

**BOARD OF GOVERNORS COMMITTEE TO ADVISE ON MATTERS OF SOCIAL RESPONSIBILITY**

**REPORT to the BOARD on DIVEST MCGILL SUBMISSION of FEBRUARY 2015**

**MARCH 17, 2016**

**I Introduction**

In February 2015, Divest McGill submitted an extensive expression of concern to the Committee to Advise on Matters of Social Responsibility (CAMSR). The submission, entitled Carbon at All Costs: The Fossil Fuel Industry and the Case for Divestment, outlines key arguments for McGill's divestment of investments from the top 200 fossil fuel companies. This report summarizes CAMSR's consideration of, and consensus response to the submission.

The Divest McGill initiative is similar to numerous proposals for divestment from fossil fuel holdings associated with an international campaign under the auspices of 350.org that have been directed at endowment and pension funds of postsecondary institutions, religious organizations, foundations and other public entities. Students and faculty have launched comparable undertakings at approximately 34 Canadian universities. A summary overview is appended as Annex A.

The submission of 2015 is the second in recent years from Divest McGill proposing divestment from fossil fuel companies, following on an expression of concern in February 2013. On that occasion the focus was on the activities of fossil fuel companies engaged in the Alberta oil sands and the Plan Nord of the Quebec government. In that case CAMSR advised the Board that it did not find social injury had occurred due to the actions of the fossil fuel companies.

The Committee appreciates the time and thought that members of Divest McGill have committed to preparing the current comprehensive submission, and to raising awareness of climate change within the University community. The document addresses the relationship between fossil fuel use and climate change, attempts to establish that fossil fuel companies are responsible for social injury and explores the main elements of the divestment argument, presenting these in a coherent way and citing research and evidence that it believes support the case being made.

During the course of its work, the Committee reviewed reports from other universities which have dealt with proposals for fossil fuel divestment. Some of these (e.g., Queen's, University of Toronto) have thoroughly examined the concept of social injury. We refer the reader to these (see Annex A), which more fully address many of the points touched on in this report.

This report throughout uses the generic term 'fossil fuel companies', which is meant to reference the group of fossil fuel companies that are the focus of the Divest McGill submission. We understand this term to refer to companies engaged in the extraction, refining and distribution of fossil fuels/hydrocarbons primarily oil and gas and coal.

**Comment [Unknown A1]:** This date is in error. All Board members had access to the report only as of March 22, 2016 – just one day before they voted on it in closed session.

**Comment [Unknown A2]:** Actually, "It was not a unanimous consensus" as Board chair Stuart Cobbett later admitted ( [www.mcgilldaily.com/2016/03/board-of-governors-refuses-to-divest-from-fossil-fuels](http://www.mcgilldaily.com/2016/03/board-of-governors-refuses-to-divest-from-fossil-fuels) ). So what does "consensus" even mean here?

## II Process and Timeline

CAMSR is a standing committee of the Board of Governors with a mandate to advise the Board on matters concerning social responsibility related to University investments overseen by the Board's Investment Committee. The Investment Committee has responsibility for investing the University's endowment fund.

As part of its mandate, CAMSR has a particular role and responsibility to "consider, report and make recommendations to the Board with respect to written expressions of concern from the University community about matters of social responsibility related to University investments". The Divest McGill submission was found to meet the criteria of an expression of concern.

The Board Chair and Secretary met with a delegation of Divest McGill members to receive the submission on February 2, 2015. Since then CAMSR has met on nine separate occasions to receive additional input from Divest McGill and other members of the McGill community, to consider the issues raised by Divest McGill and to deliberate on this report.

Four of these nine meetings involved representatives of Divest McGill, and, in some cases, members of the McGill Faculty and Librarians for Divestment, who had an opportunity to speak and make presentations in support of the submission. The Vice-Principal (Administration and Finance), who also serves as steward to CAMSR, and the Secretary of the Committee met on four separate occasions with representatives of Divest McGill to discuss issues raised in the submission.

Throughout the process the Committee received and responded to correspondence from Divest McGill and the McGill Faculty and Librarians for Divestment. One focus of this correspondence in Fall 2015 was a proposal that CAMSR recommend to the Board an interim freeze on additional fossil fuel investments pending the completion of its deliberations on the original submission. CAMSR heard from Divest McGill in support of this proposal at its October 22 meeting, and ultimately decided not to make such a recommendation.

During the process, the Faculty Councils of Arts and Law approved resolutions supporting the Divest McGill proposal to divest from fossil fuel companies. The Chair and other members of the Board received approximately 16 messages from individuals in response to an initiative of the faculty association to invite expression of opinions on whether to divest from fossil fuel investments. These messages have expressed a mix of opinions for and against.

A chronology of the process and CAMSR's response to the proposal for an interim freeze is attached as Annex B.

CAMSR assessed the merits of the submission relative to the criterion of social injury as defined in its terms of reference, reviewed the responses of other Canadian, and some non-Canadian universities to similar submissions for divestment from fossil fuel companies, considered the phenomenon of climate change and the contribution of fossil fuel companies to it, and examined the efficacy of divestment as a means of influencing the behaviour of fossil fuel companies and of mitigating climate change.

**Comment [Unknown A3]:** The Board revealed a partial list of McGill community members consulted only after a protest action by Divest McGill <http://divestmcgill.com/admin-response-to-ourfutureourchoice-open-forums-releasing-expert-testimony/>. The identities, credentials and testimony of these experts were unknown to the Board at the time it voted on this report.

**Comment [Unknown A4]:** This statement massively under-reports the demonstrated level of campus opposition to fossil fuel investment, by failing to mention the groups, collectively representing all students on campus, who also passed such resolutions.

**Comment [Unknown A5]:** It also ignores the McGill School of Environment's (MSE) divestment resolution, which also passed by an overwhelming majority. The CAMSR report's later citation of the MSE as an example of how the university is already helping to counter global warming makes this omission especially flagrant (P. 14).

