to which these guidelines were being put into practice. The TSE report ('5 Years to the Dey') found very mixed results on adoption of the voluntary guidelines. Finally, in the late 1990s the Senate initiated amendments to the Canada Business Corporation Act (CBCA). The CBCA amendments may not be a direct result of corporate failures, but at a minimum the corporate failures and the 'Dey Reports' made corporate governance an issue to legislators and regulators.

Perhaps more importantly, the CBCA required change because it did not reflect investment reality. The Verdun court decision deemed only shareholders entitled to vote (registered shareholders) had shareholders rights. However, the investment reality was that both individual and institutional shareholders held shares indirectly (with an intermediary) rather than directly (in their own name). As every shareholder held shares at an intermediary, all shareholders were beneficial, rather than registered, shareholders and therefore without shareholder rights.

Bill S-11: An Act to amend the CBCA

Prior to passing Bill S-11, the Canadian Senate held hearings over 9 days. According to Lizee, the 7 key issues of the hearings included: which shareholders were entitled to submit shareholder resolutions, on what grounds should management have the right not to circulate a shareholder resolution, should there be more flexibility in allowing communication between shareholders, should the separation of Chief Executive Officer and Chairperson of the board of directors be legislated, should the minimum Canadian residency requirement of directors be reduced, should the responsibility of the corporation and its directors extend beyond shareholder to stakeholders, and should cumulative voting for board members be legislated (Lizee, 2002). Though the eventual act chose not to address certain issues, encouraged instead of legislated others, and addressed some issues, the issue that garnered the most debate was the basis upon which management could refuse to circulate a proposal (Lizee, 2002).

Before 2001 the CBCA did not require companies to circulate proposals that promoted a general political, social or environmental cause, but during the hearings it was argued that "real-world issues are more complicated than the restriction recognized" (Lizee, 2002, p.18). For example, global climate change is an environmental issue, yet an integral part of an oil and gas company's operations. The Canadian Bar Association argued that many issues directors would consider social or political (such as gender representation on the board of directors) are precisely the types of issues that should be debated by shareholders. Father Richard Soo insisted that the intent of Section 137 was to allow shareholders, as owners, to communicate their will to the corporate managers and that Section 137(5) too easily allowed managers to stop owners (shareholders) from expressing their opinion (Lizee, 2002). The debate also examined changes in the United States, since its governing body (the Securities Exchange Commission or SEC) had been more likely to allow shareholders to submit resolutions normally thought to be management's responsibility. In the United States, generally since 1992 and specifically since the 1994 Cracker Barrel case[19], there has been recognition that the line between 'general cause' and company

[19] In 1992, Cracker Barrel Old Country Stores announced a hiring policy that excluded those who "fail to demonstrate normal heterosexual values which have been the foundation of families in our society" (Roth, 1998, p.108). The New York City Employees' Retirement System submitted a shareholder proposal requesting Cracker Barrel to "implement non-discriminatory policies relating to sexual orientation and to add explicit prohibitions against such discrimination to their corporate policy statement" (Sparkes, 2002, p.31). As employment was considered to be part of the company's ordinary business, Cracker Barrel sought assurances from the SEC that the SEC would take 'no-action' if Cracker Barrel excluded the proposal from its proxy statement. The SEC granted 'no-action' but due to the resulting outrage, shortly thereafter announced that some business operations may be appropriate for shareholder consideration because they implicate significant policy concerns. The SEC's action led to lawsuits and a petition to change the SEC rule. In 1997, the SEC proposed examining employment related shareholder proposals on a case-by-case basis rather than automatically excluding them.

responsibility has become blurred (Roth, 1998). Following the United States' example, Bill S-11 provided circumstances under which the proposal could be excluded. Instead of defining and clarifying the catch-all 'general cause' phrase, the hearings led to and opted for an approach by which proposals that did not relate to the 'business or affairs of the company' could be excluded.

The changes that occurred with Bill S-11

In the end, Bill S-11 provided some clarity. The amendments deleted the "general economic, political, racial, religious, social, or similar causes" clause and opted for the clause "it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation" (Section 137(5)(b.1)). Though directors can still disallow a proposal and the onus is still on the shareholder to prove in court that a disallowed resolution does relate to the 'business or affairs', Bill S-11 provides shareholders with more ability to file resolutions. The bill also establishes criteria, similar to those in the United States, under which proposals could be resubmitted. With the CBCA, a proposal or a 'substantially similar' proposal that was defeated could not be resubmitted for 2 years. However, with the amendments in Bill S-11 'substantially similar' proposals were prevented from being resubmitted if, within 5 years, the proposal did not garner 3% support after the first time it was submitted, 6% support after the second time, and 10% support after the third time (Section 137(5)(d)).

Bill S-11 allowed shareholders to submit resolutions

Bill S-11 is significant because by deleting the 'general causes' clause, shareholder resolutions no longer needed to be financial. As long as the resolution related to the 'business or affairs of the company', whether it is a financial, environmental or social resolution, it could no longer be excluded. In short, changes to the CBCA provided greater legal ability for shareholders. Before 2001, shareholders such as the TCCR could only make statements at the company's annual general meeting, but with Bill S-11 it became possible for shareholders to submit resolutions at companies such as Petro-Canada and Imperial Oil.

Shareholder resolutions at Petro-Canada and Imperial Oil

Methodology

In addition to a resolution, shareholders are entitled to include a supporting statement to explain the need for, and reason to support, their resolution.[20] By law every company must make public its management information circular (including shareholder resolutions and supporting statements) and SEDAR[21] is a database housing all corporate filings. After retrieving the resolution and the supporting statement from SEDAR, differences in each supporting statement are highlighted and supplemented with interviews to illuminate each shareholder's rationale.[22] The rationale is important because it is constrained by the legal environment. All

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[20] Combined, the resolution and supporting statement are not permitted to exceed 500 words.

[21] System for Document Analysis and Retrieval - at www.sedar.com

[22] The resolutions and supporting statements (including the company's response) are included as an Appendix. The textual differences between supporting statements have been highlighted.

information is publicly available secondary data. Speeches and press releases were retrieved from company websites or via web searches, newspaper articles were retrieved via keyword searches in newspaper databases, such as Canadian Newsstand, and the proxy information was retrieved from SEDAR.

Engagement in 2003

Although church representatives spoke at Petro-Canada's and Imperial Oil's 2000 annual general meeting, it was not until 2003, two years after Bill S-11, that resolutions were included in both companies' management circular. Because the position of Petro Canada's new senior management was contrary to the corporation's commitment, two institutional shareholders (an investment firm managing pension fund assets called Real Assets and a mutual fund company called Ethical Funds) became concerned enough to file a resolution at Petro-Canada. At Imperial Oil, its opposition to and denial of climate change had resulted in continuous engagement by church shareholders from 1997 to the present. This resulted in two members of the TCCR (the Sisters of Sainte Anne, Fonds Elisabeth-Bergeron and the Trustee Board of the Presbyterian Church in Canada) filing the same resolution with Imperial Oil in 2003. Reproduced in Appendix A & B, and the resolution specifically asked each company to

> prepare a report to shareholders (at reasonable cost and omitting proprietary information) by October 2003 detailing the range of potential financial liability associated with its greenhouse gas emissions, its strategy to reduce this liability, including an estimate of the costs and benefits of substantially reducing annual greenhouse gas emissions under a range of reasonable carbon pricing scenarios, with special reference to the possible role of investments in renewable energy.

At both companies, management recommended shareholders vote against the resolution. Petro-Canada requested shareholders vote against the resolution because it had voluntarily reduced greenhouse gas emissions below the level required by the Kyoto Accord, the federal government had not released an implementation plan (so any assessment of the financial impact of the Accord would be speculative), and the resolution had already been substantially implemented with Petro-Canada's current reporting practices (Petro-Canada, 2004, p.27).

Imperial Oil recommended voting against this proposal due to uncertainty surrounding the Kyoto Protocol. "The treaty was not in force because an insufficient number of developed countries had submitted their ratification" (Imperial Oil, 2003, p.8) and though the Canadian government had ratified the agreement "it has not determined what measures they will impose on companies or consumers" (Imperial Oil, 2003, p.8). As such Imperial Oil pursues scientific, technical and economic research on climate change, reports its emissions to Canada's Climate Change **Voluntary Challenge and Registry**, continues to improve energy efficiency and reduce emissions economically, and invests in technology to reduce future emissions in order to achieve both economic growth and 'meaningful environmental progress'.

In the end, 7% of Petro-Canada's shareholders voted in favour of the resolution and 5% of Imperial Oil's shareholders supported the resolution. In both cases, the resolution exceeded the 3% threshold necessary for first time resolutions and could therefore be re-filed.

Engagement in 2004

For 2004, two new resolutions were filed at each company - one assessing the opportunities in renewable energies and another requesting third party verification on a report assessing the liabilities of greenhouse gas emissions. The Petro-Canada resolutions were, once again, co-filed by Real Assets and Ethical Funds, while at Imperial Oil the Sisters of Sainte Anne requested Imperial Oil assess opportunities in renewable energies and the Fonds Elizabeth Bergeron requested third party verification of greenhouse gas reporting. Reprinted in Appendix C & D, the resolutions asked the Board to

> prepare a report by September 2004 (at reasonable cost and omitting proprietary information) to describe how the company has evaluated market opportunities in wind, solar, and other renewable sources of energy and the business risks associated with a strategic focus on a single technological solution in the renewable energy industry.

And the company to

> annually issue a report to shareholders that has been verified by credible third party auditors on: specific emission reduction initiatives undertaken by the company to address risks and liabilities arising from climate change, including targets and actual emissions.

Once again both companies' management recommended shareholders vote against the proposals. With regards to the resolution requesting a report on opportunities in renewable energies, Petro-Canada stated that as well as being involved in a number of alternative energy initiatives (including fuel cell technology), it is monitoring emerging renewable markets and waiting for better shareholder value. Moreover, the company has substantially implemented the proposal as the company's "comprehensive risk

management strategy, which addresses a wide range of risks and uncertainties associated with its businesses, are well documented in its Annual Report" (Petro-Canada, 2004, p.40). With respect to the resolution requesting third party verification of emission reductions, Petro-Canada stated it had a strong history of energy efficiency and reducing greenhouse gas emissions. Most importantly, in late 2003, the company hired an external company "to conduct a third party assessment of our processes and controls relating to the measurement, calculation, consolidation, and reporting of **GHG** emissions" (Petro-Canada, 2004, p.41). Petro-Canada was acting upon the assessment's recommendations in order to improve the consistency and transparency of its greenhouse gas reporting. Since the company has already reduced emissions, reports to the Voluntary Challenge and Registry (VCR) and is improving its reporting process, the intent of the resolution was substantially implemented. Hence Petro-Canada "sees no value to shareholders in incurring costs to produce a separate report on these matters" (Petro-Canada, 2004, p.41).

At Imperial Oil, with regard to the resolution on opportunities in renewable energy, Imperial Oil believes renewable energies are not a profitable investment. Though renewables "may experience strong growth, [they] do so from a relatively small starting point, and are not likely to achieve material market penetration for some time" (Imperial Oil, 2004, p.32). With regard to the resolution on third party verification of greenhouse gas emissions, Imperial Oil replied that although "there can be inconsistencies in the methodologies used by different firms reporting under the VCR program, this is primarily due to the lack of consistent standards in what is

still an evolving field" (Imperial Oil, 2004, p.34) and would therefore not be overcome by third party verification. Moreover, Imperial Oil believes that "attributing possible future financial risks and potential liabilities to greenhouse gas emissions at this time is extremely speculative and depends heavily on the evolution of future government policy. [As such, Imperial Oil] works closely with governments, through its major industry associations, to support the development of appropriate policy that will protect Canada's environment and also promote the development of Canada's energy resources and economy" (Imperial Oil, 2004, p.34).

The outcome at Petro-Canada was 20% of shareholders supporting each resolution. At Imperial Oil, the resolution to assess opportunities in renewable energy received 3.5% of the total voting shares, and the resolution on third party verification of greenhouse gas emissions received 4% of the total voting shares. As both resolutions at both companies received more than the threshold of 3% support for first time resolutions they could be re-filed.

Engagement in 2005

In 2005, Real Assets/Ethical Funds re-filed the 2004 resolutions asking Petro-Canada to produce a report assessing the market opportunities for renewable energy and report on initiatives to reduce greenhouse gas emissions, but the resolutions were withdrawn before the annual general meeting (S.h.a.r.e., 2005).

At Imperial Oil, the resolution from 2003 was re-filed and a resolution asking for an assessment on ways to promote and participate in renewable energies was

presented at the annual general meeting. Reproduced in Appendix E, the Fonds Elisabeth Bergeron re-filed the 2003 resolution that asked Imperial Oil to

> at reasonable cost and omitting proprietary information, by October 2005 issue a report to shareholders, verified by an independent third party with professional competency in this area, on potential risks and liabilities to Imperial Oil arising from the range of climate changes and their effects (as reported by the IPCC), and an assessment of the strategies and initiatives that may be undertaken by Imperial Oil to address those risks and liabilities. (Imperial Oil, 2005, p.31)

And the Presbyterian Church submitted a proposal similar to 2004's request for a report on market opportunities in renewable energy. This resolution requested Imperial Oil to

> prepare a report by September 2005 (at reasonable cost and omitting proprietary information) to describe how the company could promote and participate in the growing market in wind, solar, and other renewable sources of energy, particularly within Canada. (Imperial Oil, 2005, p.32)

Imperial Oil recommended shareholders vote against both resolutions. With regard to the proposal requesting a report on climate change risks, liabilities and Imperial Oil's strategy to reduce these risks, the company states more scientific progress on the topic of climate change needs to be done in order to make informed choices. Moreover, without details of a Canadian implementation plan, the financial risks and liabilities cannot be assessed. However, the company is seeking long-term solutions to reduce greenhouse gas emissions through increased efficiency. The company believes its "approach on climate change is comprehensive and responsible and that it establishes a clear process based on scientific, economic and technical analysis that will protect the long-term shareholder value as the issue evolves" (Imperial Oil, 2005,

p.32). With regard to the resolution requesting a report on how the company could promote and participate in the growing renewable energy market, Imperial Oil states that it considers investments that meet 'sound investment criteria'. Given that the economic prospects have not changed in the last year, the "directors continue to believe that participation in such renewable projects would be uneconomic and uncompetitive with the company's other opportunities and not in the interest of shareholders"(Imperial Oil, 2005, p.33).

