

Development and Peace quits ombudsperson's advisory board

Development and Peace has joined a mass resignation from a government advisory board created to monitor allegations of unethical and illegal activities by Canadian corporations involved overseas in mining, oil and gas and textiles.

The resignations came amid signs that a newly appointed ombudsperson would lack the authority to compel testimony and demand documents from corporate executives implicated in wrong-doing.

"We were disappointed that it wasn't clear the powers that the ombudsperson was going to have," said Kelly Di Domenico, a spokesperson for the Canadian [Catholic Organization for Development and Peace](#).

"It seemed to be the government was going back on what it had announced initially in January (of 2018), when they made the announcement, and also on their electoral promises."

She believes the government has broken that promise by means of a seemingly endless review of legal opinions regarding the extent of the ombudsperson's power. That legal battle behind closed doors at Global Affairs Canada led to Development and Peace joining 13 other organizations, including NGOs and unions, in resigning on July 11 from a board formed to advise International Trade Diversification Minister Jim Carr.

This board, called the Multi-Stakeholder Advisory Board (MSAB), was created parallel to the new office of the Canadian Ombudsperson for Responsible Enterprise (CORE). Its role was to advocate for communities outside of Canada who suffer because of unethical or illegal activities by Canadian corporations.

In addition to Development and Peace, organizations leaving the MSAB include Amnesty International Canada, the United Steelworkers Union, World Vision Canada and the Canadian Council for International Co-operation.

When the ombudsperson and the MSAB were first announced in January of 2018 the government promised CORE would run independent investigations and that corporate co-operation in those investigations would be mandatory.

Nineteen months later, the government has broken that promise after a seemingly endless review of legal opinions over whether the ombudsperson should have the power to compel testimony and demand documents, said Di Domenico.

It took more than a year for the government to find someone to fill the

ombudsperson role. When lawyer and former petroleum industry lobbyist Sheri Meyerhoffer was hired in April, Carr promised to obtain a legal opinion to help decide and define Meyerhoffer's ability to make corporate executives answer questions and produce company records.

Independent lawyer Barbara MacIsaac has delivered her opinion to Carr's office, but the trade division of Global Affairs is still looking it over, according to spokesperson Sylvain Leclerc.

In addition to MacIsaac's advice, Global Affairs also has a confidential 18-page memo submitted by the firm of Fasken Marineau DuMoulin LLP last September on behalf of the Mining Association of Canada and the Prospectors and Developers Association of Canada. The Fasken opinion supports the mining industry's argument that the ombudsperson should not exercise any power to compel testimony, but only bring the parties together to negotiate terms for a joint investigation.

Giving the ombudsperson quasi-judicial powers would "raise very serious, and, we believe, ultimately insurmountable, Canadian law, international law and constitutional law and public policy complications," said the Fasken memo, which was obtained by The Catholic Register.

While the Fasken memo has been quietly shared in business and mining circles, it has not been given to any of the civil society representatives on the MSAB.

"We don't see how this body (the CORE office) can viably perform that function in an extraterritorial way. And we question the need for it," said Mining Association of Canada senior vice president Ben Chalmers.

"The courts have the proper procedural protections and processes to deal with what are judicial powers around compelling evidence and testimony. When you try to look at setting that up in a non-judicial body, it just doesn't work."

Justice and Corporate Accountability Project lawyer Shin Imai calls the Fasken memo just more spin from the industry.

"The mining industry, they play tough and they don't play fair," Imai said. "You can make an argument – a Charter argument, a constitutional argument – about any piece of legislation. I mean, that's what lawyers are paid for. That's our job."

Global Affairs refused to say whether the mass resignations from MSAB have killed off their advisory board.

"The government will continue to actively engage with Canadians on responsible business conduct issues," said Leclerc.

As far as Development and Peace is concerned, the decision to walk away from the table isn't necessarily final.

“It wasn’t an easy decision to leave,” said Di Domenico. “We’re always open. If the government comes back and the ombudsperson does have the power to compel evidence and to investigate, and the government invites us back for real dialogue, then I think we would be more than happy to go back.”