CAMSR also addressed the question of whether any of its members might be in a position of conflict or potential conflict of interest. Members of the Board of Governors and its committees including CAMSR are subject to the Code of Ethics and Conduct for Members of the Board of Governors of McGill University.

Based on the annual Declaration and Disclosure of Conflict of Interest Form by each CAMSR member in Summer 2014 and 2015, no conflict or potential conflict relative to the Divest McGill submission was apparent. A further process of due diligence was undertaken in the course of finalizing CAMSR's report on the Divest McGill submission to explicitly canvass members on whether any one may be in a real or perceived conflict of interest within the meaning of the Code in relation to the Divest McGill submission for divestment from fossil fuel companies. In summary, no real or perceived conflicts of interest with respect to CAMSR's consideration of the Divest McGill submission were found. A table setting out the questions asked and the responses of each member, along with the most recent Declaration and Disclosure of Conflict of Interest Form of each member of CAMSR since February 2015 is attached as Annex C.

### **III Summary of evidence and arguments presented by Divest McGill**

Before outlining CAMSR's overall response to the Divest McGill submission, we summarize below the primary arguments and evidence put forth in the February 2015 report. Given the extensive analysis and broad scope of the submission, we include here only high level findings and a sample of the evidence that has been cited.

#### **1. Fossil Fuel Consumption Causes Climate Change**

In its submission, Divest McGill presents compelling and now widely accepted scientific evidence that fossil fuel use has a direct impact on climate change. The report emphasizes that the science on this matter is largely settled, with 97% of climate scientists and 200 scientific bodies worldwide recognizing anthropogenic climate change.

Divest McGill carefully and methodically presents substantial evidence demonstrating the impact of fossil fuel consumption on climate, and cites the conclusions of several international science bodies and experts, including:

- The International Panel on Climate Change (IPCC) 5th Assessment Report which concludes that "It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century." The five major reports of the IPCC in 1990, 1995, 2001, 2007 and 2014 have all drawn similar conclusions, and outlined in detail the causes and consequences of climate change
- The national science academies of the G8 countries plus Brazil, China, South Africa, and India which noted in a joint statement that the need "for urgent action to address climate change is now indisputable". They indicated as well that the goals of limiting global warming to 2°C would require a very rapid worldwide implementation of all currently available low carbon technologies

## 2. Fossil Fuel Companies Engage in Activities Causing “Social Harm”

Divest McGill argues that the business model of the fossil fuel industry is wholly dependent on the extraction of current and future reserves. Thus the industry spends large amounts annually (\$744 billion in 2013) on exploration and finding new reserves of oil and gas to perpetuate growth and long term profitability.

The submission presents the view that this business model of continuous exploration and exploitation necessarily causes serious social injury by exacerbating climate change, disrupting and damaging ecosystems and the environment, and violating the rights of indigenous and local communities. The report notes that “tremendous environmental harm has been committed by a majority of fossil fuel companies,” and many such companies have “horrific records regarding human rights” as well as “corrupt business practices on an international scale”.

To highlight the social injury arising from fossil fuel corporations, the report cites the activities of two companies- Royal Dutch Shell and Enbridge – as emblematic of industry-wide practices. The account of these two companies includes allegations of serious human rights abuses and large-scale environmental impact and disruption. With regard to Shell, for example, the case is presented that the company’s exploration activities in Alberta and the Arctic puts it on a “collision course with indigenous land titles, fragile ecosystems, and the stability of the world climate”.

## 3. Significant Carbon Reserves must remain unused to achieve 2% global temperature target

In 2009, within the United Nations Framework of Climate Change, 196 nations agreed that global temperature rise must not surpass 2°C if the world is to limit the impact of climate change. Divest McGill argues that the continuing activities of fossil fuel companies are unsustainable, and incompatible with the 2°C limit. They argue that 60% - 80% of the reserves of the fossil fuel industry must stay in the ground to stay below the 2°C limit, effectively pushing for an end to exploration for fossil fuels and a pledge from companies to keep the unburnable portion of fossil fuel reserves underground. They cite evidence that burning just the world’s proven reserves of coal, oil, and natural gas would produce 2,795 gigatonnes of carbon dioxide—nearly five times as much as the acceptable carbon budget to stay within the 2 degree target.

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**Comment [Unknown A6]:** Divest McGill (DM) did not invent this "argument." Climate scientists established this conclusion, in the world's top general-science journal [Nature](#) (Volume 458, Pages 1158-1162). In shining contrast to CAMSR, DM meticulously documents the evidence and logic supporting their case. CAMSR tries to hide this virtue of DM's submission by describing this and several other scientific results as DM's own arguments.

#### 4. Fossil Fuel Companies Impede Action on Climate Change

Divest McGill presents the argument that fossil fuel companies intentionally delay and impede government action on climate change as well the enforcement of existing regulations and laws on the environment. The report notes that in 2013, fossil fuel industries spent an estimated \$213 million lobbying U.S. and EU decision makers. Within the US particularly, lobbyists and legislators supporting the fossil fuel industry have achieved success in delaying climate, renewable energy and environmental legislation.

The report notes that within Canada, the Canadian Association of Petroleum Producers (CAPP) has met with the federal government more than 2700 times since 2008, nearly double that of any other industry. Divest McGill argues that the influence of such lobbyists has diminished environmental protections written into federal legislation, including most recently Omnibus bill C-38, known as the Jobs, Growth and Long-term Prosperity Act. Divest McGill claims that none of the top 200 fossil fuel companies have credible business plans for shifting from fossil fuels to renewable energy sources.

In the view of Divest McGill, fossil fuel industries also manage to skew public opinion about the status of global climate change by funding biased science. Exxon Mobil has allegedly spent at least \$22 million since 1998 funding studies, journalists and think-tanks to publish climate denial material.