Both resolutions received less than 1% support of the total voting shares and because they did not meet the 6% threshold for second time resolutions they cannot be re-filed for 2 years.

The following table (Table 2) summarizes the engagement results at each company over the 3 years.

Table 2 Results of Shareholder resolutions at Petro-Canada and Imperial Oil

Resolution	Company	**2003**	**2004**	**2005**
Report on financial liabilities of greenhouse gas emissions and possible role of renewable resources	Petro-Canada	7%		
	Imperial Oil	5%		<1%
Report on the market opportunities in renewable energy	Petro-Canada		20%	Withdrawn
	Imperial Oil		3.5%	<1%
Report on greenhouse gas emission reductions verified by a third party	Petro-Canada		20%	Withdrawn
	Imperial Oil		4%	

Source: S.h.a.r.e. (Shareholder Association for Research and Education) at http://www.share.ca/index.cfm/fuseaction/page.inside/pageID/751215E5-B0D0-157F-F405B9A1ABA8AE7B/index.cfm

The different engagement processes

Though the resolutions at Petro-Canada and Imperial Oil were the same, the engagement by the TCCR and Real Assets/Ethical Funds was different. Pension funds most often engage a company based on financial grounds and prefer less publicity while religious groups engage based on themes, issues or sectors and prefer more publicity. The rationale and tactics may depend upon the shareholder, but for any shareholder resolution to be included in the management circular, the resolution's wording is important.

The wording of the resolution

In the United States resolutions are usually omitted through the 'ordinary business' or 'substantially implemented' exclusion (Monks, Miller, & Cook, 2004; O'Rourke, 2003; Roth, 1998). The company will insist the resolution intrudes upon management's responsibility (ordinary business) or the resolution's intent has already been addressed (substantially implemented). As such, in the United States, resolutions attempt either to amend corporate by-laws or seek a report (Curzan & Pelesh, 1980). Resolutions that change the nature of the company or seek a report cannot be omitted via the 'ordinary business' or 'substantially implemented' exclusions.

In Canada, since most shareholders do not have the financial resources to contact all other shareholders, they attempt to include a resolution in the company's

management information circular at the company's expense[23]. However, because the company can exclude a proposal that is requested for inclusion in its circular, the wording of the resolution is of utmost importance. In order to be included resolutions usually link a non-financial issue to a financial issue and/or simply ask management for a report.

Prior to 2001, the legal environment allowed only registered shareholders to file resolutions that were not of a 'general cause'. Since 2001, in order to relate to the 'business or affairs' of the company, social/environmental resolutions usually link financial performance to social/environmental performance or link financial risks and liabilities to inaction. The former provides a business case for a non-financial cause (linking long-term shareholder value to social responsibility), and the later attempts to manage the risk of its investments (preserving shareholder value by avoiding financial risk). Both fulfil the shareholder's legal duty and therefore cannot be excluded by the company.

With respect to Petro-Canada and Imperial Oil, the 2003 resolution asked each company to assess and report upon the financial risk of greenhouse gas emissions. In 2004, the resolutions asked Petro-Canada and Imperial Oil to assess and report upon the financial opportunities available in renewable resources, and for a third party report on financial risks and liabilities arising from climate change. All

[23] A shareholder could circulate material to all other shareholders without the company's approval, but it is at the shareholder's expense.

these resolutions linked a financial cost or opportunity to a non-financial issue and could not be excluded.

Also seen in the two cases, shareholder resolutions usually ask the company to create a report. Such resolutions are of an advisory rather than a mandatory form, because "shareholder resolutions that require the board of directors to take certain actions intrude upon the board's discretion and can be omitted, [but] proposals in the form of non-binding requests or recommendations preserve the board's discretion to manage the business and affairs of the company" (Curzan & Pelesh, 1980, p.681). The aim of 'reporting resolutions' is to establish a transparent process of governance. It is believed that companies with transparent processes will proactively avoid irresponsible decisions, making them less risky investments. A large American pension fund (Teachers Insurance Annuity Association-College Retirement Equities Fund or TIAA-CREF) is not unusual when it states that companies "that follow good corporate governance practices and are responsive to shareholder concerns are more likely to produce better returns than those companies that do not follow these practices or act in such a manner" (TIAA-CREF, 2005, para.1). All resolutions, at both Petro-Canada and Imperial Oil, asked management to prepare a report. In linking a non-financial issue to a financial issue and by asking for a report, these shareholder resolutions could not be excluded.

TCCR's public engagement

With respect to the engagement process, shareholders can target a company on financial grounds, as part of a theme, an issue, or a sector (McLaren, 2002a) and will use varying amounts of publicity. Shareholder engagement can include public mechanisms or private mechanisms. Public mechanisms include attending the company's annual general meeting, issuing press releases, filing shareholder resolutions, and voting on resolutions proposed by other institutions, whereas private mechanisms include meeting with management, writing to other shareholders, and informing management of one's voting intentions (European Social Investment Forum, 2004).

For pension funds, the process of engagement relies on private dialogue with management. For non-governmental organizations however, the process is much more public. Non-governmental organizations (NGOs) may buy shares specifically to gain shareholder rights, using the resolution and corporate annual general meetings as a forum for publicity. As a shareholder, they are permitted to attend the annual general meeting and are able to ask pointed questions of management, thereby gaining publicity and attention for their cause (Opler & Sokobin, 1995). For NGOs the resolution and the annual general meeting becomes another tool in a larger campaign, but for institutional holders, the resolution is the only tool and is used as a last resort. Though religious shareholders are usually included as institutional shareholders, the engagement tactics of the TCCR includes publicity and is more public than the tactics used by Real Assets/Ethical Funds. For this reason, the

TCCR will not be considered an institutional shareholder but rather a non-governmental organization.

As part of its international campaign, the Taskforce on the Churches and Corporate Responsibility (TCCR) began an education and advocacy campaign on climate change in Canada. In addition to a dialogue with three Canadian companies in the fossil fuel industry, the TCCR held discussions with Environment Canada and conducted workshops to raise awareness of climate change. The TCCR's agenda, created by participating organizations, includes ecology themes (such as climate change), corporate responsibility issues (such as the impact of corporate operations) and corporate governance issues (such as board of directors) (TCCR, n.d.). The TCCR engaged oil and gas companies as part of an ecological theme and their engagement tactics included publicity.

Real Asset/Ethical Fund's private engagement

At Real Assets, a Canadian pension fund investment management company, engagement is part of its raison d'être. Real Assets focuses entirely on social impact investing - evaluating the social consequences of the investment decision. Building on evidence that links financial performance to social/environmental performance, Real Assets engages companies and encourages them to become social, environmental, and ethical leaders. It uses "corporate social responsibility metrics along with traditional financial metrics in order to identify companies that make sustainability part of a winning business model" (Real Assets, 2003, para.2).

Ethical Funds, a Canadian mutual fund, determines which companies to engage on the basis of its 'Corporate Sustainability Scorecard'. The scorecard uses 50-120 key performance indicators, which are based on more than 100 international principles, guidelines, standards, and codes of conduct, in order to evaluate a company's sustainability and corporate responsibility. The 'Corporate Sustainability Scorecard' is used both as an ethical screen (to inform the investment decision) and to create a focus list of companies - companies that Ethical Funds has previously invested in and in which it needs to encourage an improvement. The companies in the focus list "lag their peers in specific areas or are strategically positioned to help 'raise the bar' for all companies in their peer group" (Ethical Funds, 2005, para.1). It is the companies in the focus list that Ethical Funds engages. Unlike the TCCR, at Real Assets and Ethical Funds engagement is based upon financial criteria and the use of publicity is avoided.

Corporate response

From a company perspective it is best to address shareholder's concerns. While neither shareholder resolutions in general nor reporting resolutions in particular are binding, there are three reasons why companies take them seriously. First, the business community is concerned with the financial implications of ignoring the wishes of the owners. Consequently, the more support a proposal gets, the worse management appears to be. It is estimated that Talisman's share price was reduced by

25% during the campaign against the company for its Sudanese operations[24] (Guay, Doh, & Sinclair, 2004; Marens, 2004; Sparkes, 2002).

Second, shareholder resolutions in the United States have been gaining more support. The first shareholder resolution to obtain more than 50% of the vote was as early as 1988 (Marens, 2004). In 1997, according to the Investor Responsibility Research Center (IRRC), 34 shareholder resolutions opposed by management received more than 50% of the votes. Though these resolutions are not binding, in the same year 2 of 6 shareholder resolutions to amend corporate by-laws (binding resolutions) passed (Marens, 2004). In the United States, not only are non-binding resolutions more frequently obtaining a majority of votes, but also binding resolutions are starting to gain a majority of votes. Non-binding resolutions can be ignored but it may lead to an angry group of shareholders soliciting and gaining support for more onerous non-binding resolutions or for binding resolutions. For example, in the United States, shareholders sought executive accountability at Disney when executive bonuses increased while shareholder value decreased. Due to obstinacy and inaction by Disney in general and Michael Eisner in particular, the shareholders are now attempting to utilize proposed SEC amendments to change the board of directors by electing their own candidates.

[24] Talisman Energy, through its subsidiary, and its partners were cited for numerous human rights abuses. Talisman was not merely extracting oil in Sudan because independent observers reported that the company allowed government helicopters to re-fuel and re-arm on Talisman airstrips in order to attack civilians and/or force the displacement of civilians on land Talisman wished to explore.

Third and most important, "investor resolutions can indicate a policy debate's trajectory. In determining when to take such resolutions seriously, a company must consider the political climate and its future trends" (Sparkes, 2002, p.62). Stated another way, institutional shareholders function as "an early warning system of growing societal concern over aspects of their [the companies] activities that they need to address" (Graves, Rehbein, & Waddock, 2001, p.359). Though shareholder resolution issues have trends and cycles[25], coming in and out of favour with differing amounts of longevity (O'Rourke, 2003; Sparkes, 2002), as an indicator of pubic concern and possible future legislation, companies need to be aware of shareholder concerns. In this regard, companies negotiate with the shareholders and/or create substantially similar policies in order to prevent potentially more stringent and compulsory legislation. Though businesses are interested in influencing and tempering the outcome, the point is that shareholders, representing different interests, are <u>leading</u> a process of corporate change.

Public or private, engagement is effective

From the shareholder's perspective, regardless of tactics, engagement is effective. Engagement tactics may be public or private, but the goal is the same. Depending on the particular shareholder, a proposal may be filed in order to compel

[25] There have been several trends in the field of shareholder resolutions. During the 1980s, shareholder resolutions were aimed at corporate governance issues (such as poison pills, **golden parachutes** and executive compensation) because anti-takeover resolutions were seen to decrease shareholder value and corporate competitiveness (O'Rourke, 2003). In the early 1990s resolutions responded to disasters (such as Bhopal, Exxon Valdez etc.) and requested improved corporate social and environmental responsibility. Currently, in order to improve corporate decision-making processes, resolutions tend to link corporate responsibility to financial performance.

management to negotiate, or management may be approached without a proposal, or management may be approached at the same time a proposal is filed. As resolutions are seen as public and adversarial (Chidambaran & Woidtke, 1999; Opler & Sokobin, 1995) they may or may not be initially filed by the shareholder. Ultimately, the goal is to make management aware of the shareholders' concerns, to gain access to corporate decision-makers and to start a dialogue (Hoffman, 1996; O'Brien, 2002; O'Rourke, 2003).

Starting in 1996, TIAA-CREF (Teachers Insurance Annuity Association-College Retirement Equities Fund) began contacting the company's management prior to filing a resolution (Carleton, Nelson, & Weisbach, 1998), while CalPERS (California Public Employees Retirement System) simultaneously files a resolution and contacts management (ready to withdraw the resolution if a compromise can be reached) (Smith, 1996). A study of filed resolutions by Smith (1996) showed that engagement by CalPERS resulted in companies settling 72% of the time. More importantly, Carleton, Nelson & Weisbach's 1998 study on private negotiations by TIAA-CREF found that 32 of the 45 (71%) companies targeted between 1992 and 1996 reached a negotiated agreement without any public awareness before the next annual general meeting. Moreover, in the same study TIAA-CREF reached an agreement without any public awareness with 42 of the 43 companies[26] within 4 years (Carleton et al., 1998). Regardless of the engagement strategy, United States studies have shown shareholder engagement does lead to a change in corporate policy.

[26] Two of the 45 companies in the study were bought out during the 4 years.

