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Mr. Gerald Butts  
Chair, Committee to Advise on Matters of Social Responsibility (CAMSR)  
c/o Mr. Stephen Strople  
Secretary General, McGill University  
James Administration Building Suite 313  
845 Sherbrooke Street West  
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By email

Dear Mr. Butts:

Re: Jurisdiction of CAMSR to Refer an Expression of Concern to the Royal Society of Canada

I am writing in regard to the possibility, to which you alluded at the meeting held on April 17, that CAMSR might commission an Expert Panel study by the Royal Society of Canada, which, as Divest McGill was told, would in general terms relate to “the effects of fossil fuel production and consumption on the natural environment, the magnitude of such effects and the effectiveness of divestment as a means of addressing harmful effects.” The purpose of my letter is to alert you to CAMSR’s absence of jurisdiction to commission such a study in response to Divest McGill’s Expression of Concern. As a supplementary point, I draw your attention to the incompatibility between the scope of terms of reference to which I have just alluded and the Expert Panel process of the Royal Society. I would of course write to the Royal Society as a separate matter should CAMSR indeed seek the constitution of an Expert Panel.

1. Absence of Jurisdiction to Commission a Royal Society Study

According to s. 3 of the CAMSR Terms of Reference, CAMSR has a general mandate “to advise the Board on matters concerning social responsibility related to

University investments within the mandate of the Investment Committee of the Board.” Pursuant to s. 4.3, that mandate includes the power to “undertake studies of socially responsible investment policies and best practices.” Those, and those alone, are the kinds of studies CAMSR’s terms of reference specify. As regards expressions of concern governed by s. 5, there is no provision for CAMSR to commission a study. The Terms of Reference on this are quite precise. CAMSR is to receive expressions of concern that fulfill the criteria of s. 5.1. In its consideration of the expression of concern CAMSR is to establish and communicate the procedures it deems necessary, which it has already done, invite and receive representations from members of the University community as it deems appropriate, which it can continue to do, and consider the merits of an expression of concern so as to make findings based exclusively on the criterion of social injury defined in section 2. For CAMSR to seek the opinion of another body concerning social injury would amount to a delegation of its responsibility to another external instance.

I wish to emphasize that although there is language in ss. 4 and 5 of the Terms of Reference giving an expansive reading to aspects of CAMSR’s mandate (“[w]ithout limiting the generality of the foregoing mandate”), that language in fact never refers to s. 5 itself. Only ss. 3 and 4 are to be read broadly as implying a general mandate. By contrast, given the absence of parallel wording, s. 5 is to be read as specifying and delimiting the way in which CAMSR is to treat expressions of concern.

You can well appreciate, I am sure, why the Terms of Reference draw the distinction between parts of CAMSR’s mandate that are to be read broadly and parts that are to be read narrowly. It is important that the expression of concern process be specified transparently and not subject to broad discretion or uncertainty as to how that process unfolds. For CAMSR to respond to an expression of concern by commissioning a study for which there is no specified mandate places those formulating expressions of concern in an awkward and difficult position. Should they be commissioning studies pre-emptively? Can further studies be commissioned to counter the findings made by the CAMSR-commissioned study? What other new requirements might be introduced in the future? To commission a study outside the terms of s. 5 will make an already burdensome process all the more time and resource intensive – especially in the case, as here, of a reformulation of an original expression of concern in response to CAMSR’s first set of questions and specifications. Nor can such a study be called a s. 5.2 “procedure” in response to the expression of concern. Given the strict reading that must be given to s. 5, s. 5.2 procedures are those having to do with managing CAMSR’s receipt and hearing of as well as deliberations upon an expression of

concern. Nothing in s. 5 authorizes inventing a procedure that goes outside CAMSR and McGill. CAMSR should not invoke s. 5.2 to summon the ghost of Kafka.

The University community has constituted CAMSR to analyse expressions of concern and to formulate recommendations to the Board. If CAMSR determines that there is the basis for a finding of social injury, it is the job of CAMSR, not of any other body, to propose appropriate action according to the terms of s. 5.3. CAMSR is invited to seek advice from the University community. We are in an eminent research institution, indeed of which many of its professors are members of the Royal Society. Rather than commission a study, CAMSR is to come to its own conclusions according to the advice it receives at McGill.

The Terms of Reference are eminently sensible in this regard. The precedent you would set by commissioning a study would be to say the least unfortunate. Imagine now the jockeying that will have to occur around any expression of concern as intervenors seek to determine which external body ought to be brought into our community's deliberations. It is not a wise course for a deliberative body to punt its deliberations to others. The wise course, consistent with the mandate of CAMSR, is for the body charged to deliberate to do so.

## 2. Inappropriateness of the Royal Society Expert Panel Process

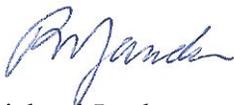
I have familiarized myself with the Expert Panel Process of the Royal Society and in particular with the Topic Proposal Form available on the Royal Society website: <https://rsc-src.ca/en/expert-panels/information-about-expert-panels>. There one discovers that the Royal Society will undertake expert studies where others have not already examined a topic and if they have, only where additional value could be provided by an RSC supported panel. As the Divest McGill brief exhaustively documents, the contribution of fossil fuel production and consumption to climate change has been studied in great depth by the international scientific community and indeed is subject to an unprecedented, indeed Nobel Prize-winning, Intergovernmental Panel process. Surely the Royal Society cannot and should not duplicate that work. Nor can one say (again drawing on the Topic Proposal Form) that "there are differences of opinion or a great deal of complexity surrounding the topic of the proposed study so significant benefits could result from bringing together experts from a variety of disciplines and/or sectors to address the proposed topic." A survey of the kinds of Expert Panel studies that the Royal Society has done indicates that they have a narrow, tractable focus upon a policy area that requires further interdisciplinary study, *e.g.* the recent report on the

“Behaviour and Environmental Impacts of Crude Oil Released into Aqueous Environments”. Such is not the case here. Given the overwhelming evidence connecting fossil fuel production and consumption to climate change and in particular the clear conclusion that existing reserves owned by fossil fuel companies can only be fractionally exploited, the issues instead are: 1) do those companies produce a social injury by continuing to find additional reserves and to pursue their maximal exploitation; and 2) if so, what should McGill’s response as a socially responsible investor be? These are not questions that lie within the terms of reference of a Royal Society Expert Panel. I leave to one side the delicate question as to how a Royal Society Expert Panel Report is to be financed.

### Conclusion

I appreciate the efforts of your Committee to engage in careful deliberations. As a member of the McGill academic community I am proud of the work done by Divest McGill and by CAMSR to provide sound advice to our Board and a direction for the University on a matter of grave public concern. If Universities have been invited by the UN Secretary General and by the UN Climate Chief to lead the way in reducing fossil fuel investments, it is because those leaders understand that the impact of such decisions upon public and governmental perceptions can be significant, notably in advance of the important Paris UNFCCC talks. McGill has an opportunity here to play the kind of role that a community of public intellectuals can and ought from time to time to accept. Let us not squander that opportunity by moving outside CAMSR and the Royal Society’s mandate and embroiling ourselves instead in a procedural imbroglio.

Yours sincerely,



Richard Janda  
Associate Professor  
Faculty of Law

Cc: Members of CAMSR, Divest McGill, McGill Faculty and Librarians for Divestment Steering Committee