#### 5. Divestment is Financially Viable

Divest McGill argues that divestment of the top 200 fossil fuel companies carries little if any financial risk. The report points to several studies that have attempted to quantify the financial consequences of taking environmental factors into account in the investment management process, and concludes that these “studies have found no significant impact on investment risk in predictive models, nor a performance penalty in tests using historical data”. The report, for example, points to a study by S&P Capital IQ, commissioned by the City of Seattle, which showed that over the past ten years, investment in the S&P 500 excluding fossil fuel companies would have received marginally higher returns (30 basis points) than a portfolio including them.

Moreover, the report presents the view that the beneficiaries of McGill University investments will be well-served by fossil fuel divestment by helping to reduce risk exposure from holding equity in companies which may become ‘stranded assets’ or whose value may decline in the long term whether due to regular market forces or government action on climate change.

Finally, Divest McGill makes the argument that shareholder activism to compel industry change has little hope of being successful since it would require that the industry adopt an entirely new core business model, focused on a transition to renewable energy and cessation of all exploration.

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**Comment [Unknown A7]:** Good to note this argument, which CAMSR never answers, and which invalidates their fifth recommendation on P. 15.

#### IV General Observations

CAMSR acknowledges and accepts the findings of climate science and the importance of action to mitigate climate change as most recently demonstrated in the Paris agreement of December 2015 and the World Economic Forum in January 2016. Global warming is a source of stress for human and planetary well-being. The continued emission of greenhouse gasses due to the burning of fossil fuels will cause further warming and long-term adverse effects. We concur with the consensus that for global warming to be kept within the accepted limit of 1.5 to 2 degrees, there also must be a limit to the amount of carbon released into the atmosphere in future. We understand and agree with the goals of Divest McGill to reduce fossil fuel consumption and in turn the extent of climate change.

The impact of fossil fuel consumption is nonetheless a reflection of the dependence globally, in both developed and developing societies, on fossil fuels for energy, agricultural and industrial production. Such basic necessities as clean water, refrigeration and food supply are based on fossil fuel usage. A significant decrease in fossil fuel use without a corresponding increase in alternatives would adversely affect the well-being and human rights of people around the world. While there is widespread agreement that a transition to a new energy system is needed, it is foreseen that the transition must be orderly.

On analysis, the brief and information produced by Divest McGill is persuasive as a call for action against climate change, and for engagement by the University in this quest. Whether divestment of investment in the fossil fuel industry is an appropriate action for the University is the main question. Our report will address this question and the more general challenge of how the University can best respond to the pressing issue of global warming.

As has been reiterated in divestment responses to date, a university exists to pursue an academic mission centered around education and research of the highest calibre. The university's core mission is the creation of knowledge through research, scholarly activity and innovation, dissemination of knowledge through teaching and learning and service to local, national and global communities of many kinds. The best way for McGill to contribute to mitigating climate change is through actions that are consistent with and build on its mission such as climate-oriented interdisciplinary and collaborative research, scientific discovery, enabling students to engage in climate-informed learning, building public awareness to support and shape public policy and doing what it can to reduce its own carbon footprint and adopt climate-friendly practices in its operations.

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**Comment [Unknown A8]:** With one exception on P. 9, CAMSR offers no empirical support for this claim or any of its others.

Facts like the following refute this one: Sweden enjoys better quality and length of life than Canada, while producing and consuming far less energy per capita (see the United Nations and World Resources Institute for relevant data).

**Comment [Unknown A9]:** Continued investment in fossil fuels makes a disorderly transition more likely, by facilitating continuing increase in fossil fuel extraction over the short term, thus making the necessary subsequent decrease that much sharper.

**Comment [Unknown A10]:** This is not the substance of the petitioners' expression of concern. The expression of concern directs the committee to consider whether McGill invests in companies that cause grave social injury and, if it does, whether divestment is a suitable remedy for that. It does not direct the committee to determine whether divestment is an appropriate or "the best" way for the university to take action against climate change.

**Comment [Unknown A11]:** Again, this is irrelevant to the petition, and a red herring. All of these are commendable actions, but none address the ethical jeopardy caused by continued investment in companies that cause social injury.

## V Social Injury

As noted above, other universities have grappled with the concept of social injury and the link between social injury and divestment. Their reports on fossil fuel divestment are helpful in providing a comprehensive understanding of the concept. In drafting the McGill-specific summary below, the Committee has not repeated everything others have said.

The Committee's mandate with respect to the Divest McGill submission is set out in the Terms of Reference of CAMSR (S. 5.2 c.): which states that it may "consider the merits of an expression of concern and make findings exclusively on the criterion of social injury defined in section 2".

Section 2 states that for the purposes of CAMSR's mandate, "...the term "social injury" means the grave injurious impact which the activities of a company is found to have on consumers, employees, or other persons, or on the natural environment. The full terms of reference is appended as Annex D.

Section 2 goes on to indicate that the kinds of activities that may have grave injurious impact "include those which violate, or frustrate the enforcement of rules of domestic or international law intended to protect individuals against deprivation of health, safety, or basic freedoms, or to protect the natural environment".

To establish that the criterion of social injury has been met requires that three elements be present. There must be an injurious impact. Such impact must be grave. Such grave injurious impact must result from the activities of a company (or companies).

### Injurious Impact

The Committee recognizes that climate change is an injurious impact that has occurred based on the elaborate body of climate science research. The science establishes that climate change, if not mitigated, will have harmful effects on the future well-being of people and the natural environment. Climate change is in turn linked significantly to the burning of fossil fuels and the resulting emission of carbon-intensive gasses. This is sufficient basis to merit mitigating action.

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**Comment [Unknown A12]:** It is important first to note that these arguments do not fall within the mandate of the Committee under the terms of reference.

According to s. 5.2c. of those terms, upon receipt of the expression of concern from Divest McGill, the Committee is to do the following:

"consider the merits of an expression of concern and make findings based exclusively on the criterion of social injury defined in section 2."