The rationale for engagement and process for pension funds is captured in the response to the Exxon Valdez disaster by the treasurer of New York City's pension fund. As stated by Elizabeth Holtzman:

> We felt that when corporations treat the environment badly, they treat their investors badly by exposing their investments to enormous liability and negative publicity. We are such large investors that we cannot quickly sell holdings in problem companies, therefore it makes sense to exercise the power of ownership when faced with environmental negligence, and press for changes. Our primary job is to protect the assets of our beneficiaries, that's our fiduciary responsibility. But that responsibility includes protecting our portfolio investments from being damaged by corporate environmental carelessness.
>
> We owned 6 million shares in Exxon, and after the Exxon Valdez disaster I organized a meeting with ourselves and other big pension funds and the Exxon management to express our concerns. We then went further in recommending that companies should adopt the CERES [Coalition for Environmentally Responsible Economies] principles, and when Exxon declined to publish an environmental report, we filed a proxy resolution instructing them to adopt the CERES principles. Note that we only file such resolutions as a last resort...(as cited in Sparkes, 2002, p.61).

As illustrated, engagement is effective. Regardless of the tactic used, studies have shown shareholders can be successful. The goal is to enter into a dialogue with management, yet be prepared to escalate the engagement. For institutional shareholders, negotiation must be backed by the threat to use shareholder rights, and for NGOs negotiation must be backed by the threat of publicity. "As Kurt Schacht of SWIB [State of Wisconsin Investment Board] put it, 'every once in awhile, the junkyard dog has to bite'" (DelGuerico & Hawkins, 1999, p.4).

Due to successful engagement, a resolution may never be filed and the rationale for a change in corporate policy may never be known. If Ethical Funds did not disclose the resolutions it files (and **S.h.a.r.e.**[27] the results of filed resolutions) then it would not be known that the 2005 resolution at Petro-Canada was withdrawn. Companies must make the management circular public, but are under no obligation to disclose the resolutions that are withdrawn (or excluded) and the negotiations that are ongoing. Consequently, not only is engagement an effective process, but also the public data on shareholder resolutions understate the existence and effectiveness of engagement for they do not include resolutions that are withdrawn by the filer or are not submitted due to successful negotiations. The studies by Carleton et al (1998) on TIAA-CREF and by Smith (1996) on CalPERS not only indicate that engagement is effective, but also that engagement is often invisible. As negotiations occur behind the scenes, often leading to the proposal being withdrawn, it is hard to know when institutional shareholders have approached a company.

If successful dialogue leads to a resolution never being filed or to the resolution being withdrawn, then resolutions that reach the annual general meeting usually indicate failed dialogue. The goal of shareholder engagement is to compel dialogue, and dialogue that is positive either does not have a resolution filed or has a resolution withdrawn. With respect to the case of Petro-Canada and Imperial Oil, the fact that the 2005 resolutions were withdrawn at Petro-Canada may indicate positive

[27] Shareholder Association for Research and Education. A national non-profit organization providing education and information to pension funds and pension fund trustees.

dialogue. It may be that Petro-Canada will address some or all of the Real Asset's/Ethical Fund's concerns and change its policy.

Explaining the engagement results via the discourses

Although the resolutions are the same at Imperial Oil and Petro-Canada, the accompanying supporting statements do contain differences. By examining the differences in the supporting statements (highlighted in the Appendices) and supplementing those differences with interviews and press releases, each shareholder's unique **discourse**[28] is revealed. The discourse is significant because it is shaped by the legal environment within which shareholders operate. Not only do the TCCR and Real Assets/Ethical Funds engage within different legal environments, using different rationales, but also the companies respond in a different discourse. Since there are three 'conversations' representing three worldviews occurring at the same time, Gramsci's belief on the role of ideology in the counter-hegemony will provide particularly useful insight. Ideology must be adaptive, it must incorporate the interests of other groups, and it cannot be imposed by, or indicative of, a single group.

Financial discourse of Real Assets/Ethical Funds

Real Assets/Ethical Funds' engagement of Petro-Canada may have included the same resolution as TCCR's at Imperial Oil, but the rationale for engagement was

[28] Discourse will refer to the way of representing knowledge on a topic. Discourse refers to the underlying meaning rather than the literal content of the text or mode of communication. It is more than simply what was said.

different. The supporting statement to the 2003 resolution at Petro-Canada included two unique and additional sentences that were not included in the supporting statement at Imperial Oil. Namely,

> carbon emissions trading is one flexibility mechanism by which companies buy and sell GHG [greenhouse gas] emissions trading permits (Petro-Canada, 2003, p.27).

and

> according to the World Resources Institute (WRI), preliminary carbon pricing estimates for emissions trading range from low single digits to more than US$300 per tonne (Petro-Canada, 2003, p.27).

In 2004, the supporting statement to the resolution was identical to the 2004 resolution at Imperial Oil with the addition of the statement

> Innovest Strategic Value Advisors state that large emitters may face multi-billion dollar lawsuits as contributors to climate change. 'Lawyers believe that scientific opinion will assist jurors in any future cases. The UN's Intergovernmental Panel on Climate Change (IPCC) is reportedly 90-99% confident that there will be higher maximum temperatures and more hot days over nearly all land areas, and is 67-95% confident that in some areas this will result in increased incidence of death and serious illness in older age groups and the urban poor, in increased risk of damage to a number of crops, in increased heat stress in livestock and wildlife, in reduced energy supply reliability and in a shift in tourist destinations.' (*Innovest* 2003) (Petro-Canada, 2004, p.40).

These unique sentences suggest a financial rationale that is best summarized in an interview with the President of Real Assets. In the interview, Deb Abbey said

> 'so many decisions are made for financial reasons without thinking about the full cost and the risks of that cost.' She pointed out the huge liabilities that have been rung up because of tobacco and asbestos. Shareholders didn't perceive those risks, Abbey said, but they definitely had an impact on the bottom line. 'Our focus is on the risk to long-

term shareholder value' she said. 'In almost every instance when you look at globalization, you can see more and more sources of liability for companies' (Nebenzahl, 2004, p. B1).

The underlying rationale for engagement by Real Assets/Ethical Funds is financial - risk reduction. The belief is that Petro-Canada ought to change in order to avoid potential future costs that have plagued and/or bankrupted companies in the past. It is a non-financial resolution justified by financial reasons. In an interview prior to the 2003 resolution, Robert Walker, a vice-president at Ethical Funds stated "we feel this poses an environmental risk to the company. This information is material and should be disclosed to investors" (Varcoe, 2003, p. D1).

The underlying belief is that by filing resolutions asking the company to report on potential liabilities, the shareholders are managing risk. They are managing risk because past disasters have hurt other companies. Hence, forcing Petro-Canada to report on the financial liabilities of an issue makes the company aware of the financial risks inherent in corporate action - liabilities that could potentially bankrupt the company. Moreover, by avoiding the risks and liabilities, a pension fund is also fulfilling its legal duty.

Several statutes regulate pension funds. In order for its investment income to be exempt from income taxes it is bound by the Income Tax Act; as a pension it is bound by the appropriate Pension Act; and because the funds are usually held in trust, the Trustee Act applies. The Income Tax Act allows the income of a pension to be exempt from income taxes if it is established in a trust and registered with Canada Revenue Agency. This act states pensions need to be registered (either

federally or provincially) and abide by the investment criteria suggested in the provincial or federal pension legislation.

Schedule III of the federal *Pension Benefits Standards Act* (1985) provides criteria and definitions of acceptable types of investments such as the stock exchanges from which investments may be purchased and the limits of share ownership.

In Canada, there is no federal Trustee Act and no uniformity across the provinces (Yaron, 2001). However, each province has its own Trustee Act that sets out the principles and duties by which the trustee must abide by. Much as the corporation is governed generally by the appropriate business corporation act and specifically by the corporate by-laws, the trustee is governed generally by the principles of trust law and specifically by the **trust instrument**. It is the trust instrument that first determines the trustee's duties. If the trust instrument provides specific instructions on how the trustee should act, then the trustee is bound to follow the trust instrument (Continuing Legal Education Society of British Columbia., 1992). However, if the **trust agreement** is silent on issues, such as the types of investments allowed, then the principles of trust law must be referred to. As the trust agreement is most often silent (Yaron, 2001) case law most often applies.

Trust law is applicable not only to Real Assets and Ethical Funds but also applicable to the TCCR, for all three are administering investments on behalf of another. The TCCR is administering investments on behalf of its congregation, Real Assets on behalf of its clients, and Ethical Funds on behalf of its unitholders. It is the administration on behalf of another that creates a duty from trustee to beneficiary

- specifically a fiduciary duty. Black's Law Dictionary defines fiduciary duty as "a duty of utmost good faith, trust, confidence and candor owed by a fiduciary (such as a lawyer) to the beneficiary (such as the client); a duty to act with the highest degree of honesty and loyalty towards another person and in the best interest of the other person" (Garner, 1999, p.523).

Fiduciary duty includes the principles of prudence and of loyalty. The principle of prudence requires the trustee to exercise the skill, diligence and judgement that a prudent investor would in dealing with the investments of another person (Continuing Legal Education Society of British Columbia., 1992; Yaron, 2001). The principle of loyalty requires the trustee to act in the best interests of the beneficiary, not to delegate ultimate responsibility, to avoid conflicts of interest and to treat all beneficiaries equally without discrimination.

Trust law is applicable to union pension plans because the pension assets are owned and administered by one party for the benefit of another. Though pension funds can be administered by the beneficiary or by the employer, the most common arrangement is a pension plan held in trust and administered by a trustee - trusteed pension funds. Though pension funds and traditional trusts share some similarities, the fit is not perfect. On one hand, typical trusts, such as church and charity trusts, have an identifiable creator, income beneficiaries, capital beneficiaries, and a transfer of wealth from the donor to the beneficiaries. On the other hand, trusteed pension plans are a business transaction (that may be created by the employer, union, government, employees or any combination of the preceding parties); they are

administered by another party for the benefit of the retired employees; and upon dissolution they do not have a transfer of wealth (for there are no capital beneficiaries) (Manitoba Law Reform Commission, 1993). Though trust law is applied, a fundamental difference is that trusts "are funded exclusively by the original settlor as a gift whereas pension schemes are a form of deferred remuneration which have in the past been set up in the trust form for reasons of tax advantage" (Farrar & Maxton, 1986, p.33). Case law may treat pension plans as trusts, but pension plans are also a contract. Despite the difference and imperfect fit, through historical precedence, the principles of trust law continue to apply to the management of pension funds.

On the issue of shareholder activism, the most applicable cases to trust law and fiduciary duty are those examining socially responsible investing. Socially responsible investing is only tangentially related because it is often an ethical investment screen focusing on the decision to purchase the investment. However, socially responsible investing case law is applicable because pension fund trustees need a rationale and justification to engage management for goals unrelated to the maximization of profit. Unfortunately, there are no socially responsible investment case law decisions within Canada and only a few in the United States and the United Kingdom.

Both Yaron (2001) and the Manitoba Law Reform Commission (1993) extensively examined the case law surrounding socially responsible investing in the United States and the United Kingdom and suggest case law is outdated and

ambiguous with respect to investing realities. In the United States, they argue both *Blankenship v. Boyle* (1950) and *Withers v. Teacher's Retirement System of the City of New York* (1978) reaffirmed loyalty as requiring trustees to act in the best interests of the beneficiary. Alternatively, *Donovan v. Walton* (1985) deemed the principle of loyalty to be central but not exclusive. *American Communications Association v. Retirement Plan for Employees* (1980) considered prudent investing to be the trustee's conduct rather than future financial results but *Board of Trustees v. City of Baltimore* (1989) suggested prudent investing emphasizes risk management more than financial gain as the <u>long-term interests</u> of the beneficiary was most prudent. In the United Kingdom, they argue that *Buttle v. Saunders* (1950) decided that, though there may be rare instances to the contrary, prudent investing requires the trustee to obtain the best price. Alternatively, *Evans v. London Co-operative Society Limited* (1976) decided financial gain was not paramount; and *Martin v. City of Edinburgh District Council* (1984) ignored the use of non-financial investment criteria, focusing instead on the imposition of the trustee's values, as not being in the best interests of the beneficiary. Finally, in the oft-cited case of *Cowan v. Scargill* (1985), the court suggested non-financial criteria could be considered if equally advantageous opportunities were available. The paramount duty of the trustees was to act in the best interests of the beneficiaries - both "present and future beneficiaries of the trust, holding the scales impartially between different classes of beneficiaries" (as cited inYaron, 2001, p.28).

Trustees must follow the trust instrument. Where the trust instrument is silent there is controversy. On the issue of socially responsible investing or

shareholder engagement, the absence of certainty has forced pension plan trustees to err on the side of caution. For example, trustees for the Ontario Teachers Pension plan felt they could not take action with respect to Talisman's complicit and irresponsible operations in Sudan since the trust agreement did not provide a socially responsible mandate (Drohan, 2003).

It is in applying fiduciary duty to socially responsible investing that the tenuous application of trust law to pension plans becomes apparent. A religious or charitable trust is capable of including social and environmental criteria that are consistent with the aims of the institution (i.e. cancer trust refusing tobacco companies). "Where property is bequeathed to or purchased by a religious institution, it is to be used for the purpose for which it was acquired. Thus a trust established for the benefit of a named congregation, for example, should be devoted to the interests of that congregation" (Ogilvie, 2003, p.253). Trustees must act in the best interests of the beneficiary, and the best interests' of a church trust provides the church's trustees with more investment latitude. A prudent, loyal pension plan trustee is much more limited in its investment options than a prudent, loyal church trustee. Pension plan trustees cannot exclude whole industries from available investments, but church trustees can.

