



**Department of Art History and
Communication Studies**
McGill University
Arts Building, W-255
853 Sherbrooke Street West
Montreal, QC, Canada H3A 0G5

**Département d'histoire de l'art et
d'études en communication**
Université McGill
Pavillon des arts, W-225
853, rue Sherbrooke ouest
Montréal, QC, Canada H3A 0G5

Tel. : (514) 398-6541
Fax: (514) 398-7247
E-mail: ahcs@mcgill.ca

Stephen Stropole
Secretary-General
McGill University
James Administration Building Suite 313
845 Sherbrooke Street West
Montréal (Québec) H3A 0G4

By email

14 May 2015

Dear Secretary-General Stropole,

Re: Divest McGill Expression of Concern and CAMSR Terms of Reference

We write as a current and a former McGill Senator to express concern over the proceedings of the Board of Governors' Committee to Advise on Matter of Social Responsibility (CAMSR), in its consideration of the expression of concern placed before the committee by Divest McGill. **We are concerned that CAMSR's actions have contravened the committee's terms of reference and that the committee is therefore acting out of order, and will be unable to advise the Board appropriately on this matter.**

The CAMSR Terms of Reference provide as follows (emphasis added):

5.3.c. Where the Committee has made a finding that social injury has occurred, in its consideration of possible actions, it shall take into account the gravity of the social injury, the potential effectiveness of various means of influencing corporate behaviour, the University's need to adhere to sound financial policy, and consistency between the possible actions and the mission of the University.

This provision clearly intends that consideration of possible remedial action should follow, not precede, determination of whether social injury has occurred. It aims to ensure that the committee's finding concerning social injury will not be prejudiced by anticipation of the potential repercussions of possible remedial actions. That determination of social injury arising from McGill's investments should be wholly independent of any consideration of possible remedial action is further made clear in Section 5.2.c. of the CAMSR terms of reference, which directs the committee to "consider the merits of an expression of concern and make findings *based exclusively on the criterion of social injury defined in section 2*" (emphasis added).

Section 2 of the CAMSR terms of reference makes no mention of possible remedial actions as a criterion in making a finding of social injury. Consideration of remedial actions should occur only “Where the Committee is satisfied that social injury, as defined in section 2, has occurred” (Section 5.3.b.).

In sum, according to its terms of reference, CAMSR should not make a finding of social injury contingent on assessment of the potential effectiveness of measures proposed to relieve it. The finding of social injury should precede consideration of the effectiveness of possible actions.

On 8 May 2015, representatives of Divest McGill appeared before CAMSR to address questions from the committee (Prof. Nystrom was present as an observer at this meeting). The committee provided Divest McGill with several questions in advance pertaining to the relative effectiveness of divestment and other possible actions.¹ Based on CAMSR’s terms of reference, the substance of these questions implied that a prior finding had been made concerning social injury and the committee was now in the process of assessing “the potential effectiveness of various means of influencing corporate behaviour” (Section 5.3.c). However, when asked directly if CAMSR had made a finding concerning social injury in this case, committee member and Chair of the Board of Governors Stuart Cobbett replied that CAMSR had made no such finding.

This raises the possibility –and, at the very least, creates the impression—that CAMSR will make its finding on social injury contingent on its consideration of the implications of Divest McGill’s proposed remedy for the injury set out in its petition and brief. To be specific: it now appears that CAMSR may decide whether the activities of the fossil-fuel companies in which McGill invests constitute a social injury based not on the merits of the claim but, instead, on the committee’s perception of the effectiveness and implications of the proposed remedy of divestment. This contravenes CAMSR’s terms of reference and casts serious doubt on both its advice to the Board and the legitimacy of its proceedings in this matter.

In our view, CAMSR is acting in bad faith, and is no longer in a position to legitimately advise the Board of Governors on Divest McGill’s expression of concern. The CAMSR terms of reference make no provision for appeal of its decisions in cases where it has proceeded out of order. Even if an appeal directly to the Board of Governors was possible, it is not clear that such an appeal would be treated without bias, given that the Chair of the Board of Governors and the Principal are *ex officio* members of CAMSR and have, in this particular case, themselves pursued the question of the potential effectiveness of possible remedial actions prior to the determination of social injury. This leaves Divest McGill with few options for a fair and impartial disposition of their expression of concern.


¹ The questions provided to Divest McGill by CAMSR were as follows: 1.) How does immediate divestment compare to a freeze on any future investments in companies actively involved in fossil fuel extraction activities? 2.) Regarding climate change and global warming, is divestment the most effective measure to prevent the unnecessary burning of fossil fuels? 3.) What actions have or can be taken that have a more direct impact? 4.) Regarding social injury through environmental harm, is divestment the most effective way to counter actual and potential threats to our ecosystems? 4.) Does Divest McGill consider divestment a long term policy or an immediate action with direct or indirect tangible effects? 5.) How will divestment reduce pollution and /or result in a reduction in the use of hydrocarbons?

We are certain that you appreciate the need to ensure the integrity of CAMSR's advice to the Board on this matter. In this light, we request the following:

1. That your office directs CAMSR to make its determination of social injury independently of consideration of possible remedies, and that a deadline of 1 July 2015 is established for this determination.
2. That an independent third-party be appointed (in consultation with Divest McGill) to observe CAMSR's deliberations (including *in camera* sessions) on the question of social injury, to ensure that the committee adheres to its terms of reference as discussed above.

What is done cannot be undone, but we are hopeful that these minor measures will encourage CAMSR to act in good faith and base its finding on social injury solely on the facts of the matter. Our concerns about the integrity of CAMSR's proceedings are compounded by those set out in Prof. Janda's letter of April 27, 2015, regarding the committee's lack of jurisdiction to refer an expression of concern to an external body for further study. It is of utmost importance that CAMSR adheres to its terms of reference in these matters. The University cannot afford to have the legitimacy of CAMSR and the Board compromised in relation to this very important decision.

Sincerely,



Prof. Derek Nystrom
Department of English
McGill Senator (2012-2015)



Prof. Darin Barney
Department of Art History & Communication Studies
McGill Senator (2009-2012)

copied: Gerald Butts, Chair, CAMSR
Divest McGill
McGill Faculty & Librarians for Divestment