Section 2 states:

"For the purposes of the mandate of this Committee, the term 'social injury' means the grave injurious impact which the activities of a company is found to have on consumers, employees, or other persons, or on the natural environment."

Since CAMSR's Report strays from the meaning of social injury defined in section 2, its report has failed to fulfill its terms of reference and is thus void.

A Board of Governors decision based on a void report can be of no force or effect.

Yet a void Report is precisely what CAMSR has written:

First, CAMSR has subtly redefined 'social injury' to depart from its terms of reference.

Second, and most importantly, it has not applied even its redefined test to the actual findings on social injury.

Instead it has introduced extraneous considerations, unauthorized by the terms, that it relies upon to determine that there was no social injury.

**Comment [Unknown A13]:** CAMSR contradicts its own criteria on the very next two pages.

On P. 8 it illegitimately shifts the first criterion from injurious impact *per se* to net injurious impact.

On P. 9 it illegitimately shifts the third criterion from "result[ing] from the activities of... companies" to resulting primarily from them.

**Comment [Unknown A14]:** This statement, and the rest of the report, ignore the catastrophic past and present effects of global warming, such as the following:

1: 150,000 people killed per year according to the World Health Organization (

[www.who.int/heli/risks/climate/climatechange/en](http://www.who.int/heli/risks/climate/climatechange/en) )

2: Global collapse in wildlife populations according to the World Wide Fund for Nature ( [bit.ly/1sxx5m](http://bit.ly/1sxx5m) ).

## Grave Injurious Impact

Whether the injurious impact of climate change can be considered grave, is, in part, a question of degree; the plain meaning of grave in this usage is extremely serious or threatening. To be extremely serious or threatening implies quantum, imminence and persistence of harm.

As underscored by the Paris agreement of December 2015, widely seen as a major turning point in the global fight against climate change, there is widespread acceptance that the rise in average global temperatures must be held well below 2°C (not more than 1.5°C) above pre- industrial levels between now and 2050 if humankind is to avoid irreversible effects of climate change. Without negating the current injurious impact, this suggests that the most pronounced and harmful effects of climate change have not yet been experienced, and may not happen if the Paris agreement goal is achieved and concerted related action is taken. If the most pronounced effects materialize, it will involve a measurable worsening of conditions from present levels and will occur in the future. In this context grave injurious impact is a threshold which arguably has not been reached and can yet be avoided. Indeed, the report of the Massachusetts Institute of Technology entitled A Plan for Action on Climate Change dated October 21, 2015 succinctly sums up this point.

A warming of about 2°C (3.6°F) above pre-industrial levels marks a threshold after which the resulting damage to societies and natural systems becomes increasingly grave.

In weighing the degree of injurious impact one must take into account the full context including the beneficial impact of the fossil fuels industry. Society, both in the developed and developing worlds, depends on energy to support housing, production and distribution of goods and services, transportation and many amenities. The latest OECD calculation estimates that approximately 80% of the world's energy is generated from the burning of hydrocarbons. The Committee must give regard to this global reliance on fossil fuel energy. Energy is essential to economic development, health, reduction of poverty and social justice. Alternative sources of energy are not broadly or uniformly available to society at this time.

Fossil fuels and their petro-chemical derivatives also are important inputs to many products and technologies that underpin everyday life around the world. Currently society has no cost effective and reliable alternative to these inputs.

**Comment [Unknown A15]:** Death is not reversible. See the preceding note about past and current deaths caused by global warming. In other words, irreversible harms already have occurred and are occurring every year.

**Comment [Unknown A16]:** This statement admits the existence of current injurious impact, but the report nowhere specifies what that impact is. The report thus provides no basis for assessing whether the current injurious impact is grave or not.

**Comment [Unknown A17]:** Is it really necessary to point out that just because things could get worse, it doesn't mean they are not gravely injurious already? Yet this is all CAMSR has to offer as an "argument" against the gravity of the current impact.

**Comment [Unknown A18]:** Even if CAMSR had an argument – and they do not – that past and current impacts are not gravely injurious, there is a word for foregoing present action upon a known cause of impending harm: CAMSR is knowingly counselling the Board to commit negligence.

**Comment [Unknown A19]:** This is where the report illegitimately shifts from impact *per se* to net impact. CAMSR is called upon first to make a finding as to social injury; it is not directed to make a finding as to whether social injury is offset by other factors. On this basis alone its Report is void for failing to fulfill its mandate.



Fossil fuel usage is indispensable to society as we know it today, and to the standard of living and quality of life enjoyed by people around the world. In this context and at this time the producers of fossil fuels are essential in meeting this demand, and contribute in socially beneficial ways, to the functioning and welfare of society. Fossil fuels will remain an irreplaceable component of modern life until we can make an orderly transition to a new energy system and economy.

The Committee is persuaded that the beneficial impact of fossil fuel companies offsets or outweighs injurious impact at this time.

### Activities of companies

The injurious impact of climate change/global warming cannot be attributed primarily to the activities of fossil fuel companies which extract and produce fuel. Recent figures suggest that 80-90% of total greenhouse gas emissions emanate from the end use of products in industry, power plants, buildings and transportation by both companies and individuals. For instance, 60% of oil produced is consumed in transportation. (WEF p 9). Admittedly, the extraction, refining and distribution of fossil fuels account for up to 20% of emissions, but the comparatively small proportion of supply side activity impact cannot be substituted for the whole impact resulting from the end-use consumption of fossil fuels. A significant proportion of the injurious impact of fossil fuels is caused by their burning, which mostly takes place beyond and outside the activities of the fossil fuel companies identified in the Divest McGill submission. A view that responsibility for climate change lies with the supply side (extracting and producing fossil fuels) is partial and unsatisfactory. Only a holistic and balanced view that focuses on both supply and demand (usage) will enable meaningful action to address climate change.