Not only is the application of SRI case law to pension funds tenuous, but also the two principles underlying fiduciary duty continue to evolve. For example, with the collapse of the South Seas Company bubble in 1720 prudent investors were limited to a permissible list of investments (Yaron, 2001). In the 1950s, modern

portfolio theory suggested diversification would reduce overall investment risk, such that prudent investors attempted to minimize risk while maximizing return. More recently, Yaron (2001) as well as Baker and McKenzie, a leading American law firm (as cited by Baue, 2004a) suggest the principles of loyalty and prudence do not preclude social investments. In November 2005, Freshfield Druckhaus Deringer, a renowned corporate fiduciary law firm, released a report commissioned by the United Nations Environmental Programme that dispelled the idea that fiduciary duty prevents social or environmental considerations in investment decisions (as cited by Baue, 2005). Legal notions of the prudent investor are changing to allow more investment latitude. However, pension funds choose to engage with caution, if at all, instead of using their financial clout and resources to overcome the ambiguities. Rather than seek clarity, pension plans continue to operate conservatively in an environment of uncertainty. Moreover, using a financial rationale to justify a non-financial resolution may be unnecessary because studies show there is no longer a choice between 'doing well' and 'doing good'.

A simple comparison of SRI indices to market indices (the Domini 400 Social Index versus the S&P500 and the Jantzi Social Index to the TSE Composite Index) indicates the SRI indices have slightly better financial returns than the market index (Phillips Hagar & North Investment Management Ltd., 2003). Other studies are more complex and rigorous. As cited in a European Social Investment Forum Report, Margolis and Walsh examined 80 studies in which the authors measured the link between socially responsible investing and financial performance. Margolis and

Walsh's review indicated a positive link between non-financial goals and financial performance in 50% of the studies and no link in 45% of the studies (European Social Investment Forum, 2004). Furthermore, Orlitzky, Schmidt and Rynes' (2003) meta analysis of 52 studies over 30 years supports the positive link between corporate social performance (and to a lesser extent environmental performance) and financial performance. Their analysis shows that corporate social performance does not cost, but rather pays. These studies indicate that there is no longer a trade off between social/environmental performance and financial performance. Consequently the persistent shareholder use of a business case for a non-business cause is unnecessary.

Real Assets and Ethical Funds engagement is very conservative. Trust law may not apply to pension funds, SRI case law may not apply to engagement, studies are showing there is no longer a choice with respect to financial return and legal opinion is evolving. Despite these ambiguities, the resolutions filed by Real Assets/Ethical Funds all linked financial risks to an environmental issue. Real Asset's/Ethical Fund's financial discourse is the result of a more constraining past as resolutions need only to relate to the 'business or affairs' of the company. Resolutions that link financial risk to an environmental issue may be unnecessary, but the financial discourse used by Real Assets/Ethical Funds does incorporate elements of the dominant ideology. It argues that profit will be less (or extinguished) if environmental concerns are not addressed.

Religious discourse of the TCCR

When the TCCR (now called Kairos) spoke at the 2000 annual general meeting of all the companies, the organization stated that

> churches in Canada and around the world view climate change as a very serious ethical issue. While it is primarily being caused by emissions by industrialized countries over the past 150 years, the impacts are going to be experienced most severely by those who don't have a voice at meetings like this. In particular, I am referring to those people in poor and developing countries who are struggling to survive in the face of violent and uncertain climate conditions which are exacerbated by changing weather patterns. As well, I am referring to future generations. (TCCR, 2000a, para.3)

Though the 2003 statement supporting the resolutions at Imperial Oil and Petro-Canada are almost identical, they do contain unique differences. The supporting statement at Imperial Oil includes the assertion that "the oil and gas industry will share responsibility with other industries, government, and consumers for meeting Canada's Kyoto commitments" (Imperial Oil, 2003, p.27).

In 2004, the supporting statement to the resolution requesting third party verification of emissions included two unique paragraphs at Imperial Oil.

> A growing number of investors take 'carbon risk' into account. Through the 2003 *Carbon Disclosure Project,* a group of 87 institutional investors with assets of over $9 trillion under management wrote to the 500 largest public companies in the world by market capitalization, asking for the disclosure of investment-relevant information concerning their greenhouse gas emissions. (Imperial Oil, 2004, p.33)

And

> While the Kyoto Protocol has not yet entered into force, this should not obscure the fact that legislation encouraging the transition to low

> carbon intensity fuels, either through setting emissions limits or through introducing renewable portfolio standards (RPS) and other 'green incentives', is now a fact of life across the EU as well as in many parts of the U.S., Japan and Canada. There is also a possibility that the federal government decides to impose mandatory reductions on the oil sector. This could have significant financial impact on Imperial Oil which [sic] emissions per unit-of-production has increased over the years (by 17% for bitumen production and 12% for conventional oil and gas production between 1990 and 2002) (Imperial Oil, 2004, p.33).

These unique sentences and paragraphs suggest a moral imperative emphasizing collective responsibility. This rationale is best illustrated by David Hallman, co-chair of Kairos (formerly the TCCR), who stated in an interview before Imperial Oil's 2003 annual general meeting:

> They can't avoid the issue of climate change and a responsible company needs to respond in a way that helps protect God's creation - and not continue relentless exploration [sic] of it. (Varcoe, 2003, p. D1)

The use of a religious-moral rationale reflects both the beliefs of the organization and the greater legal latitude. Legally, churches do not have to justify their engagement with a financial rationale. In fact, churches could be even more 'aggressive' in their engagement.

The discourse used by each shareholder is a reflection of the legal environment. Real Asset's/Ethical Fund's financial rationale is a result of a more limiting legal environment. While this environment is evolving, pension funds still engage financially since the trust agreement is usually silent and the laws are ambiguous. The TCCR's moral rationale is a result of the greater legal latitude churches enjoy. Pension plans are more constrained, but churches have more legal latitude in their engagement. The moral argument may be the result of greater legal

latitude, but it also indicates a more constraining ideology. Real Assets/Ethical Funds have incorporated elements of the dominant ideology, yet the TCCR seems to be imposing its ideology. Instead of arguing that profit will be threatened if environmental concerns are not addressed (as Real Assets/Ethical Funds do), the moral discourse suggests it is the duty of the company to include environmental issues into corporate decisions.

Corporate discourse

Whether it is a function of the company or a function of the shareholders, the corporate responses are dissimilar – but for the same reason. Imperial Oil may deny there is a problem, and Petro-Canada suggests its current actions meet the substance of the resolution, but both companies seek to preserve the status quo using a financial rationale. Both assert there is no value to shareholders by complying with the resolution.

Petro-Canada's CEO argues that "shareholders have invested in this company for shareholder value, not for us to solve a global problem" (Olive, 2000, p. C4). Meanwhile Imperial Oil justifies its actions (or inaction) by insisting that economic growth and environmental progress are interdependent.

> Studies have clearly shown that economic growth and rising prosperity leads directly to improved environmental performance across the board. The more prosperous a society, the more it can afford to focus on both economic growth through productivity and environmental responsibility. The fact remains, however, that to grow an economy, and/or sustain growing populations, added energy is required. (Hearn, 2004)

However, this is a self-serving justification to maintain the status quo. The corporate hegemony is fixated upon profit, yet when shareholders attempt to incorporate profit into the resolutions (seeking a report on financial risks and the cost of inaction), the company responds by emphasizing the cost of action. Shareholders suggest profit will be impacted by not addressing the inherent financial risks but the company suggests profit will be impacted in producing a report on the same inherent financial risks. It is all financial costs, but different sides. Whether it is Petro-Canada suggesting that current actions are sufficient or Imperial Oil suggesting that actions are not needed, neither company responds to the risks and concerns of the shareholders as there is no 'value' to complying.

Directors are still able to ignore many shareholder concerns because Bill S-11 brought little change to directors' rights and duties. Bill S-11 responded to the recommendations of the 'Dey Report', released by the TSE in 1994, by including "supervising the management of" the business and affairs of a corporation to the director's duty and increased the director's defence from "good faith" to "due diligence". Though directors' responsibilities changed after 2001 and the standard by which directors' conduct is measured was increased, the changes are trivial. Directors must still act in the best interests of the corporation and still seek maximum shareholder value. As seen in the cases, at both Imperial Oil and Petro-Canada the directors justified ignoring the wishes of the corporate owners simply by insisting the action was not financially feasible - it had no business case.

Conclusion

For to win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill. Thus, what is of supreme importance in war is to attack the enemy's strategy.
*- **Sun Tzu** in The Art of War*

This study has demonstrated that shareholder engagement, operating within a larger counter-hegemony, is effective in moderating the profit motive by including social and environmental criteria into corporate decisions. It challenges the corporate belief that profit is the sole corporate goal. Though the rules are stacked against the shareholders, and though shareholders consent to their ruling, the corporate hegemony of profit is slowly being undermined.

The supported hegemony

Legal environment

With regard to shareholder engagement, because the law limits the means by which shareholders can exercise their ownership, the rules are stacked against them. Shareholders can affect management through a unanimous shareholder agreement or a change to the corporate by-laws, but since directors are also shareholders neither is likely to succeed. As such, shareholders attempt to exercise their ownership rights through shareholder resolutions. Yet when a company excludes a shareholder resolution, shareholders must prove the resolution should be included. Not only

does this place the onus upon the shareholder to prove the resolution's relevance, but also the process occurs in court at the shareholder's expense. Shareholders may be the owners of the corporation, with the Canada Business Corporation Act (CBCA) right to discuss corporate affairs at a shareholder meeting, yet corporate management can limit discussion by excluding resolutions. Prior to 2001, management could easily exclude a resolution. The legal environment supported the corporate hegemony to the extent that discussion was prevented. Since 2001, shareholders have more ability to file 'general cause' resolutions and engage in a discussion, but the discussion is only a suggestion because the resolution is non-binding. As well, directors' rights became slightly more stringent yet still reinforce the corporate hegemony of profit.

In order to be included, the resolution is carefully worded in such a way that it does not encroach upon management's responsibility. Moreover, as the resolution must meet minimum voting support each year in order to be re-filed, the company can ignore or defeat an issue through the shares owned by management. In the case of Imperial Oil, the parent company, Exxon Mobil, owns 70% (Imperial Oil, 2005) of Imperial Oil's shares in addition to the shares owned by management[29]. Consequently, achieving the 3%, 6%, and 10% thresholds becomes more difficult and provides corporate management with more incentive not to negotiate. Hoffman's study of the negotiation between Amoco and the Coalition for Environmentally

[29] At Imperial Oil "directors are required to hold the equivalent of at least 5,000 shares of Imperial Oil Limited, including common shares, deferred share units and restricted stock units. Directors are expected to reach this level within five years. The board of directors believes that the share ownership guideline will result in an alignment of the interest of board members with the interests of all other shareholders" (Imperial Oil, 2005, p.10).

Responsible Economies (CERES) suggests that the corporate response will depend on the firm's corporate culture, the power and influence of the resolution's sponsor, and the political climate in which the resolution is filed (Hoffman, 1996). That study not only helps to explain Imperial Oil's obstinacy (Exxon Mobil's culture and the TCCR's lack of financial power), but also helps to explain Petro-Canada's capitulation (large support for the resolutions and Real Assets/Ethical Funds financial power). Finally, the regulatory environment forces shareholders to file non-binding resolutions and seek corporate change through dialogue. Even when dialogue is initially positive and the resolution withdrawn, if dialogue collapses the law states that the same resolution cannot be re-filed for two years. Thus, the legal environment supports the corporate hegemony of profit.

Consent to ruling

Though the legal environment protects the hegemonic status quo of maximum 'shareholder value', shareholders also consent to their own ruling. Shareholder's conservative action is illustrated by the limited use of shareholder rights. The list of shareholder rights is extensive, including the right to stop a shareholder meeting or the distribution of a management circular containing untrue facts (Section 154) and the right to remove a director (Section 109). Shareholders,

however, have never used these rights[30]. Directors must legally act in the best interests of the corporation, and if directors respond to the risks associated with climate change in a manner that is not in the best interests of the corporation then they can, and should, be removed. The CEOs of Imperial Oil have denied the existence of climate change and not acknowledged the concerns of shareholders. It could be argued that they are not only distributing untrue facts but, more importantly, are in breach of their duty; and yet shareholders have not attempted to remove any Imperial Oil director.

The uncertainty and ambiguity of the legal environment should encourage shareholders to pursue more corporate change. Pension funds are tenuously being treated as trusts, and case law examines investing rather than engagement. Moreover, the limits of Section 137(5)'s 'business or affairs' have not yet been challenged. The only shareholder recourse is the expense of the courts, but shareholders with financial means (pension funds) have not tested these boundaries.

Shareholders' conservative action is also reflected in the continued use of a financial rationale. Not only do studies indicate the financial justification is unnecessary, but also the trend of shareholder resolutions is towards non-financial resolutions without a financial rationale. According to O'Rourke (2003) and Graves

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[30] Section 109 of the CBCA has been consulted but never applied. In March 2005 the shareholders of Stelco Inc. sought and had the bankruptcy judge remove 2 directors. However, the decision to remove the directors was overturned on appeal. The appeal judge determined that Section 11 of the Company Creditors Arrangement Act does not allow a bankruptcy judge to remove directors as Section 109 of the CBCA allows shareholders. That the shareholders were not successful is not important for the case applies to the Company Creditors Arrangement Act, not shareholders use of CBCA's Section 109.

et al. (2001), shareholder resolutions have trends and cycles. Starting in the 1980s resolutions aimed to protect shareholder value by eliminating anti-takeover provisions, then resolutions reactively encouraged corporate responsibility to disasters by pressuring the company to adopt social or environmental principles, and now resolutions address corporate governance by linking shareholder value to corporate responsibility. Next, resolutions could proactively address responsibility and accountability by only addressing corporate governance (without linking corporate governance to shareholder value). Because the legal environment recognizes non-financial criteria, the need to link responsibility to shareholder value may become unnecessary. It may become possible for resolutions on climate change to occur without reference to financial costs or opportunities. In the past, a financial justification was necessary in order to make a 'business case' for the change. However, now that academic studies show there is no longer a choice between financial performance and social/environmental performance, the business case is unnecessary. If there are trends and cycles to shareholder resolutions, then perhaps the next trend will be resolutions without a financial rationale. The changing notion of legal prudence and academic studies indicate resolutions do not need to be financial; yet shareholders do not use their resources to encourage these changes.

