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Backgrounder to the accompanying report “’Troubling Incrementalism’: Is the Canadian Pension Plan Fund Doing Enough to Advance the Transition to a Low-carbon Economy?”

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Canada Climate Law Initiative | L'Initiative canadienne de droit climatique

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BACKGROUNDER

- The Canada Pension Plan is one of the world's largest and most influential public pension funds with more than CA$434.4 billion in assets under management (as of June 30, 2020). The funds are managed by CPP Investments (formerly CPP Investment Board or CPPIB) with a mandate to serve the best interests of over 20 million Canadian workers and retirees whose retirement savings are vested in the plan.
- CPP Investments' CEO, Mark Machin has stated that the actions CPP Investments takes today could help to ensure the long-term well-being of Canadians for generations to come. (The Star, May 30, 2020).
- However, an in-depth legal analysis by the Canada Climate Law Initiative (CCLI) of CPP Investments' private investments in the oil and gas sector reveals a 'troubling incrementalism' that exposes Canadians' pension investments to significant climate related risks; risks that the Bank of Canada has stated affect the ability of central banks to achieve goals for financial stability.
- In CCLI's new report, "'Troubling Incrementalism': Is the Canadian Pension Plan Fund Doing Enough to Advance the Transition to a Low-carbon Economy?", report author Cynthia A. Williams takes the view that CPP Investments can demonstrate leadership by increasing transparency and setting aggressive targets for reducing carbon in its Canadian portfolio, thus supporting Canada's low carbon transition and good jobs for future generations of Canadians.
- Canadian business leaders, including an independent group of 15 finance, policy and sustainability leaders of the Taskforce for a Resilient Recovery, agree that building back better for Canada means supporting the jobs, infrastructure and growth that will keep Canada competitive in the clean economy of the 21st century.
- Furthermore, in her recent legal opinion, distinguished corporate governance expert and Canadian lawyer Carol Hansell stresses that directors of Canadian corporations are obliged to recognize that the courts, regulators and investors accept that climate change poses material risks, and should address climate risk accordingly ("Putting Climate Change Risk on the Boardroom Table", June 2020)
- CCLI's analysis of CPPIB's disclosures suggests that the pension fund's investment strategy may not be in the best interests of its Canadian beneficiaries and contributors, or consistent with the requirements of intergenerational equity that are a constituent part of pension trustees' fiduciary obligations.
- In particular, CCLI investigated six CPPIB private investments that have created companies that engage in hydraulic fracking in Ohio and Colorado; expand oil sands extraction in Alberta and Saskatchewan; and engage in natural gas development off the coast of Ireland. These investments include:

- CPPIB's $2.6 billion investment in Wolf Midstream: CPPIB highlights the emissions reduction potential of a $300 million investment in the Alberta Carbon Trunk Line (a carbon sequestration project) in Mr. Machin's article in the Star, above, but does not disclose that the remaining $2.3 billion will purchase bitumen pipeline and oil storage assets that facilitate the expansion of oil production and increase carbon emissions.
- CPPIB's €830 million investment in Nephin Energy: CPPIB's wholly-owned subsidiary bought natural gas interests off the coast of Ireland from Shell in 2018. Nephin is now Ireland's biggest producer of natural gas, but Shell called it the most controversial investment in Irish history.
- CPPIB wholly owns 95% of a Denver-based fracking company called Crestone Peak Resources that it established. Crestone's board and executive management team is composed of several current and former CPPIB fund managers. But Crestone's fracking operations are plagued by controversy in Colorado, as the company tried to drill fracking wells less than half a mile from schools, homes and playgrounds, generating thousands of complaints to Colorado's oil and gas regulator about poor air quality, toxic fumes, poisonous gas leaks, earthquakes, explosions, health problems and illnesses. Faced with the potential of a state-wide fracking moratorium, Crestone responded by donating over US$600,000 in funds from US activities to support pro-fracking candidates and interest groups in Colorado's 2018 state elections.

- CCLI urges CPP Investments to engage with contributors to and beneficiaries of CPP in a thoughtful discussion of its responsibility and power to take swift and urgent action that can set Canada on a path to compete and succeed in the clean economy of the 21st century.
- Report author Cynthia A. Williams discusses the findings of her report at a public webinar on Friday September 18 from 8 a.m. – 9 a.m. PDT. Register here for "Pension Funds and the Transition to a Low-Carbon Economy".

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About the Canada Climate Law Initiative: The Canada Climate Law Initiative (CCLI) provides legal analysis, resources and tools to help corporate directors, officers, and pension fund trustees in Canada understand how director duties and fiduciary obligations relate to climate change risks and opportunities. CCLI is the Canadian partner of the Commonwealth Climate Law Initiative, established at Oxford University and with projects in Australia, Canada, Singapore, South Africa, and the United Kingdom. CCLI is led by Drs. Carol Liao and Janis Sarra of the Peter

A. Allard School of Law, University of British Columbia, and Prof. Cynthia Williams of Osgoode Hall Law School, York University. In Canada, CCLI has established the Canadian Climate Governance Experts, a collaboration among leading lawyers, accountants, economists, capital markets experts, company executives, and governance experts across Canada to advise boards and pension fund trustees *pro bono* concerning their fiduciary responsibilities with respect to climate change. For further information: https://ccli.ubc.ca/

About Cynthia A. Williams: Professor Williams writes in the areas of securities law, corporate law, corporate responsibility, comparative corporate governance and regulatory theory, often in interdisciplinary collaborations with professors in anthropology, economic sociology, and organizational psychology. Professor Williams also engages in policy work through her board membership in the Climate Bonds Initiative, a London-based NGO creating a new asset class, Climate Bonds, to finance the transition to a low-carbon economy; the Commonwealth Climate and Law Initiative, part of the Oxford Sustainable Finance Programme, which is evaluating directors' and trustees' legal obligations to consider climate change risk in companies' strategies and securities disclosure; and was the principal author of a petition submitted to the U.S. Securities and Exchange Commission in October, 2018, asking the SEC to engage in rule-making to require greater sustainability (environmental, social, and governance) disclosure. Professor Cynthia Williams joined Osgoode Hall Law School on July 1, 2013 as the Osler Chair in Business Law, a position she also held from 2007 to 2009. Before coming to Osgoode, she was a member of the faculty at the University of Illinois College of Law and, prior to that, she practised law at Cravath, Swaine & Moore in New York City.