As outlined above, it may be said that fossil fuel companies and companies that use fossil fuels, engage in activities that to some degree have an injurious impact. Indeed, in the industrial age and society in which we find ourselves, much human activity may be said to have an injurious impact on the natural environment. CAMSR fails to see the logic or virtue in singling out the activities of fossil fuel companies for special attention, when concerted efforts are needed on a mass scale to change the behaviour of many companies and individuals.

Divest McGill argues that certain other activities of fossil fuel companies de facto cause social injury, namely: continuing exploration for fossil fuels despite global warming limits; lobbying and supporting campaigns aimed at preventing action on climate change; refusing to pledge to keep the unburnable portion of fossil fuel reserves underground; and failing to meet national and international standards for obtaining the consent of indigenous communities on whose lands they operate.

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**Comment [Unknown A20]:** Once again, a bald statement of opinion with not even an attempt to back it up with evidence.

Nowhere does the report justify the idea that to get whatever important benefits currently derive from fossil fuel use, it is necessary to use so much that it causes global warming.

See preceding note about Sweden's much lower consumption of energy.

Nor were petitioners invited to respond to this assertion.

**Comment [Unknown A21]:** Furthermore, the CAMSR terms of reference do not include a provision for considering benefits that might offset injuries.

**Comment [Unknown A22]:** This is where the report illegitimately shifts from "result[ing] from the activities of... companies" to resulting primarily to them.

**Comment [Unknown A23]:** This is thus a key point at which the subtle reframing of the test for social injury is brought to produce a false outcome beyond the jurisdiction of CAMSR.

Section 2 of the terms of reference does not ask CAMSR to determine whether the activities of the companies in issue are primarily responsible for global warming and other harms of fossil fuel extraction.

On such a test, divestment from companies involved in apartheid South Africa or from companies manufacturing cigarettes could not meet a grave social injury test.

Others, besides those companies, contributed to those social ills and the totality of social practice exceeded considerable the individual part of the companies. ... [1]

**Comment [Unknown A24]:** The tobacco example illustrates how ridiculous it is to apportion responsibility this way.

Simply substitute the relevant terms:

"Recent figures suggest that 99% of total CIGARETTE SMOKE emissions emanate from the end use of ... [2]

**Comment [Unknown A25]:** This statement ignores the fact that fossil fuel companies have the greatest vested interest in continuing societies' dependence on fossil fuel.

Many of those companies also rank among the largest, and therefore most powerful, in the world. ... [3]

**Comment [Unknown A26]:** Furthermore, the question is not whether CAMSR see the "logic" or "virtue" of focusing on the activities of these companies to the exclusion of other companies.

The question is whether these companies, in which McGill is invested, are engaged in socially injurious ... [4]

**Comment [Unknown A27]:** Finally, it is disingenuous to pretend that Divest McGill's efforts are not part of a "concerted effort on a mass scale".

Divest McGill cites infractions of domestic and international laws by some of these companies, for which they were sanctioned. This tends to show that these companies operate within the law, although they, like commercial ventures in other areas of activity, sometimes breach specific laws or regulations. Such an outcome does not demonstrate that the company's activities frustrate the enforcement of rules or domestic and international law as described in our terms of reference. Fossil fuel companies are lawful entities. They operate within an extensive body of legislation and regulation around the world. There must be a nexus between incidents of unlawful behaviour and grave injurious impact by the responsible company (ies) in order to establish social injury.

The Committee is not persuaded that the combined effects of these four actions identified by Divest McGill have a grave injurious impact that meets the test of social injury contained in the Committee's terms of reference. For example, lobbying against some measures does not automatically violate or frustrate the enforcement of rules of domestic or international laws against deprivation of health, safety or basic freedoms or to protect the environment. Continuing to explore or refusing to keep unburnable reserves underground does not directly have grave injurious impact on individuals or the natural environment.

Climate change is an injurious impact primarily due to the burning of fossil fuels by end-users rather than activities of fossil fuel companies.

### Finding on Social Injury

There is not the degree or extent of injurious impact at this time that results from the activities of fossil fuel companies that would warrant a finding of grave injurious impact. Arguably, cutting off access to fossil fuels would be more likely to result in grave injurious impact in the short-term than the continued reliance on fossil fuels.

For all of the reasons outlined above, the Committee remains unconvinced that grave injurious impact resulting from the activities of the top 200 fossil fuel companies or a particular fossil fuel company has occurred at this time. In the absence of the three elements required to establish social injury, namely the existence of injurious impact that is grave and attributable to the activities of one or more companies, the criterion of social injury is not met.

**Comment [Unknown A28]:** By this argument, one must conclude that serial offenders – for whom the benefits of repeated unlawful activity outweigh the penalties they pay when they are periodically caught -- are best described as lawful citizens.

Beyond this, the Committee leaves unconsidered the question of whether these companies actually do act to "frustrate" the application of rules and laws (by, for example, failing to disclose and comply, or by engaging in prohibitive litigation) alongside their periodic breaches.

Second, and more importantly, the CAMSR terms of reference explicitly say that injurious activities include such activities include "those which violate, or frustrate the enforcement of rules of domestic or international law...".

Yet here, CAMSR acts as if the reference to "violation" does not exist – even as it acknowledges that such companies do indeed violate the law from time to time.

**Comment [Unknown A29]:** There is nothing in the CAMSR terms of reference that says an impact must be "direct" in order to qualify as gravely injurious.

**Comment [Unknown A30]:** To draw another analogy, according to this argument the drug dealer in the school yard proffering his wares is not a problem, it is the "end-users" that are entirely responsible for any injury: there is no rationale for interfering with the dealer's business.

**Comment [Unknown A31]:** The petition does not ask CAMSR to endorse "cutting off access to fossil fuels" nor is this implied by divestment. CAMSR is directed by its terms of reference and the petition only to consider whether fossil-fuel extraction and the related activities of the companies that carry it out are gravely injurious and, if so, whether divestment is a remedy for the ethical jeopardy in which this places the University.