In keeping with Gramsci's notion of hegemony, not only must rules support the dominant group's beliefs, but also subordinate groups must consent to their ruling. With respect to engagement, shareholders consent to their ruling by not using

all their rights, by not challenging the ambiguities and by unnecessarily including a financial rationale. Peter Kinder was quoted as saying:

> the 'business case' test for socially responsible investing and corporate social responsibility is a means of dismissing and denigrating both, and we should not entertain the question. By validating the question, by responding to it, we admit the validity of the business case for precisely the behavior we want to change: prioritising profit over all else (Baue, 2004b).

And yet shareholders like the TCCR, Real Assets and Ethical Funds, through the resolutions they file, continue to validate the corporate hegemony. Prior to the CBCA changes in 2001, only registered shareholders could file resolutions that were not of a 'general cause'. As examined, case law thoroughly limited shareholders' ownership rights and abilities. However, the amendments in 2001 provided shareholders with more latitude. Shareholders can file resolutions as long as the resolution relates to the 'business or affairs of the company'. The regulatory environment has changed such that resolutions do not need to link non-financial issues to a financial effect – especially for church shareholders. Furthermore, studies have shown that you can 'do well' and 'do good'. In the past, it was believed that pursuing a non-financial issue meant a loss of 'shareholder value' and hence was contrary to the trustees' fiduciary duty. As such, social/environmental resolutions tended to link financial performance to social/environmental performance or financial liabilities to social/environmental inaction. Since recent studies have shown that you can 'do well' and 'do good' this arbitrary link has become unnecessary.

Because of laws that limit shareholder's actions and because of inaction on the part of shareholders, there is a supported and legitimised hegemony.

Challenges to the hegemony

Macro challenges to the hegemony

Despite the limiting legal environment and shareholders consenting to their ruling, the hegemony is being challenged. On a larger scale, corporate abuses have led to an increased public awareness and laws are encouraging active ownership.

In Canada, the legal environment has changed significantly and is continuing to change[31]. The CBCA amendments in 2001 provided Canadian shareholders with more rights, and trustee duties continue to evolve. Developments in the United States also encourage more active ownership. The United States Department of Labour has deemed proxies (like the shares themselves) to be an asset and has stated that not voting proxies in accordance with the beneficiaries' interests is inconsistent with the duty of prudence (Goodman et al., 2002). Furthermore, in 2003 the United States Securities Exchange Commission (SEC) started to require mutual funds and registered investment management companies to annually disclose their proxy voting

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[31] In April 2005, the Government of Canada released its plan to meet the country's Kyoto commitment. Entitled "Moving Forward on Climate Change" the report insists the 700 large industrial emitters in the oil and gas, mining and manufacturing, and thermal electricity sectors reduce their greenhouse gas emissions by 45 (of the total 270) mega tonnes. These companies can reduce their emissions through increased efficiency, buying emission 'credits' from large industrial emitters that have exceeded their target, investing in projects that reduce emissions in Canada (or international projects that allow the federal government to offset its GHG targets), and contributing to the new Greenhouse Gas Technology Investment Fund. Both Imperial Oil and Petro-Canada are included in a group the federal government declares will reduce its greenhouse gas emissions in order for Canada to meet its targets. As the new legislation affects all in the oil and gas industry, it does not explain why the resolutions were withdrawn at Petro-Canada and not at Imperial Oil.

policy as well as report on how they actually voted on each issue at each company. Additionally, the SEC has proposed an amendment allowing shareholders in the United States to nominate directors[32]. Instead of corporate management nominating their candidates in a number that matches the number of vacancies, shareholders may be able to exercise more ownership by electing directors[33].

In the United Kingdom, a 2002 law requires private sector pension plans to report on the extent to which social, environmental, and ethical criteria were considered as well as on the pension plan's policy with respect to the exercise of shareholder rights. Though it does not force pension plans to use social, environmental, or ethical criteria, it is significant because it clearly allows pension plan trustees to consider non-financial criteria without breaching their fiduciary duty. Trustees must act on behalf of another but have tended to act conservatively without direction. All developments encourage institutional shareholders to become active owners – apathy is no longer an option.

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[32] In Canada shareholders currently have the right to nominate directors through section 137(4) of the CBCA. The section states that shareholders who are entitled to vote and hold more than 5% of the company's shares can nominate a director. Though the CBCA amendments in 2001 changed those entitled to vote to include both beneficial shareholders <u>and</u> registered shareholders, the amendments do not apply to section 137(4). Therefore, Canadian shareholders who wish to nominate directors not only must own 5% of the company, but also must have the shares registered in their name.

[33] Though shareholders elect directors, it is the corporate managers who nominate candidates. Typically managers nominate only the number of candidates equal to the number of vacancies (if 3 directors have left, then 3 candidates are nominated). Because shareholders can only for 'for' or 'abstain from voting' it is possible for a candidate to be elected to the board of directors with only one vote. As a result, board of director resolutions are currently a major issue for shareholders - whether that be resolutions requiring candidates to receive a majority of votes 'for' or the ability for shareholders to nominate candidates of their choice.

In addition to legislative changes, the legal notion of prudence continues to evolve and studies show there is no longer a choice between 'doing well' and 'doing good'. If there is no financial loss and no breach of fiduciary duty in pursuing non-financial goals, then the role of the corporation, according to Friedman, needs to be re-examined. If profit does not need to be sacrificed in order to benefit society, then the 'social role of the corporation' cannot be to maximize profit. The corporate hegemony states that the corporation's primary role is to make a profit. Not only do studies fail to support the belief that profit is sacrificed, but also if there was a choice between profit and 'doing good', it is the shareholders, as corporate owners, who make that choice. Friedman and his followers, by insisting that the sole role of a corporation is profit, are flawed in their assumption (of directors having to choose the social role) and flawed in their conclusion (profit is sacrificed).

Counter-hegemonic advances have undermined the logic of, and support for, the dominant hegemony. The foundation upon which the corporate hegemony stands is eroding. These macro developments, both in theory and in practice, encourage, allow and accept the inclusion of non-financial criteria into corporate decision-making. All represent larger challenges to the corporate hegemony.

Micro challenges to the hegemony

Finally, shareholders are critical of the corporate hegemony. Studies in the United States show that shareholder engagement is effective in compelling corporate change. With respect to the cases of Petro-Canada and Imperial Oil, what began as

an ideological battle between the TCCR and the two companies has become both an ideological and financial battle. At Petro-Canada, the TCCR initially approached with a moral argument for change. Now Real Assets/Ethical Funds, backed with economic power, have approached Petro-Canada with a financial argument for change.

At Imperial Oil engagement has always been an ideological battle. The church evokes a moral argument and the company justifies the status quo with a financial argument. It is an ideological battle between the company's financial rationale and the TCCR's moral rationale, but it is bound to fail because the TCCR does not have enough financial resources and has not incorporated elements of the dominant ideology. Imperial Oil is bolstered ideologically by its parent company (ExxonMobil[34]) and financially by the economic power it has over the TCCR. According to Gramsci, change should occur if the ideology is more compelling. Yet at Imperial Oil change will not occur. Though there is an underlying movement towards socially responsible investing, and though Imperial Oil has changed from denying climate change to denying a need for greenhouse gas reductions, the company will likely not address the concerns of the TCCR. The TCCR may not be as constrained by the legal environment as pension funds, but it is still engaging within the legal framework that is stacked against shareholders. More importantly, the TCCR's moral discourse does not address corporate concerns. The TCCR lacks financial resources and engages with a less compelling ideology.

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[34] ExxonMobil's opposition to climate change has been well documented.

Since the Canadian history of shareholder engagement for 'general causes' is very short (effectively starting in 2001), the number of successful corporate policy changes is small relative to those in the United States. Without precedents, change is hard to accurately predict, but change will likely occur at Petro-Canada for several reasons. Petro-Canada does not have the backing of a parent company, Real Assets/Ethical Funds have financial resources, and Real Assets/Ethical Funds are speaking the financial language of the company. Engagement at Petro-Canada is not just an ideological battle because it includes the economic clout of the shareholder. Economic power may be important, but to compel change the shareholder's ideology must combine the interests of other groups (including the interests of the dominant group).

Shareholder engagement includes both economic resources and ideology. As Gramsci suggests, ideology cannot be reduced to a class. Ideology cannot be imposed but must adapt and evolve. Even if the TCCR had financial resources, the moral rationale would still fail because the TCCR did not incorporate elements of the dominant ideology. Directors must act in the best interests of the corporation and a moral rationale for change does not attend to corporate interests. Real Assets/Ethical Funds, by using a financial rationale, are amending the existing ideology from profit to the financial risks, liabilities and opportunities associated with an environmental issue. Operating within the confines of the hegemonic framework, Real Assets/Ethical Funds are critical of the corporate pre-occupation with profit. Speaking the company's financial language for a non-financial issue has led to a

degree of co-option in the shareholders' position, but with financial clout and the same language, change is more likely to occur.

Although the shareholder's ideology is important, the economic power of the shareholder is also important because the only recourse Canadian shareholders have is to the courts. Since the legal environment may allow resolutions that do not include a financial rationale shareholders could be more aggressive in asserting their rights, but the financial burden of pursuing the issue through the courts is a burden most shareholders cannot bear. Consequently, shareholders without financial resources are forced to engage within narrowly defined boundaries, and to date even shareholders with financial resources engage conservatively. Shareholder engagement is effective and shareholders could do more. Granted shareholders gained many rights in 2001, and continue to gain more, but shareholders have not tested the limits of 'business or affairs' set out in section 137(5) of the amended CBCA. A shareholder needs financial resources to enforce their rights, yet cannot force their ideology upon the populace. Therefore, economic power is relevant but not ruling.

Corporate change is not solely due to economic power because the shareholder's ideology must be relevant to the corporation, yet change is not solely due to ideology because the shareholder's financial resources are important to enforce shareholder rights. Successful shareholder engagement is neither a battle of beliefs, nor a battle of resources, but under the right circumstances a mix of the two. Neither resources nor ideology alone is sufficient for corporate change. Shareholders with

resources and an inclusive ideology, who operate within the hegemonic framework, can effect corporate change.

The findings presented are significant as the shareholder engagement literature lacks a sociological perspective. This initial foray is a point from which others can proceed. Sociology can contribute greatly to the shareholder activism literature because notions of power (ideological, economic or otherwise) are lacking from the studies. Future sociological studies may want to examine one of several areas. First, research on the potential liberating nature of all Canadians becoming shareholders would add to the shareholder engagement literature. Shareholders have access to corporate data that the public does not but if the working public are beneficial shareholders (as the Canada Pension Plan invests in the stock market), can this be liberating? Workers have become owners, and as owners (shareholders) they are legally entitled to access corporate records such as the minutes to annual general meetings. If every working person is a beneficial shareholder, with the right to examine this corporate information, then corporate records become public data rather than private data. Could this become empowering enough to create corporate accountability? Second, research must be undertaken on whether providing directors with shares really does align the interests of shareholders and managers. In order for directors to act in the best interests of shareholders, the business community insists directors should also be shareholders. The consequence however, is that directors legally get both management rights and the ability to prevent binding shareholder

(ownership) rights[35]. Whether this insistence provides too much power to directors and undermines shareholder rights contrary to the intention of the CBCA should be assessed. Third, primary research on how power influences the outcome of negotiations should be conducted. Similarly, though the public data of these cases dovetails with elements of Gramsci's theory, engagement by institutional shareholders is most effective and most preferred in private. Canadian ethnographic sociological studies would contribute greatly to knowledge on how, why and when engagement is effective. For example, in 2005 the resolutions were withdrawn at Petro-Canada but research using secondary data is unable to uncover the reason why. And finally, a sociological analysis of Canadian shareholders and its impact on shareholder engagement would provide the foundation for Sociology's contribution. Many large Canadian companies do not have widely distributed shares (because shares are owned by the foreign parent company or because shares are owned by a family) and a study in 2003 by Fairvest (as cited in Yaron, 2005) found that of companies in the TSE Composite Index, only 60% of total shares are voted. How this impacts shareholders exercising their ownership rights should be determined.

Regardless of directions in future research, the findings of this thesis show that shareholders are restricted in exercising ownership rights both by the legal environment and by their own inaction. The rights gained by Canadian shareholders in 2001 overcame an environment that suppressed shareholder voice. Shareholders

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[35] As previously stated there are only two binding ways to affect corporate direction - a unanimous shareholder agreement (which is impossible) and an amendment to the corporate by-laws (which is improbable).

in the United States are gaining the right to nominate directors. In Canada, shareholders are constrained by a **hegemonic discourse** and operate within the context of a larger counter-hegemonic movement. Nevertheless, shareholders' strategic response to the constraining environment is effective; using a financial rationale consents to their ruling and incorporates elements of the dominant ideology. Shareholders can and do have a limited impact on corporate decisions. Though not absolutely or always, shareholders that operate within the hegemonic structure can incorporate non-financial criteria into corporate decision-making. In this manner, the belief that profit is the sole corporate purpose and pre-eminent corporate decision-making criterion is challenged.

