

## Open letter to members of the Board of Governors of the University of British Columbia

February 14, 2016

Dear members of the Board of Governors,

Climate change is a defining issue of our time. We urge UBC to demonstrate the leadership that serious action on climate change – proportionate to the scale and urgency of the crisis – requires.

We believe that you cannot in good conscience – and in respect of your duty to act in the best interests of the University – accept the motion recommended by the Finance Committee against Divestment from Fossil Fuels.

The motion against Divestment from Fossil Fuels is based on a fundamentally inadequate and flawed process and a demonstrably weak substantive analysis of the issue.

The UBC community deserves an open, transparent, timely, and evidence-based consideration of divestment. Indeed, that is the minimum standard to which students and faculty are entitled after two decisive university-wide referendum votes in favour of divestment.

The process undertaken has not met that standard. Below we summarize some of the serious flaws in process and substance.

You have an opportunity to set the University on a path to being a leader of sustainability and good governance.

We ask you to reject the motion against Divestment from Fossil Fuels and immediately undertake an open, transparent and evidence-based consideration of divestment.

*Tuum Est.*

*- The Divest UBC / UBCC350 Team*

### UBC's wholly inadequate process in addressing fossil fuel divestment: an overview

#### *Respect for stakeholders*

- **Students and faculty votes:** Both students and faculty voted in decisive university-wide referendum votes in favour of fossil fuel divestment. A very high standard of evidence and process should be met if you intend to ignore that expressed will.

#### *Opaque process and lack of evidence*

- **Retroactive imposition of policy regarding divestment:** The student referendum in favour of divestment was passed in February 2014. Not only did UBC refuse to consider the request for divestment at that point, but the Board passed a new policy in April 2014,

which *retroactively* required that another constituency – such as faculty – hold a referendum, before the issue would be considered.

- **Retroactive imposition of criteria for divestment:** The April 2014 policy also, again retroactively, created a new set of excessive – and in some cases outright illogical – criteria for UBC to consider divestment.
- **No serious consideration of divestment:** The committee commissioned a report from Koskie-Minsky evaluating whether the divestment proposal met their retroactive criteria, but limited the analysis to a bizarrely narrow scope. Specifically, the report *excluded consideration of any evidence in favour of divestment* except for that contained in a single document: a brief that we, UBCC350, wrote to motivate the case for divestment.
- **Committee consistently refused to meet with UBCC350:** Despite considering a single UBCC350 brief as the only possible source of evidence in favour of divestment, the committee refused to meet with us at any point in its decision-making process.
  - The committee’s refusal to meet was despite our repeated requests (including on 21 May 2015; 3 June 2015; 16 June 2015; 22 June 2015; 25 September 2015; documentation available). To reiterate, our requests did not simply go unanswered, but rather were explicitly refused (also documented).
- **No community consultation:** The broader UBC community did not receive the opportunity to engage with the committee on divestment. In stark contrast, the University of Toronto’s advisory committee on divestment held consultations with a wide range of community members and stakeholders.
- **Narrow composition of committee:** UBC has a wealth of academic experts who could be drawn upon to address the complex issues of divestment and climate change. This institutional wealth of expertise was actively utilized in the University of Toronto’s committee process, but not in UBC’s process.
- **No public documentation of the committee's meetings:** As far as we know, there is currently no public record or minutes documenting how the Responsible Investment Policy Committee came to its recommendation or what information was considered.

*Unsupported claims that divestment would be inconsistent with fiduciary duty*

- **Claim directly contradicted by outside legal opinions:** The Finance Committee’s interpretation of fiduciary duty directly contradicts an external legal opinion received by the University of Toronto President’s Advisory Committee on Divestment, which finds that divestment *is* consistent with fiduciary duty. The UBC committee’s interpretation also contradicts, for example, research from the UBC Allard School of Law.<sup>1</sup>
- **Claim contradicted by the committee’s own brief.** Even the committee’s own (flawed, see above) Koskie-Minsky brief does not substantiate the claim that divestment would be inconsistent with fiduciary duty. In fact, it explicitly says that divestment *could* be

