

Summary backgrounder from CNCA to SDIR members - February 23 2021

Canada still needs an Independent Ombudsperson with teeth

The creation of an ombudsperson's office is much-needed and long overdue. Canadian companies operating overseas have been associated with widespread and egregious human rights abuses including forced labour, sexual assault and killings. Human rights defenders and communities face increasing risks during the Covid-19 pandemic.

In January 2018 the Government of Canada [announced](#) the creation of an independent ombudsperson office with robust powers to investigate allegations of human rights abuse tied to Canadian corporate activity overseas. It has still not delivered on that promise.

The Canadian Network on Corporate Accountability has spent [over a decade](#) advocating for a human rights ombudsperson with real powers to investigate abuses and redress the harms caused or contributed to by Canadian companies operating abroad. The federal government finally announced the creation of such an independent watchdog in 2018, and pledged that the office would have the crucial powers to compel testimony and the production of documents from companies. This announcement was applauded by civil society and labour groups, including the CNCA.

Despite its explicit and public commitment, the government subsequently bowed to industry pressure and gutted the office's powers before it even got off the ground. In April 2019, the government [created](#) a powerless advisory post that differed little from the discredited offices that had come before it. Sheri Meyerhoffer was appointed as the Special Advisor to the Minister of International Trade Diversification, to be known as the Canadian Ombudsperson for Responsible Enterprise. It remains an ombudsperson in name only, without the independence and powers that are the foundation of an effective office.

At the time, Minister Carr said that the promised powers to independently investigate would need to wait for a time-bound external legal review, that was to be completed within a few weeks' time. 20 months later and the report remains buried and the office of the CORE remains powerless.

CNCA's analysis of the serious deficiencies of the CORE's mandate are available [here](#) and [here](#).

“It was because of assurances that the CORE would have independence and real investigatory powers that we stood alongside the government in January 2018 and we promoted the announcement both nationally and internationally.”

— *Alex Neve, then-Secretary General, Amnesty International Canada*

In September 2019 then-Minister of International Trade Diversification Jim Carr wrote to CNCA

“I have concluded the most effective way to ensure the Ombudsperson has the tools they need would be to **enact a stand-alone legal framework for the office, including stipulating its powers to compel documents, witnesses, and other key testimony. To this end, I have asked my officials to begin the work required to pursue such a legal framework.**”

Prior to that letter, in the spring of 2019, Minister Carr had commissioned an external legal review - the McIsaac Report - to advise him on “how to equip the Canadian Ombudsperson for Responsible Enterprise (CORE) with **sufficient tools** to engage in credible and effective investigations of alleged human rights abuse and **to ensure that she has the powers to compel witnesses and documents.**”

Key observations from the McIsaac report:

- “While the best way to ensure that the CORE has the necessary powers to compel witnesses and the production of documents would be to enact legislation to establish the CORE, **appointing the CORE as a commissioner under Part I of the Inquiries Act could also achieve that objective, while, at the same time, retaining the overall mandate currently envisaged for the CORE.**” (emphasis added)
- “If the CORE is structured as an ombudsperson appointed as a Ministerial Advisor, as is currently the case, **its effectiveness will be dependent on the cooperation of the complainant and the entity being investigated.**” (emphasis added)
- “...it is fair to say that without a way to compel the cooperation of the entities against which a complaint is made or others who may hold relevant information, **the CORE’s effectiveness may be compromised.**” (emphasis added)

Impacted communities and workers can wait no longer

The COVID-19 pandemic has not made the institution of corporate accountability any less urgent. Quite the contrary. In addition to the new public health crisis, in some cases, the human rights risks faced by workers, women, Indigenous peoples, and human rights and environmental defenders negatively impacted by Canadian business operations have been exacerbated.

In addition, the urgency in seeing an empowered CORE is heightened by the fact that the CORE plans to open its doors to complaints in early 2021. Without independent investigatory powers, the CORE will be unfit for purpose and will suffer the same fate as its predecessors, including the [National Contact Point](#).

Given the absence of the basic minimum powers to fulfill the CORE’s mandate, CNCA members have felt the obligation to warn our global partners to [approach the CORE with caution](#).

Canadians, civil society and impacted communities around the world continue to expect Canada to get serious about its international human rights obligations and to put in place effective corporate accountability mechanisms. We expect the government to fulfill its commitments. We will not be waiting silently.

Recent CNCA publications

- [Building Back Better Requires Urgent Action on Corporate Accountability](#)
- Submission to CORE: [Supplemental feedback regarding harm and operating procedures](#)
- Submission: [Civil society confidence in the CORE, undermined by absence of powers](#)

- ▶ How will the Ombudsperson be selected and what is the duration of its term?
- ▶ When will the Ombudsperson be operational?
- ▶ How will the Ombudsperson be different from the Extractive Sector Corporate Social Responsibility (CSR) Counsellor?
- ▶ How will the Ombudsperson be different from the Canadian National Contact Point (NCP)?
- ▶ What does this announcement mean for the Extractive Sector CSR Counsellor?
- ▶ What will be the role of the Canadian Trade Commissioner Service with the creation of an Ombudsperson?
- ▶ How is the appointment of an Ombudsperson considered an improvement to Canada's approach on CSR abroad?
- ▶ What sectors will be covered under the Ombudsperson mandate?

What teeth does the Ombudsperson have? How will the Office of Ombudsperson deal with companies that do not cooperate with the Office

- The Government is committed to ensuring that the Ombudsperson has all the tools required to ensure compliance with information requests – including the compelling of witnesses and documents – in the hopefully very rare circumstances where a company is not fully and appropriately cooperating.
- The Ombudsperson will operate with a budget sufficient to allow him/her to conduct complex collaborative and independent investigations.

What penalties will be applied to business if the Ombudsperson uncovers wrongdoing abroad? / What remedy can complainants expect?

How much independence will the Ombudsperson have? For example, will the Ombudsperson be able to initiate independent investigations and publish its findings?

- The Ombudsperson will retain full discretion to undertake collaborative and independent fact-finding to address allegations of human rights abuses by Canadian companies operating abroad.
- To improve transparency, the Ombudsperson will publicly report at various stages – another important distinction - of an investigation process and when monitoring recommendations.
- The Minister of International Trade will table the Ombudsperson's annual reports in Parliament. Before being published, all reports will be shared with the Minister and the parties to ensure procedural fairness.

What are the investigative powers of the Ombudsperson?