Gramsci's revolutionary theory is relevant to shareholder activism as it includes both power and ideology. Shareholders that have financial resources and an inclusive ideology are more likely to compel corporate change - even if the sought after change is limited. Rather than advocating for, or seeking, revolutionary change in society, shareholders are using the existing laws of society to address the ill effects of corporate behaviour. Revolutionary change could occur via shareholder resolutions to dissolve the corporation (Section 211 of the CBCA), but shareholders choose to engage within the hegemonic framework in order to instil social and environmental responsibility into the corporation. Although introducing non-financial criteria into corporate decisions only impacts the corporate pre-occupation with profit indirectly, it is a step in the right direction. The social and environmental costs of focusing solely upon profit are too high. Shareholder activism is not

revolutionary, but perhaps including social or environmental criteria into corporate decisions could have averted disasters such as Ford/Firestone. With respect to moderating the profit motive, shareholder activism is limited and it is effective. Though not open, the door is ajar.

Appendices

Appendix A - Petro-Canada 2003 Resolution [36]

Shareholder Proposals

The following proposals have been made by holders of common shares of Petro-Canada for consideration at the Annual Meeting. In no specific order, Proposal A has been co-submitted by Real Assets Investment Management Inc. of Suite 801, 1166 Alberni Street, Vancouver, British Columbia, V6E 3Z3 and Ethical Funds Inc., 1441 Creekside Drive, 8th Floor, Vancouver, British Columbia, V6J 4S7. Proposal B has been submitted by the Carpenter's Local 27, Benefit Trust Funds, Office of the Trust Fund, Marion Wilkins & Associates Ltd., 230 Norseman Street, Etobicoke, Ontario, M8Z 6A2.

The Board of Directors of Petro-Canada and its management oppose these proposals for the reasons set out after each of them.

Proposal A

It is proposed that Petro-Canada prepare a report to shareholders (at a reasonable cost and omitting proprietary information) by October 2003 detailing the range of potential financial liability associated with its greenhouse gas emissions, its strategy to reduce this liability, including an estimate of the costs and benefits of substantially reducing annual greenhouse gas emissions under a range of reasonable carbon pricing scenarios, with special reference to the possible role of investments in renewable energy.

Statement of Support

Investors, their confidence in corporate bookkeeping shaken, are scrutinizing other possible "off-balance-sheet" liabilities, including the embedded risks associated with global climate change.

The world's largest reinsurance company, MunichRe, cites direct climate-related losses reaching US$300 billion annually by 2050. SwissRe, the world's second largest reinsurer, sees inaction on climate change as a possible liability issue and is considering the potential coverage implications for companies, directors and officers who do not address this risk.

The Kyoto Protocol will commit signatories to binding national reductions in greenhouse gas (GHG) emissions. Carbon emissions trading is one flexibility mechanism by which companies buy and sell GHG emissions trading permits.

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[36] Shareholder resolutions, supporting statements and corporate responses have been reproduced from the System for Electronic Document Analysis and Retrieval (SEDAR) at www.sedar.com. This resolution was released by Petro-Canada on March 6, 2003 and filed at SEDAR on March 27, 2003.

Leading companies are integrating GHG emissions trading into their climate change strategies, either as a cost-effective means of achieving emissions reduction goals or as a means of monetizing their existing investments in reducing GHG emissions. Experts predict the GHG emissions trading market to grow rapidly from US$10 billion in 2005 to over $2 trillion by 2012.

According to the World Resources Institute (WRI), preliminary carbon pricing estimates for emissions trading range from low single digits to more than US$300 per tonne. The WRI also reports that US oil and gas companies face varying levels of risk associated with climate change, yet few companies disclosed their financial exposure and "no company attempted to quantify the financial implications for its shareholders" (Changing Oil: Emerging Risks and Shareholder Value in the Oil and Gas Industry, WRI 2002).

BP has reduced greenhouse gas emissions by over nine million tonnes eight years ahead of target. BP states that projects to improve energy efficiency have resulted in an estimated US$650 million in extra value for the company and said it will peg net future emissions at this new, lower level despite plans to grow its oil and gas business by 5.5% per year to 2005. Shell International has indicated that it will meet its target to reduce emissions to 10% below 1990 levels by 2002.

In its 2002 filings with securities regulators, Petro-Canada, acknowledges public concern about global climate change, describes past efforts to reduce GHG emissions, and declares an intention to reduce emissions further and improve energy efficiency, but does not provide a rigorous quantified assessment of: the implications of the Kyoto Protocol; how oil sands development will impact the company's overall GHG emissions and emissions trading; potential risks and risk mitigation strategies associated with climate change. On November 30, 2002 Petro-Canada announced it may freeze or cancel nearly half a billion dollars in new investment in oil sands by 2003.

The Board of Directors recommends voting AGAINST this proposal for the following reasons:

As a principled company, Petro-Canada has already reduced its annual greenhouse gas emissions through voluntary action by more than a million tonnes – the equivalent of taking 150,000 full-sized cars off the road. The Company's 2001 greenhouse gas emissions were 15 per cent below their level in 1990, the Kyoto benchmark year, despite a 23 per cent increase in total production of crude oil, natural gas and refined products. Petro-Canada is pledged to continue to reduce emissions in its ongoing Upstream and Downstream operations, and will continue to seek and implement innovative solutions to minimize emissions in new developments, such as co-generation of power and steam, which substantially reduces total emissions related to oil sands production.

The federal government has not yet outlined its implementation plan for the Kyoto Protocol in sufficient detail for Petro-Canada to assess with any accuracy the potential impact of such a plan on our future business. Petro-Canada and others in

the industry are actively engaged with the government seeking additional clarity on these matters, but there is no assurance that sufficient detail will be available to enable Petro-Canada to provide, by October 2003, meaningful estimates of the range of financial impacts of such an implementation plan.

Petro-Canada provides to our shareholders and investors substantive information on risks and uncertainties related to our business plans, through our annual and quarterly reports, through investor presentations which are posted on our Web site, and through other avenues of continuous disclosure. Also, each year we provide a summary of our actions to limit greenhouse gas emissions in our Annual Report, with greater detail in our Report to the Community and Voluntary Challenge and Registry Progress Report. All of these reports are publicly available on our Web site. As Petro-Canada's practice is to be open and forthcoming with timely disclosure, we see no need for a separate report on these matters.

Appendix B - Imperial Oil 2003 Resolution [37]

Shareholders' proposal

The Congregation of the Sisters of Saint Anne, Fonds Élisabeth-Bergeron and the Trustee Board of the Presbyterian Church in Canada have each submitted the identical shareholders' proposal that is reproduced as Schedule B to this management proxy circular for consideration at the meeting.

The directors recommend that you vote against this proposal for the following reasons.

At this time, neither the company nor others in industry know the regulatory obligations we may face in dealing with the Kyoto Protocol and the climate change issue.

The Government of Canada ratified the Kyoto Protocol on December 17, 2002. As of year end 2002, the treaty was not in force because an insufficient number of developed countries had submitted their ratification. The Protocol may come into force in 2003.

Although the Government of Canada in ratifying the Kyoto Protocol has agreed to restrictions of greenhouse gas emissions by the period 2008-2012, it has not determined what measures they will impose on companies or consumers. Consequently, attempts to assess impacts on shareholder value can only be speculative.

The company has long realized that climate change poses important issues for its business. While studies must continue to better understand the risks and possible consequences, the company will continue to take tangible actions now to develop effective long-term solutions.

The company has widely communicated its strategy to address climate change risks. The company's objective is to achieve the twin goals of economic growth in Canada and meaningful environmental progress for the prosperity and benefit of Canadians. The company will work with all levels of government on this matter.

Actions taken by the company, including those of affiliated companies, are:

- recognition of the seriousness and importance of climate change risks
- scientific, technical and economic research on climate change and proposed response options

[37] The resolution was released by Imperial Oil on March 20, 2003 and filed at SEDAR on March 21, 2003

- measurement and reporting of emissions from the company's operations in Canada's Climate Change Voluntary Challenge and Registry (VCR)
- continuing actions to improve energy efficiency and reduce emissions economically
- investments in advanced technology and research to reduce future emissions from the company's operations and the use of the company's products by customers, for example, fuel cells in vehicles
- technology research to develop innovative, commercially viable solutions leading to significantly lower global greenhouse gas emissions
- participation in professional, regulatory and public policy forums to communicate the company's views.

Some specific examples of actions taken by the company that reduce greenhouse gas emissions are:

- Since 1973, the energy efficiency of the company's refining operations has improved by about 40 percent. The company is implementing an energy management system to identify further opportunities to improve energy efficiency and lower emissions.
- Flare and vent volumes from the company's upstream operations in the province of Alberta have been reduced by over 70 percent since 1998. In 2001, the most recent year of reporting, the company's natural resources operations recovered 99.7 percent of the "solution gas" associated with crude oil production. This record was the best among the 50 largest oil producers in the province of Alberta.
- At Cold Lake, Alberta and Sarnia, Ontario, the company is investing more than $250 million in cogeneration facilities which use one source of fuel to create both steam and electricity. These investments are expected to improve energy efficiency on site and contribute to the reduction of air emissions and greenhouse gases.

The company's most recent VCR submission covering 2001 operations received a gold level rating for a fourth time and reported that greenhouse gas emissions from company operated facilities decreased by three percent from the previous year.

The directors believe that the company's approach on climate change is comprehensive and responsible and that it establishes a clear process based on scientific, economic and technical analysis that will protect long-term shareholder value as the issue evolves.

In order for the shareholders' proposal to become effective, the resolution to approve the shareholders' proposal, which is set out in Schedule B to this management proxy circular, must be passed by a majority of the votes cast by the shareholders who vote in respect of the resolution.

Unless a proxy specifies that the shares it represents should be voted for the shareholders' proposal that the company prepare a report to shareholders on

its greenhouse gas emissions, the potential proxyholders named in the accompanying proxy intend to use it to vote against the proposal.

Schedule B

Embedded climate risk
Whereas:

Investors, their confidence in corporate bookkeeping shaken, are scrutinizing other possible "off-balance sheet" liabilities, including the embedded risks associated with global climate change.

The world's largest reinsurance company, MunichRe, cites direct climate-related losses reaching US $300 billion annually by 2050. SwissRe, the world's second largest reinsurer, sees inaction on climate change as a possible liability issue and is considering the potential coverage implications for companies, directors and officers who do not address this risk.

On December 10th, the Canadian Parliament voted in favour of ratifying the Kyoto Protocol, which commits signatories to binding national reductions in greenhouse gas (GHG) emissions. The oil and gas industry will share responsibility with other industries, government, and consumers for meeting Canada's Kyoto commitments.

Leading companies are integrating carbon emissions trading into their climate change strategies, either as a cost-effective means of achieving emissions reduction goals or as a means of monetizing their existing investments in reducing GHG emissions. Experts predict the GHG emissions trading market to grow from US $10 billion in 2005 to over $2 trillion by 2012.

According to the World Resources Institute (WRI), US oil and gas companies face varying levels of risk associated with climate change, yet few companies disclosed their financial exposure and "no company attempted to quantify the financial implications for its shareholders" *(Changing Oil: Emerging Risks and Shareholder Value in the Oil and Gas Industry,* WRI 2002).

BP has reduced greenhouse gas emissions by over nine million tonnes eight years ahead of target. BP states that projects to improve energy efficiency have resulted in an estimated US $650 million in extra value for the company and said it will peg net future emissions at this new, lower level despite plans to grow its oil and gas business by 5.5% per year to 2005. Shell International has indicated that it will meet its target to reduce emissions to 10% below 1990 levels by 2002.

Imperial Oil's commitments under Canada's Kyoto implementation plan may be costly unless energetic action is taken immediately to reduce or offset GHG emissions. According to Imperial Oil's most recent submission to the Government of Canada's Voluntary Challenge and Registry (VCR), GHG emissions are expected to be roughly 12% higher in 2006 than in 1990. Imperial Oil was Canada's fifth largest GHG emitter in 2000, and analysis of its VCR submissions indicates that its emissions rose by 9% between 1990 and 2000 despite an 11% decline in upstream

production and a 2% decline in downstream production volumes (Pembina Institute, *The Case for Kyoto: The Failure of Voluntary Corporate Action,* October 2002).

Resolved: that Imperial Oil prepare a report to shareholders (at reasonable cost and omitting proprietary information) by October 2003 detailing the range of potential financial liability associated with its GHG emissions, its strategy to reduce this liability, including an estimate of the costs and benefits of substantially reducing annual greenhouse gas emissions under a range of reasonable carbon pricing scenarios, with special reference to the possible role of investments in renewable energy.

Appendix C - Petro-Canada 2004 Resolutions [38]

The following proposals have been made by holders of common shares of Petro-Canada for consideration at the Annual and Special Meeting. Proposal A and Proposal B have been co-submitted by Real Assets Investment Management Inc. of Suite 801, 1166 Alberni Street, Vancouver, British Columbia, V6E 3Z3 and Ethical Funds Inc. of 800 - 1111 West Georgia Street, Vancouver, British Columbia, V6E 4T6.
The Board of Directors of Petro-Canada and its management oppose these proposals for the reasons set out after each of them.

Proposal A
"Shareholders request the Board to prepare a report by September 2004 (at reasonable cost and omitting proprietary information) to describe how the company has evaluated market opportunities in wind, solar, and other renewable sources of energy and the business risks associated with a strategic focus on a single technological solution in the renewable energy industry."

Statement of support
Renewables are the fastest growing segment of the global energy market. In 2002 renewable energy use grew 11% in the US. From 1992-2001 global wind capacity grew from nearly 2,300 megawatts (MW) to over 23,000 MW — a ten-fold increase, while solar photovoltaics capacity grew nearly 400% from 370 MW to over 1,800 MW.