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<sup>1</sup> Report of the President’s Advisory Committee on Divestment from Fossil Fuels, December 15, 2015. <http://www.president.utoronto.ca/secure-content/uploads/2015/12/Report-of-the-Advisory-Committee-on-Divestment-from-Fossil-Fuels-December-2015.pdf>; Professor Benjamin Richardson, “Legality of Socially-Responsible Investing (SRI) by University Endowment Funds,” August 3, 2013.

consistent with fiduciary duty (we had two lawyers corroborate this interpretation of the Koskie-Minsky brief, in the short time since the committee made it available).<sup>2</sup>

- **Confidential legal memo won't be released:** We also received notice from the committee that it has an additional legal memo on fiduciary duty, but that it will not be made available to campaigners or to the university community.
- **Contradicted by \$3.4 trillion already committed to divestment globally:** The committee's claim that divestment is inconsistent with fiduciary duty is also belied by the 503 universities, municipalities, foundations and other institutions in Canada and around the world, which have committed to divesting.<sup>3</sup>
- **Unsupported premise that returns from fossil free funds are lower:** A large body of research evidence, which was provided to the committee, shows that returns to fossil free investments are the same or better than investments without this type of screening. The committee failed to provide any documented evidence to refute that literature.
- **No consideration of downside risk from "stranded assets" by not divesting:** There is a substantial and growing "carbon risk" literature that goes further, finding that *not* divesting could itself create significant financial risks. There is no evidence that the committee seriously considered this.

#### *Fundamentally flawed "Sustainable Future Fund"*

- **Proposed fund does not address the core concerns of divestment:** Whatever merits it may possess, the sustainability fund is a remarkably tokenistic measure when faced with the urgent reality that 80% of global fossil fuel reserves must remain in the ground. It is a \$10 million drop in a \$1.4 billion bucket. Furthermore, it does nothing to confront the crucial role of the fossil fuel industry in striving to weaken and delay climate policy.
- **Proposed fund would consider coal to be "low-carbon":**<sup>4</sup> As of February 13, 2016, ETFs tracking the MSCI ACWI Low Carbon Target index include investments in several coal companies. More generally, the fund would rely on deeply flawed metrics.<sup>5</sup>
- **ESG metrics are a weak standard for environmental leadership:** ESG principles are aspirational goals left to fund managers to define. For example, the MSCI Global Socially Responsible Indices (which it appears the proposed fund may use) exclude investments in alcohol and nuclear power, but do not screen for the fossil fuel industry. Investing in moderately better-run fossil fuel companies is not environmental leadership.
- **Industry standard methods of determining carbon emissions will incentivize investments directly counter to addressing climate change:** The Sustainable Future Fund's "carbon footprint" would paradoxically improve from *selling* some solar energy

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<sup>2</sup> If divesting would not materially harm financial returns, as the weight of evidence says it would not (see subsequent bullet point).

<sup>3</sup> See list of commitments at: <http://gofossilfree.org/commitments/>

<sup>4</sup> We recognize that the Board has not yet defined what is meant by "low carbon." As a result, we use industry standard low-carbon metrics that the Chair of the Finance Committee has indicated UBC will use.

<sup>5</sup> For example, only 1% of the emissions from coal fired electricity are attributed to the footprint of a coal mining company, but 100% of those coal emissions contribute to the footprint of, for example, a wind turbine company in a present-day electricity grid including generation from coal to manufacture the turbines. Solar, wind, and other alternative energy companies receive no credit for generating clean energy.

investments and *buying* fossil fuels companies including in thermal coal mining. If the UBC fund invests in ETF's tracking the MSCI ACWI Low Carbon Target Index, it would include investments in 21 of the world's 200 largest fossil fuel companies.

Suggested new process for considering divestment

We believe a proper process for considering divestment would establish an Advisory Committee on Divestment from Fossil Fuels that:

- a. is external to the Board, consisting of representatives of UBC stakeholders;
- b. is charged with examining the financial and social risks associated with continued investment in the fossil fuel sector, reflecting upon the university's social responsibility to show leadership in responding to climate change, and seriously examining paths to divestment for UBC, as per the mandate from students and faculty;
- c. conducts the review in an open, transparent, and evidence-based manner;
- d. presents an actionable recommendation on divestment to the Board of Governors for the June 2016 meeting.