## VI Divestment

In its submission Divest McGill proposes that the University divest from investments in the 200 fossil fuel companies with the largest carbon reserves.

In keeping with the CAMSR terms of reference, determination of social injury would be a prerequisite for a recommendation for divestment of holdings in a company or companies.

Although, as explained in section V of this report, CAMSR has determined that the activities of fossil fuel companies do not meet the criterion of social injury, we believe it worthwhile to offer observations on divestment and other actions McGill might consider to address climate change.

Even where CAMSR were to make a finding of social injury, and is of the opinion that action is warranted, it may recommend action within a broad range of options including divestment.

CAMSR is of the view that divestment would be an appropriate action only where exceptional and compelling circumstances exist to justify such an intervention in the normal oversight of endowment investments carried out by the Board's Investments Committee and professional investment managers.

The Investment Committee of the Board has a fiduciary duty to oversee the investment and effective management of the University's endowment funds to generate optimal, risk-adjusted returns in accordance with the Statement of Investment Policy and its terms of reference. The endowment is made up of thousands of donations received over many years for purposes related to our academic mission as designated by generous benefactors. The University holds endowment funds in perpetuity to advance its mission.

The University depends on the return on investment of the endowment fund to generate income to support donor-designated objectives such as student scholarships and bursaries, research, academic chairs, facilities and special programs. The Investment Committee has the responsibility to generate returns in order to make annual payouts and to protect the capital value of the endowment fund indefinitely into the future. One of the fundamental strategies for prudent management of investments is portfolio diversification. The exclusion of any lawful investment sector or class of assets would necessarily restrict the range of investment options, which, in turn could have a negative impact on the overall health of the endowment fund. Divestment could increase the risk to capital and to the generation of optimal returns. Accordingly, we have reservations against divesting holdings for reasons unrelated to the endowment's financial well-being. Only serious unacceptable activities of particular companies would warrant the deployment of a divestment strategy. The bar for justifying divestment is and must continue to be set very high.

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**Comment [Unknown A32]:** This adds undefined criteria – "exceptional and compelling circumstances" – where none exist in the CAMSR terms of reference. Further, one might question why, in the event that grave social injury was established, the onus would be on the petitioners to justify divestment in terms of such an arbitrarily high standard. Once grave injury has been established, wouldn't it be more reasonable to expect those who favor *continued investment* in the injurious activity to justify this course of action? Wouldn't it rather be more reasonable to permit continued investment in gravely injurious activities only under "exceptional and compelling circumstances"?

**Comment [Unknown A33]:** If the Board really took even this principle seriously it would have divested from fossil fuel three years ago. Financial analysts were already warning about the "carbon bubble" threatening to leave "stranded assets" of unburnable fossil deposits (see for example the Canadian Centre for Policy Alternatives' 2013 study of "Canada's Carbon Liabilities").

**Comment [Unknown A34]:** Sure enough, the Board's failure to divest has cost the university over \$40 million so far ([www.corporateknights.com/channels/responsible-investing/fossil-fuel-investments-cost-major-funds-billions-14476536](http://www.corporateknights.com/channels/responsible-investing/fossil-fuel-investments-cost-major-funds-billions-14476536)). Are they turning the endowment into a charity for fossil-fuel executives?

**Comment [Unknown A35]:** To whom does CAMSR think the Board has a fiduciary duty? The students of McGill? The professors and/or other employees? Quebec or Canadian society? The only group mentioned in the text are wealthy donors.

**Comment [Unknown A36]:** CAMSR, and the Board that approved this report one day after receiving it, have thus misplaced their loyalties. Wealthy donors, and perhaps the fossil fuel companies to which Board members have strong ties, have stolen the hearts and minds of our so-called governors.

**Comment [Unknown A37]:** This rehearsal of mainstream economic dogma flies in the face of the actual empirical record, which as noted above shows that investment in fossil fuel has in fact had a negative financial impact on the endowment.

**Comment [Unknown A38]:** This statement runs counter to the very reason for CAMSR's existence, which is specifically to consider action for "reasons unrelated to the endowment's financial well-being." Were this not the case, there would be no need for CAMSR – the Investment Committee, whose mandate is to be directed by the endowment's financial well-being, could be left alone to decide the fate of McGill's investments. This statement effectively negates the Committee's own mandate.

Even if CAMSR had found that the activities of fossil fuel companies resulted in social injury, it would be disinclined to recommend divestment unless it could be demonstrated that divestment was required in order to have an impact on redressing the social injury similar to the impact that divestment was seen to have in the cases of tobacco and South Africa. If the grave injurious impact is climate change, we do not see that divestment would be an effective or meaningful form of action to address climate change at this time.

**Comment [Unknown A39]:** Here they are admitting that divestment was effective in the case of South Africa and tobacco, without saying anything about how those cases differ from fossil fuels.

Let us examine the possible consequences of divestment. Divestment can be used to bring pressure to bear or to influence the behaviour of a company through direct financial impact, e.g., by depleting its capitalization. As economists and other commentators have pointed out, universities hold a very small fraction of the total market capitalization of fossil fuel companies. If McGill and other universities were to divest our holdings at this moment, it is likely these assets would find other willing buyers with little or no economic effect on the companies. At the same time, divestment would reduce or remove the influence we may be able to exert on fossil fuel companies by remaining invested. In this light, divestment is likely to have negligible financial or other tangible impact on fossil fuel companies.

**Comment [Unknown A40]:** This statement intentionally misconstrues the aim of divestment as economic rather than political and moral. Divestment by major Canadian universities would certainly bring substantial pressure to bear on governments to reverse their collusion with the fossil fuel industry.

Secondly, divestment may be used for symbolic reasons, to make a statement or send a signal of disapproval of a company's activities with the goal of affecting public opinion and perhaps public policy. Symbolism affects reputation and attempts to impart a measure of stigmatization. Divest McGill itself has stated that divestment would be largely a symbolic and political act.