Several U.S. states including California (20%), New York (25%), and Maine (30%) have renewables requirements for electricity production. The U.K. adopted a 20% requirement for renewables by 2020;. The European Union has a goal of 22% renewables by 2010; and six European and Middle Eastern countries have goals ranging from 3% to 100%. The World Energy Council reports that the global market for renewable energy is likely to be in the range of $234 to $625 billion by 2010 and $1,900 billion by 2020.

Twelve companies (Alcoa, Cargill Dow, Delphi Corporation, Dow, DuPont, General Motors, IBM, Interface, Johnson & Johnson, Kinko's, Pitney Bowes, and Staples) representing 6.5% of US power demand have formed the Green Power Market Development Group to support the development of 1,000 MW of new renewable energy generating capacity over the next 10 years. Since January 2001, the

[38] These resolutions were released by Petro-Canada on March 4, 2004 and filed at SEDAR on March 25, 2004.

Group has implemented or signed contracts for 112 MW of new renewable power projects.

In its 2002 *Report In Support of Canada's Voluntary Challenge & Registry*, Petro-Canada declares its understanding "that the world may move to a different energy mix as technologies change in response to the challenge of rising greenhouse gas levels".

To date, Petro-Canada has focused only on development of producing fuel ethanol from waste byproducts of the agriculture industry and a commercially-viable fuel distribution network to meet the expected demand for fuel cell vehicles.

Direct competitors have significantly increased their development of renewables, including significant investments in solar and wind. In July 2002, BP announced its goal of being "a new company able to offer global energy solutions". BP stated in a March 11, 2002 media release that "BP would continue to expand its solar business which is set to grow by 40% this year and already has a 17% share of the world market."

Leadership in renewables is not a function of size. In 2002, Suncor Energy, a company approximately half the size of Petro-Canada as measured by 2002 revenues, launched Sunbridge, a wind power project in Saskatchewan. Early in 2003, Suncor announced plans to partner in the development of a 30 MW wind power project in southern Alberta. These two projects are expected to account for nearly 15% of Canada's installed wind power by the end of 2004.

The Board of Directors recommends voting AGAINST this Proposal for the following reasons:

Petro-Canada is monitoring and actively engaged in a number of alternative energy opportunities.

Petro-Canada is part of an alliance, Fueling a Cleaner Canada Association, formed in 1999 by Ballard Power Systems, Methanex and Petro-Canada to understand the issues of fuel distribution for fuel cell powered vehicles. Each participating company is assessing the changes and determining the optimal position to take in this environment.

Petro-Canada is also involved with Iogen Corporation, a Canadian based biotechnology company which aims to commercialize a process for producing fuel ethanol from waste by-products of the agricultural industry. Petro-Canada has provided funding for ongoing research and the construction of a demonstration plant. Program results are being evaluated and a preliminary design for commercial facilities has been established.

Petro-Canada continues to monitor other emerging technologies in alternative fuels and alternate power sources that may help reduce greenhouse gas emissions and also contribute to the Corporation's future business success.

Petro-Canada will consider investing in these and other areas when the Corporation's core competencies and infrastructure can be leveraged to generate the appropriate returns for shareholders.

Petro-Canada has a well-balanced portfolio that has geographical diversity, a mix of commodities and participation across the oil and gas value chain. The Corporation's comprehensive risk management strategy, which addresses a wide range of risks and uncertainties associated with its businesses are well documented in its Annual Report.

In addition, each year Petro-Canada provides a summary of its activities in the area of alternative energy in its annual report and in greater detail in the Corporation's Voluntary Challenge and Registry progress report and in its Report to the Community. All of these reports are publicly available on the Corporation's Web site at petro-canada.ca.

As such, Petro-Canada sees no value to shareholders in incurring costs to produce a separate report on these matters.

Proposal B

"That Petro-Canada annually issue a report to shareholders that has been verified by credible third party auditors on: specific emission reduction initiatives undertaken by the company to address risks and liabilities arising from climate change, including targets and actual emissions."

Supporting Statement

Climate change has significant potential economic consequences. Fossil fuels, including petroleum products, contribute to increased greenhouse gas emissions, the source of climate change. Companies who produce fossil fuels, or depend on their sale as a major source of revenue, are incurring financial risks and potential liabilities.

Innovest Strategic Value Advisors state that large emitters may face multi-billion dollar lawsuits as contributors to climate change. "Lawyers believe that scientific opinion will assist jurors in any future cases. The UN's Intergovernmental Panel on Climate Change (IPCC) is reportedly 90-99% confident that there will be higher maximum temperatures and more hot days over nearly all land areas, and is 67-95% confident that in some areas this will result in increased incidence of death and serious illness in older age groups and the urban poor, in increased risk of damage to a number of crops, in increased heat stress in livestock and wildlife, in reduced energy supply reliability and in a shift in tourist destinations." (*Innovest* 2003)

MunichRe, an international re-insurance company, projects that direct climate-related losses could reach US$300 billion annually by 2050. SwissRe, another re-insurer, sees inaction on climate change as a possible liability issue and is considering the potential coverage implications for companies, directors and officers who do not address this risk. SwissRe states the most effective way to address risks posed by the climate change is to reduce the degree of human intervention in the natural climate system.

Since 1997 Canadian companies have reported emission reductions to the Voluntary Challenge and Registry (VCR), an industry/government initiative. A 2002 review of the VCR, by the Pembina Institute, states: "There are a large number of major inconsistencies in the methodology used by firms in calculating the emissions they report, and data reported to VCR are rarely subject to verification by independent professional auditors." This makes it difficult to compare the performance of different firms or to have confidence in instances of progress that are reported. The use of emissions offsets present particular problems; some claimed offsets are quite misleading and amount to little more than accounting tricks."(*The Case for Kyoto: The Failure of Voluntary Corporate Action*)

Petro-Canada's 2003 VCR submission states: "We are committed to ongoing improvements in energy efficiency in each of our major Canadian sectors, of an average of one per cent per year through 2005, and we are evaluating technology and other options for further action." and "Petro-Canada intends to have large investments in the integrated Alberta oil sands developments in coming years, a growth program that significantly adds to our greenhouse gas management challenge."

To assure that actions taken by Petro-Canada to address climate change are sufficient to mitigate financial risks and potential liabilities we urge shareholders to vote FOR this proposal.

The Board of Directors recommends voting AGAINST this Proposal for the following reasons:

Petro-Canada has a strong record of improving energy efficiency and reducing greenhouse gas ("GHG") emissions. Since 1990, energy saving investments and projects have eliminated over one million tonnes of annual emissions from our core business.

Petro-Canada belongs to a number of Canadian and international industry associations devoted to progressive engagement on climate change issues. We are a member of the World Business Council for Sustainable Development and a member of its Climate and Energy Working Group. This is a worldwide business organization providing business leadership as a catalyst for change toward sustainable development. In Canada, we are a member of the Canadian Association of Petroleum Producers, the Canadian Petroleum Products Institute and the Voluntary Challenge and Registry's ("VCR") Champions in Action Group. The VCR Champions in Action is a small group of companies assessing leading edge practices to address and manage GHG emissions. Petro-Canada is also a member of the Canadian Industry Program for Energy Conservation (CIPEC), which looks at best practices to improve energy efficiency.

Since 1997, Petro-Canada has voluntarily reported on its energy efficiency performance, GHG emissions and the projects, which have helped the company achieve improvement through participation in the VCR. As the highest (gold) level

reporter to the VCR, Petro-Canada's emissions reporting satisfies a number of criteria such as the endorsement of the VCR report by senior management, target setting commitments, listing key activities to reduce emissions, documentation of results achieved and building awareness through education and training. The Corporation's annual VCR report can be found on the Corporation's Web site at petro-canada.ca.

Independently of this resolution, Petro-Canada has already begun to seek ways to improve our measurement of energy use and GHG emissions, the tracking of emission reduction initiatives and the trending of our performance versus company targets and plans.

In mid 2003, Petro-Canada engaged Pricewaterhouse Coopers LLP ("PwC") to conduct a third party assessment of our processes and controls relating to the measurement, calculation, consolidation, and reporting of GHG emissions. PwC concluded that the Corporation has implemented generally reliable reporting processes. They also recommended several continuous improvement actions to further strengthen reporting and controls.

We are now developing action plans to respond to continuous improvement opportunities identified by the PwC assessment. We will focus our improvement actions in the areas of improved documentation of procedures, clarification of level and accuracy of reporting required from internal business units, and the verification of energy efficient projects. As a result of this last mentioned focus; in 2004, Petro-Canada is working toward third party verification of some of the upstream energy efficiency projects.

By taking this approach in 2004 we plan to improve the consistency and transparency in our reported GHG emissions.

Petro-Canada reports its actions and plans to limit GHG emissions on an annual basis in its annual report, Report to the Community, and in more detail in its Voluntary Challenge & Registry report. Through these reports Petro-Canada provides to its shareholders and investors substantive information on the risks and uncertainties related to its business plans.

As such, Petro-Canada sees no value to shareholders in incurring costs to produce a separate report on these matters.

Appendix D - Imperial Oil 2004 Resolutions [39]

The Congrégation des Soeurs de Sainte-Anne has submitted one shareholder proposal that is reproduced below.

Proposal No. 3

Be it resolved that the board of Imperial Oil Limited prepare a report by September 2004 (at reasonable cost and omitting proprietary information) to describe how the company has evaluated market opportunities in wind, solar, and other renewable sources of energy.

- Renewables are the fastest growing segment of the global energy market. In 2002, renewable energy use grew 11% in the U.S. From 1998 to 2002, world wind energy installed generating capacity increasing by an average 32% annually. (American Wind Energy Association)
- Several U.S. states including California (20%), New York (25%), and Maine (30%) have renewables requirements for electricity production. The U.K. adopted a 20% requirement for renewables by 2020. The European Union has a goal of 22% renewables by 2010; and six European and Middle Eastern countries have goals ranging from 3% to 100%. The World Energy Council reports that the global market for renewable energy is likely to be in the range of $234 to $625 billion by 2010 and $1,900 billion by 2020.
- Twelve companies (Alcoa, Cargill Dow, Delphi Corporation, Dow, DuPont, General Motors, IBM, Interface, Johnson & Johnson, Kinko's, Pitney Bowes, and Staples) representing 6.5% of U.S. power demand have formed the Green Power Market Development Group to support the development of 1,000 MW of new renewable energy generating capacity over the next 10 years. Since January 2001, the Group has implemented or signed contracts for 112 MW of new renewable power projects.
- In its 2002 *Climate Change Voluntary Challenge & Registry,* Imperial Oil declares "that the risk of climate change and its potential impacts on society and the ecosystem may prove to be significant."
- To date, Imperial Oil has focused only on the development of fuel cell vehicles. Although its significant investments in cogeneration have resulted in emission reductions, they do not increase Imperial Oil's presence in the growing renewable sector.
- Direct competitors have significantly increased their development of renewables. In 2002, Suncor Energy launched Sunbridge, a wind power

[39] These resolutions were released by Imperial Oil on March 18, 2004 and filed at SEDAR on March 18, 2004

project in Saskatchewan. Early in 2003, Suncor announced plans to partner in the development of a 30 MW wind power project in southern Alberta. These two projects are expected to account for nearly 15% of Canada's installed wind power by the end of 2004. Another company, BP, stated in a March 11, 2002 media release that "BP would continue to expand its solar business which is set to grow by 40% this year and already has a 17% share of the world market."

The directors recommend that you vote against this proposal for the following reasons.

Imperial Oil Limited is an energy company. Understanding and projecting energy supply, demand and technology trends are important elements of our strategic business plan. We are open to considering investments in renewable energy which meet sound investment criteria and can compete favourably with other energy opportunities.

However, at this time, renewable technologies do not offer near term promise for profitable investment relative to attractive opportunities in our core business.

In 2002, renewables, particularly hydroelectricity, but also including use of biomass in the forest products industry provided about 15% of total Canadian primary energy. Imperial however has no real opportunities to participate in these businesses. In contrast, emerging renewables such as wind and solar represent less than one tenth of 1% of Canadian energy supply.

Renewables such as wind and solar power, even while they may experience strong growth, do so from a relatively small starting point, and are not likely to achieve material market penetration for some time.

This is confirmed by projections of independent, credible outside parties. For example, the International Energy Agency forecasts that the "overall contribution [of non-hydro renewables to total generation] will still be small in 2030" for Canada.

The World Energy Council (WEC) (a source cited by the resolution) has projected that by 2020, while renewables in total will provide about 21% of world energy supply, this is dominated by hydroelectricity and traditional fuels such as firewood. Other sources such as wind, solar and geothermal will supply less than one percent of total energy in this outlook. Oil and gas remain the world's most important energy sources - supplying about 50% of the total. The WEC further notes that "wind energy is generally not cost-competitive with the thermal sources [so] the pattern of development has been largely dependent upon the support provided by national governments."

That economic dependence of renewables such as wind on government subsidy is demonstrated by the pattern of development - with wind power growing principally in jurisdictions with the most generous government support. Imperial does not view dependence on government support as a strong basis for an economically sustainable business opportunity.

Imperial is making a greater and more economic contribution to efficient, low-emitting electricity generation through its installation of co-generation at Sarnia and Cold Lake. Once construction at Sarnia is completed this year, these two projects alone will provide as much generating capacity as 80% of the current total installed wind capacity in Canada.

Imperial participates along with other affiliates in the Global Climate and Energy Project (GCEP) at Stanford University sponsored by Exxon Mobil Corporation and other leading companies. This project is helping to advance research to accelerate the development of commercially viable energy technologies that can substantially reduce greenhouse gas emissions. This includes, among other topics, research into renewable energy technologies.