**Comment [Unknown A41]:** This claim ignores the point, noted earlier in the report (P. 5), that shareholder activism will obviously not convince companies to forego billions of dollars in revenue by leaving the bulk of their fossil deposits in the ground.

CAMSR shares the view articulated by Drew Faust, President of Harvard, in October 2013. We should, moreover, be very wary of steps intended to instrumentalize our endowment in ways that would appear to position the university as a political actor rather than an academic institution. Conceiving of the endowment not as an economic resource, but as a tool to inject the University into the political process or as a lever to exert economic pressure for social purposes, can entail serious risks to the independence of the academic enterprise. The endowment is a resource, not an instrument to impel social or political change.

**Comment [Unknown A42]:** All of this was true of the cases of South Africa and tobacco. Is CAMSR here saying that these divestment decisions were a mistake?

Again, they have not shown how or why fossil fuel is different from apartheid or tobacco such that what was justified and worked in those cases is not justified or would not work in the case of fossil-fuels.

Divestment, whether to exert financial influence or for symbolic purposes, would not be an effective means of addressing climate change. It is an ultimate action that is disconnected from the intended outcome of reducing the injurious impact represented by climate change. It also is a distraction to efficacious forms of action, and somewhat overreaching relative to reasonable next steps given the current economic and political reality. The Committee sees no advantage or benefit for McGill to engage in action that would have negligible impact on climate change. Furthermore, since fossil fuel companies are not engaged uniformly in activities which result in grave injurious impact, a blanket divestment strategy would be unprincipled and inappropriate.

**Comment [Unknown A43]:** This statement ignores the fact that investment in fossil fuel despite global warming is itself a political act, and a very regressive one at that.

Divestment will change the direction of this political stance, not impart one.

**Comment [Unknown A44]:** This is not the issue for CAMSR to decide. The question is whether divestment would remediate the harm caused by fossil fuel companies, not whether it will solve the problem of climate change all by itself.

**Comment [Unknown A45]:** This statement misconstrues divestment as an alternative to, rather than a means for promoting, other measures, especially those directed toward establishing and enforcing strong government policy to keep fossil deposits in the ground.

CAMSR could find no instance among Canadian universities of a decision to divest from fossil fuel companies. Beyond Canada there have been relatively few such decisions by universities, and sometimes, as in the case of Stanford, these have been rather limited in scope and significance.

At the University of Toronto, the President's Advisory Committee on Divestment from fossil fuels recommended a strategy of targeted divestment from fossil fuel companies which “engage in egregious behaviour and contribute inordinately to social injury.” In that Committee’s view “fossil fuel firms engaging in activities that blatantly disregards the 1.5 degree threshold are engaging egregiously in socially injurious behavior that is irreconcilable with internationally agreed limits ....” and “the University should, in a targeted and principled manner, divest from its direct holdings in such firms”. This approach may offer some promise in establishing a concrete measure of social injury that would justify selective divestment. However, at this time, as the University of Toronto report acknowledges, a method to evaluate whether a given fossil fuel company’s actions meet this test does not exist and must first be determined. CAMSR considered the question of partial divestment targeted at companies engaged in production and burning of coal but in current circumstances do not see this as effective or constructive in reducing coal production and use.

### VII Other Forms of Climate Action

In the Committee’s view, action by McGill to counter climate change is appropriate irrespective of the determination of social injury per CAMSR’s terms of reference. We agree with Divest McGill that issues of climate change must be addressed.

McGill already has important programs and initiatives underway that are significant in promoting socially responsible investments and combatting climate change.

- In 2007 it established an Office of Sustainability and has adopted a strategic plan for sustainability, Vision 2020 that has resulted in achievement of many action objectives. The Sustainability Projects Fund (SPF) is financed 50/50 by the students and the administration for a total of \$ 850,000 / year. The University also contributes \$42,000 annually to the operating budget of the Office of Sustainability.
- McGill contributes over approximately \$500,000 annually to a dozen research projects related to Sustainability. In addition, the university provided \$750,000 in funds to match philanthropic donations given for the Trottier Institute for Sustainability in Engineering and Design and the Sustainable Engineering Support Fund.

**Comment [Unknown A46]:** This is a misrepresentation. The U of T report makes a recommendation for immediate targeted divestment.

**Comment [Unknown A47]:** It is also contradictory. If “a method to evaluate whether a given fossil fuel company’s actions meet this test does not exist and must first be determined” how is it that CAMSR has succeeded in determining, as it claims to have done above, that “the criterion of social injury is not met.”? They cannot have it both ways.

- McGill has undertaken a series of energy management initiatives since 2002 intended to reduce energy consumption and realize savings in energy costs. McGill's Five-Year Energy Management Plan initiated in 2010 promotes energy conservation and reduction through projects ranging from technological upgrades to changes in user behaviour. The 2013 updated plan calls for investments that will generate a reduction in annual energy consumption of 480,000 gigajoules and a reduction in annual energy costs of \$5.3 million by fiscal year 2018.
- The Office of Investments and the Investment Committee have promoted the adoption of ESG (Environmental, Social, Governance) policies and signing on to the UNPRI (United Nations Principles of Responsible Investing) to McGill's 38 investment managers.
- Beginning in Fiscal Year 2017, McGill has committed \$2 million per year over the next 5 years to sustainability sciences across a range of disciplines. This is a highly integrated approach to identifying, quantifying, modelling and addressing sustainability challenges through five interconnected research themes: biodiversity; climate modelling/climate change; green chemistry; advanced materials and nanotechnology; economics, policy and governance. The University also is pursuing additional funding of \$20 million in research grants and philanthropic donations to support this commitment.
- In 1998, McGill established the McGill School of Environment (MSE), involving the Faculties of Agricultural and Environmental Sciences, Arts and Science. Areas of study include Biodiversity and Conservation, Environment and Development as well as Renewable Resource Managing. MSE programs lead to degrees at the Bachelor and graduate level.
- McGill offers various student study programs such as the Major in Managing for Sustainability in the Desautels Faculty of Management which integrates management studies with fundamentals of environmental science and sustainability, and is offered in collaboration with the McGill School of Environment and the Department of Geography.