The Fonds Élizabeth Bergeron has submitted one shareholder proposal that is reproduced below.

Proposal No. 4

Be it resolved that Imperial Oil Limited annually issue a report to shareholders that has been verified by credible third party auditors on: specific emission reduction initiatives undertaken by the company to address risks and liabilities arising from climate change, including targets and actual emissions.

- Climate change has significant potential economic consequences. Fossil fuels, including petroleum products, contribute to increased greenhouse gas emissions, the source of climate change. Companies who produce fossil fuels, or depend on their sale as a major source of revenue, are incurring financial risks and potential liabilities.
- **A growing number of investors take "carbon risk" into account. Through the 2003 *Carbon Disclosure Project*, a group of 87 institutional investors with assets of over $9 trillion under management wrote to the 500 largest public companies in the world by market capitalization, asking for the disclosure of investment-relevant information concerning their greenhouse gas emissions.**
- MunichRe, an international re-insurance company, projects that direct climate-related losses could reach US$300 billion annually by 2050. SwissRe, another re-insurer, sees inaction on climate change as a possible liability issue and is considering the potential coverage implications for companies, directors and officers who do not address this risk. SwissRe states the most effective way to address risks posed by the climate change is to reduce the degree of human intervention in the natural climate system.
- While the Kyoto Protocol has not yet entered into force, this should not obscure the fact that legislation encouraging the transition to low carbon intensity fuels, either through setting emissions limits or through introducing renewable portfolio standards (RPS) and other "green incentives", is now a fact of life across the EU as well as in many parts of the U.S., Japan and Canada. There is also a possibility that the federal government decides to

impose mandatory reductions on the oil sector. This could have significant financial impact on Imperial Oil which emissions per unit-of-production has increased over the years (by 17% for bitumen production and 12% for conventional oil and gas production between 1990 and 2002).

- Since 1997, Canadian companies have reported emission reductions to the Voluntary Challenge and Registry (VCR), an industry/government initiative. A 2002 review of the VCR, by the Pembina Institute, states: "There are a large number of major inconsistencies in the methodology used by firms in calculating the emissions they report, and data reported to VCR are rarely subject to verification by independent professional auditors. This makes it difficult to compare the performance of different firms or to have confidence in instances of progress that are reported. The use of emissions offsets present particular problems; some claimed offsets are quite misleading and amount to little more than accounting tricks." *(The Case for Kyoto: The Failure of Voluntary Corporate Action)*
- Although Imperial Oil has submitted VCR reports since the inception of the program, none have been audited by a third party. Last year, Suncor began providing stakeholders with audited sustainability reports.

To assure that actions taken by Imperial Oil to address climate change are sufficient to mitigate financial risks and potential liabilities, we urge shareholders to vote FOR this proposal.

The directors recommend that you vote against this proposal for the following reasons.

Imperial already reports annually to the Canadian public on its greenhouse gas emissions in its report to the federal Voluntary Challenge and Registry (VCR). These reports are readily accessible on either Imperial's own website or that of VCR inc., the agency responsible for managing the VCR program. The VCR reports include, in addition to a report on the company's actual emissions, descriptions of initiatives undertaken to reduce emissions.

Since the inception of the "gold-silver-bronze" award system for VCR reports, Imperial's submissions have consistently been awarded "gold" for completeness and clarity of reporting. Imperial's 2001 report also won a VCR Leadership award for "extraordinary commitment, action and/or leadership towards the voluntary reduction of GHG emissions."

While there can be inconsistencies in the methodologies used by different firms reporting under the VCR program, this is primarily due to the lack of consistent standards in what is still an evolving field. Wherever practicable, Imperial in its VCR reports uses methodologies recommended by its major industry associations in order to ensure consistency.

However, the absence of clear, generally accepted standards for greenhouse gas emission reporting further reduces any value in third party audits, in that there is no standard against which reported results can be assessed. Even where companies

have elected to have independent auditors verify emissions reports, those auditors have noted the absence of any accepted standards to audit the data against.

Attributing possible future financial risks and potential liabilities to greenhouse gas emissions at this time is extremely speculative and depends heavily on the evolution of future government policy. This is why the company, in addition to tracking and reporting on its emissions, works closely with governments, through its major industry associations, to support the development of appropriate policy that will protect Canada's environment and also promote the development of Canada's energy resources and economy.

Third party verification of actual emissions data would not change in any way the highly speculative nature of any assessments of potential future liabilities. Imperial already substantially complies with the proposed resolution in terms of reporting its emissions and initiatives taken to reduce them. The only new element in the resolution is a requirement for third party verification. However, Imperial believes this would neither improve the accuracy of the reports nor do anything to address the major uncertainties of lack of clear, recognized reporting methodologies and of potential liabilities because of political uncertainties. Instead it would simply involve additional expense for no real benefit.

Appendix E - Imperial Oil 2005 Resolutions[40]

The Fonds Élisabeth Bergeron has submitted one shareholder proposal that is reproduced below.

Proposal No. 1

Be it resolved that the board of directors, at reasonable cost and omitting proprietary information, by October 2005 issue a report to shareholders, verified by an independent third party with professional competency in this area, on potential risks and liabilities to Imperial Oil arising from the range of climate changes and their effects (as reported by the IPCC), and an assessment of the strategies and initiatives that may be undertaken by Imperial Oil to address those risks and liabilities.

It is now acknowledged that an increase in greenhouse gases (GHGs) caused by the use of fossil fuels is changing the climate patterns throughout the world, as described in the reports of the world's foremost authority, the Intergovernmental Panel on Climate Change (IPCC).

The social, environmental and economic consequences of such changes, as described in the IPCC's Climate Change 2001: Impacts, Adaptation & Vulnerability report, are becoming increasingly evident, e.g., the marked rise in the frequency, severity and costs of extreme weather events. Major impacts on the Canadian northland have been noted in the recent Fourth Arctic Council Ministerial Meeting report.

A majority of national governments, to circumvent the dangers of climate change, have now brought the Kyoto Protocol into force, legally binding them to reduce GHG emissions to below 1990 levels by 2012. Imperial Oil, which is one of the largest GHG emitters in Canada, is currently 5% above 1990 emission levels.

The Canadian government, which under the Kyoto Protocol has committed to a 20% reduction in current emissions in Canada over the next 7 years, will likely institute economic policies to reduce fossil fuel use. Such policies may include the further promotion of renewable energy sources (the 2004 Throne Speech promised the development of 4,000 MW of wind energy, for example).

Other major energy companies are profitably setting and exceeding targets for GHG reduction. BP in 2001 achieved their 1998 GHG emission target of 10% below 1990 levels and in the process saved $650 million. Other competitors, such as Nexen, Talisman, Shell and Suncor have begun investing in renewable energy

[40] These resolutions were released by Imperial Oil on March 18, 2005 and filed at SEDAR (www.sedar.com) on March 18, 2005.

projects, leaving Imperial as one of the few remaining energy companies in Canada yet to do so.

Socially responsible shareholders are becoming increasingly concerned that failure by large GHG emitters to adequately deal with the environmental and regulatory effects of climate change could leave them open to litigation for negligence, as was the case for tobacco companies. One of several recent lawsuits saw five of the largest US power companies sued by the attorneys-general of eight states for failing to regulate carbon dioxide emissions.

Socially responsible shareholders are also becoming increasingly concerned that many large institutional investors may be inclined to reduce their investments in companies seen as unresponsive to these risks, as may be inferred from the actions of the Carbon Disclosure Project, a global group of 95 fund managers representing more than $10 trillion in assets who recently surveyed 500 multinational corporations on their reporting of GHG emissions.

The directors recommend that you vote against this proposal for the following reasons.

A similar proposal was submitted at the 2003 annual meetings and was defeated by 95.4% of the votes cast.

Scientific knowledge on climate change has made considerable progress but much more remains to be done. Areas of uncertainty that require attention have been identified in numerous reports including several by the U.S. National Research Council. Important areas include the role of clouds and aerosols, natural climate variability, oceanic currents and heat transfer, the hydrological cycle and the ability of climate models to predict changes on a regional and local scale. Despite differing views on what near term policies are appropriate for addressing climate concerns, ongoing research will be essential to informing long-term science-based decisions.

At this time, neither the company nor others in industry know the regulatory obligations to be faced in dealing with the Kyoto Protocol and the climate change issue.

Although the government of Canada in ratifying the Kyoto Protocol agreed to restrictions of greenhouse gas emissions by the period 2008-2012, it has not determined what measures it will impose on companies or individuals. Consequently, attempts to assess impacts on shareholder value can only be speculative.

While the details of future legal requirements are not known, some limits on potential exposure can be estimated. The government of Canada in 2002 and 2003 made commitments to the oil and gas industry regarding the magnitude and cost of CO2 emission reductions. In analyzing these commitments, Moody's Investor Services concluded that the "cost impact of [Canada's policy on] Kyoto will be relatively small" based on the government's assurances.

The company has widely communicated its strategy to address climate change risks. The company's objective is to achieve the twin goals of economic growth in Canada and meaningful environmental progress for the prosperity and benefit of Canadians.

Although the company is unable to assess the risks and liabilities of climate change, it is taking action to develop effective long-term solutions.

Some specific examples of actions taken by the company that reduce greenhouse gas emissions are:

- Since 1973, the energy efficiency of the company's refining operations has improved by more than 40 percent. Further initiatives continue to improve energy efficiency and lower emissions.
- Flare and vent volumes from the company's upstream operations in the province of Alberta have been reduced nearly 90% since 1998. The company's performance in this area is the best among the 50 largest producers in the province of Alberta.
- In 2004, the company committed $10 million to a five year research program at the University of Alberta. The Imperial Oil Centre's mandate will be to find more efficient, economically viable, and environmentally responsible ways to develop Canada's oil-sands resources, one of the largest crude oil deposits in the world.

The company is investing in the groundbreaking Global Climate and Energy Project (GCEP) led by Stanford University. GCEP is dedicated to researching new options for commercially viable, technological systems for energy supply and use which have the capability to substantially reduce greenhouse gas emissions.

The directors believe the company's approach on climate change is comprehensive and responsible and that it establishes a clear process based on scientific, economic and technical analysis that will protect the long-term shareholder value as the issue evolves.

The Presbyterian Church in Canada has submitted one shareholder proposal that is reproduced below

Proposal No. 2

Be it resolved that shareholders request the board to prepare a report by September 2005 (at reasonable cost and omitting proprietary information) to describe how the company could promote and participate in the growing market in wind, solar, and other renewable sources of energy, particularly within Canada.

Renewables are the fastest growing segment of the global energy market. According to Clean Edge Research, solar, wind and fuel cells markets have expanded from US$9.5 billion in 2002 to US$12.9 billion today, or a combined annual growth rate of 36%. Recent forecasts indicate clean energy markets will grow to US$82 billion by 2010.

Seventeen states in the U.S. have renewables requirements for electricity production, including California (20%), New York (25%), and Maine (30%). The U.K. adopted a 20% requirement for renewables by 2020; The European Union has a

goal of 22% by 2010; and six European and Middle Eastern countries have goals ranging from 3% to 100%.

The Canadian Wind Energy Association (CanWEA) states that a minimum 122 MW of wind energy capacity will be installed in Canada by the end of 2004, a 38% increase over Canada's total installed capacity at the end of 2003. Over the preceding five years, installed wind energy capacity had increased by an average 27% a year in Canada.

In Canada, the Province of Ontario is committed to developing 3,000 MW of renewable energy by 2014. The Government of Quebec intends to develop 1,000 MW of wind energy. The federal government is committed to purchasing 20% of its electricity from emerging renewable sources of energy. In addition, the Canadian government has quadrupled the Wind Power Production Incentive's original target of 1,000 MW to 4,000 MW by 2012.

In the last year, several Canadian energy companies have made investments in wind power to capitalize on business opportunities and diversify their energy mix.

Suncor and Enbridge have joined with EHN Wind Power Inc. to commission the 30 MW Megrath Wind Power Project in Alberta and have submitted a proposal to the Ontario government to build an additional 75 MW wind power project in Ontario. Talisman Energy announced plans to construct a deepwater wind farm demonstration project off the east coast of Scotland. If successful, Talisman will consider the construction of a full-scale offshore wind farm that could generate up to one gigawatt of electricity. Nexen is participating in a joint venture with GW Power Corp. to develop a 70 MW wind power project south of Fort McLeod, Alberta.

To date, Imperial Oil has focused on reducing the energy intensity of its operations, with its significant investments in cogeneration facilities. It has also funded research primarily on the development of fuel cell technologies. These are commendable efforts but they do not increase Imperial Oil's presence in the growing renewable energy sector.

The directors recommend that you vote against this proposal for the following reasons.

A similar proposal was submitted at the 2004 annual meeting and was defeated by 96.5% of the votes cast.

Imperial Oil is an energy company. Understanding and projecting energy supply, demand and technology trends and the market opportunities for all energy forms are important elements of the company's strategic business plan. The company is open to considering investments in renewable energy which meet sound investment criteria and can compete favourably with other energy opportunities.

However, the economic prospects of wind, solar and other renewables have not improved materially from a year ago when shareholders voted against a similar resolution. Independent international experts including the International Energy Agency and the U.S. Energy Information Administration also find that wind and other renewables generally have higher costs and are not able to compete with fossil fuels. Consequently, long term forecasts show wind is expected to make only a very

small contribution to total energy supply. The directors continue to believe that participation in such renewable projects would be uneconomic and uncompetitive with the company's other opportunities and not in the interest of shareholders.

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