**Comment [Unknown A48]:** Suspicious not to mention that the MSE voted overwhelmingly in favor of divestment.

## Recommendations

CAMSR proposes that the Board ask the Investment Committee, while exercising its fiduciary duty, to consider and report back on by December 2016, measures such as set out below.

- Establishing a socially responsible investment fund option for donors interested in such an option - similar to the fund established for pension investments
- Looking at opportunities for, and supporting, sound investments in alternative (renewable) energy firms, alternative technology development and commercialization
- Developing ESG principles and guidelines for endowment investments
- Asking investment managers to report annually on ESG and UNPRI implementation and compliance, which will in turn be reported to the Board
- Supporting and initiating shareholder resolutions to encourage changes in company practices deemed inconsistent with ESG and UNPRI

CAMSR also proposes that the Board ask the University administration to provide it by the May 2016 meeting with a preliminary overview of all current sustainability and climate-related activities. This overview would form the basis for the Board and senior administration to work collaboratively on further integrating and expanding initiatives, consistent with the McGill mission, to create a comprehensive climate action plan. CAMSR also proposes that the Board ask the University administration to report annually to the Board on all sustainability and climate initiatives. Such initiatives would encompass, but not be limited to:

- Sustainability research and education across all fields of study, efforts to advance understanding of climate change and promote innovative mitigation and adaptation solutions
- Ongoing implementation of Vision 2020 and the development of a further sustainability strategic plan and action plan for 2017-2020
- Projects to quantify and reduce McGill's own carbon footprint that set measurable goals and contain indicators of performance and progress

In closing, CAMSR thanks Divest McGill for helping to bring the issues of climate change and sustainability and the need for climate action to prominent attention at McGill and especially at the Board of Governors, and for its commitment to the University and to improving policy, practices and operations. We also commend Divest McGill for fostering debate and building a sense of responsibility within the University on important issues ranging from sustainability and climate change to socially responsible investing. While we acknowledge differences in the views held by CAMSR and Divest McGill, we express our appreciation for the respectful and constructive approach that Divest McGill has brought to our exchanges throughout the process.

**Comment [Unknown A49]:** What about donors who want nothing to do with an institution where those in charge lack the courage or integrity to divest from fossil fuel? [https://www.facebook.com/DivestMcGill/videos/1081210718588904/?\\_mref=message\\_bubble](https://www.facebook.com/DivestMcGill/videos/1081210718588904/?_mref=message_bubble)

**Comment [Unknown A50]:** Already shown by Divest McGill to be ineffective in this case, as noted on P. 5 above but never answered.

**Comment [Unknown A51]:** How telling that the same day that the Board voted on the CAMSR Report, the Rockefeller Family Fund issued a statement that it was divesting from fossil fuels: "While the global community works to eliminate the use of fossil fuels, it makes little sense - financially or ethically - to continue holding investments in these companies. There is no sane rationale for companies to continue to explore for new sources of hydrocarbons." "We would be remiss if we failed to focus on what we believe to be the morally reprehensible conduct on the part of ExxonMobil." "[A]s a matter of good governance, we cannot be associated with a company exhibiting such apparent contempt for the public interest."

**Comment [Unknown A52]:** Vision 2020 includes the provision "McGill's financial portfolio is managed according to principles of sustainability (social, economic and environmental)." How does investment in fossil fuel companies square with this?

**Comment [Unknown A53]:** Too bad this was not reciprocated.

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**Unknown Author**

**4/5/16 9:59:00 AM**

This is thus a key point at which the subtle reframing of the test for social injury is brought to produce a false outcome beyond the jurisdiction of CAMSR.

Section 2 of the terms of reference does not ask CAMSR to determine whether the activities of the companies in issue are primarily responsible for global warming and other harms of fossil fuel extraction.

On such a test, divestment from companies involved in apartheid South Africa or from companies manufacturing cigarettes could not meet a grave social injury test.

Others, besides those companies, contributed to those social ills and the totality of social practice exceeded considerable the individual part of the companies.

Nonetheless, fossil fuel companies meet an important and indeed stringent test for impact that arguably applies as well to cigarette manufacturers and companies that propped up the apartheid economy:

But for the activities of these companies, the social injury likely could not occur.

One can certainly affirm that but for the activities of fossil fuel companies we could not burn fossil fuels.

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**Unknown Author**

**4/3/16 6:35:00 AM**

The tobacco example illustrates how ridiculous it is to apportion responsibility this way.

Simply substitute the relevant terms:

"Recent figures suggest that 99% of total CIGARETTE SMOKE emissions emanate from the end use of products... by... individuals."

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**Unknown Author**

**4/3/16 6:40:00 AM**

This statement ignores the fact that fossil fuel companies have the greatest vested interest in continuing societies' dependence on fossil fuel.

Many of those companies also rank among the largest, and therefore most powerful, in the world.

And of course many of them have used that power to advance that interest, against the public interest in reducing global warming (see for example [www.cbc.ca/news/politics/energy-industry-letter-suggested-environmental-law-changes-1.1346258](http://www.cbc.ca/news/politics/energy-industry-letter-suggested-environmental-law-changes-1.1346258) ).

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**Unknown Author**

**4/3/16 4:56:00 PM**

Furthermore, the question is not whether CAMSR see the "logic" or "virtue" of focusing on the activities of these companies to the exclusion of other companies.

The question is whether these companies, in which McGill is invested, are engaged in socially injurious behaviour, if that injury is grave, and if divestment is an appropriate remedy for that.