

Grocery Industry Code of Conduct Progress Report / July 2022

The Grocery Industry Code of Conduct Steering Committee is pleased to present this report to Federal, Provincial and Territorial Ministers on its progress as of July 21, 2022. From our last report (March 31, 2022) we have made progress on several issues; continuing to build consensus and specific language for a draft Code.

This report will detail the progress we have made, highlighting outstanding issues and proposed next steps. While unresolved issues remain, we feel confident that the work we have done to date represents a major step forward, and that a finalized Grocery Industry Code of Conduct remains within reach if alignment is achieved.

The Steering Committee has been focused on addressing the FPT Ministers concerns related to the following announced on November 27, 2020: “Ministers discussed the concerns of processors, producers, and independent grocers regarding increased retailer fees on suppliers and the need for balance in the supplier-retailer relationship, while also ensuring that Canadians continue to have access to a reliable food supply at affordable prices. FPT governments agree that collaborative action is the best approach.” While the issues are complex, we are pleased with the progress we have made. We also recognize there is work to be done to address the diversity of our food system.

We intend to continue working on the process, and to broaden the scope of consulted parties to make sure that a broad range of stakeholder voices are heard, and that the Code responds to the needs of everyone affected by it, while delivering value to Canadian consumers

We thank the FPT Ministers for their leadership and support and remain committed to working together toward a positive outcome accepted by all.

Signatories

Michael Graydon/ Food Health & Consumer Products – Co-Chair
Diane Brisbois/ Retail Council of Canada – Co-Chair
Denise Allen /Food Producers of Canada
Kathleen Sullivan / Food & Beverage Canada
Mathieu Frigon / Dairy Producers Association of Canada
Scott Ross / Canadian Federation of Agriculture
Gary Sands / Canadian Federation of Independent Grocers
Ron Lemaire / Canadian Produce Marketing Association
Rebecca Lee / Fruit & Vegetable Growers of Canada
Marcel Groleau / L'Union des Producteurs Agricoles

Background

In July 2021, Federal, Provincial, and Territorial (FPT) Ministers called for an industry-led process to develop broad consensus around a concrete proposal to improve transparency, predictability, and respect for the principles of fair dealing within the supplier/retailer relationship. The report can be found [here](#). Among the key findings highlighted:

- Concentration in the retail sector enables retailers to use their bargaining power to levy a range of fees on suppliers to supply and market their products in store.
- The unpredictability and lack of transparency in how some fees and fines are levied, along with limited and often complex recourse for dispute resolution, has led to an overall straining of relationships.
- There are other impacts of this dynamic, including preventing small processors and producers from accessing the market and creating supply and price challenges for independent retailers.
- There is also a need for Independent retailers to have more balance in the supplier retailer relationship, so that they can continue to access reliable supply at affordable prices. This is particularly important in rural and remote communities across the country.
- Facing similar issues, several other countries, such as the United Kingdom, have addressed the issue of retail fees via legislated codes of conduct. These processes usually took several steps, starting with industry-led voluntary approaches.
- Certain principles and good practices have been recognized by various stakeholders and constitute the basis of a healthy relationship between suppliers and retailers, such as: fair dealing in relationships between suppliers and retailers, predictability, transparency, and access to recourse for dispute resolution.

Following the July 2021 announcement, a Steering Committee comprised of individuals from ten key stakeholder groups was formed with the goal of developing terms of reference and a work plan aimed at facilitating development of a formal Grocery Industry Code of Conduct. Progress updates were presented to the FPT ministers on December 17, 2021, and March 31, 2022.

[Communique Final Dec 21 \(English & French\)](#)

[2022 March Report to Ministers \(English\)](#)

[2022 March Report to Ministers \(French\)](#)

Integrated Model

The Code of Conduct is not a singular document. It is a set of integrated measures including principles; trade rules supported by clear definitions; a dispute resolution tool like the adjudication, mediation and arbitration models seen in other countries; and a government framework all of which work together to promote fair and ethical trading and contractual certainty. Through this integrated approach the application of the core principles within the code become binding to all parties identified within the scope. It is critical that mandatory participation by all stakeholders is achieved and there is the power of enforcement and if this is not achieved voluntarily then a regulated solution may need to be considered.

Jurisdiction

The Steering Committee believes that mandatory participation by all stakeholders is required. Due to the complexity of our food businesses and the division of legislative powers across Federal, Provincial and Territorial jurisdictions, the Code should be industry led. The Steering Committee recognises however, that if this cannot be achieved, a regulated solution may need to be considered to ensure mandatory participation of companies on a national level. Singular provincial and territorial codes will only disrupt business and potentially impact small to medium sized businesses. The code should also consider the trade implications and not disadvantage domestic businesses including growers, ranchers, fishers and harvesters and grocery manufactures.

Moving the Process Forward

As outlined in the most recent update on March 31, 2022, the Steering Committee, following development of the Terms of Reference and work plan, identified that the next step in the Code of Conduct development required individuals with greater depth of expertise to provide perspectives and practical design advice based on their expert knowledge of how the industry works at a detailed level.

The complexity of Code of Conduct development cannot be overstated. While the Steering Committee is referencing the Codes of other jurisdictions, the unique nature of Canada's grocery system, including a large Independent retail sector, a domestic manufacturing base and the need for reciprocity across the supply chain, requires us to consider elements unique to a Canadian Code. Many constituents representing a broad mix of industry and retail partners; each with specific needs and concerns have been engaged in the process. As a result, a cross-industry Working Group was established, reporting directly to the Steering Committee, and meetings occurred throughout the April – July period. All Working Group meetings were facilitated by the Intersol group, and with a neutral competition lawyer present, to tackle the major subjects of the Code:

The Working Group examined the following topics within a code, providing expert perspectives and recommendations:

- **Scope** – what products should be included, and what entities should be subject to the Code?
- **Defining Agreements** – what is the definition of a commercial agreement, from the perspective of the Code, and how should the Code treat the common industry practice of non-written agreements? This in the context of not wishing to create undue administrative burden for small and medium enterprises.
- **Payments, Deductions, fines and fees** – what types of activities should be covered, and what should the rules be? These are the key provisions to ensure transparency and contractual certainty and define fair dealing in practical terms, while taking care of not limiting competition in the marketplace.

- **Other Elements** (de-listing, forecasting and a reduction in fines – other practices a code should cover, or not? The effect of technologies (e.g., forecasting systems) and how they interact with the system?)

The Steering Committee and Working Group have established a high level of consensus on the objectives and principles for the Code of Conduct.

Objectives

- Enable a thriving industry
- Promote trust, fair dealing, and collaboration throughout the value chain
- Achieve Increased commercial certainty
- Effective, equitable dispute resolution
- Recognize the unique needs of all stakeholders in the grocery value chain

Principles

- Transparency & Certainty
- Fair Dealing Across the Value Chain
- Timely Dispute Resolution
- Simplicity

We are pleased to report that progress has been achieved on many of the provision of the Code and those listed below are progressing towards consensus.

- Written Agreements
- Variation of Agreements
- Fair dealing /Good faith
- Payment timing
- Stocking/Listing fees
- Changes to supply chain procedures
- Consumer complaints
- Funding promotions
- Duty to inform
- Unsellables
- Shrinkage
- Tying of third-party goods & services

Discussion remains ongoing specific to the areas of:

- Payments, Deductions, Fines and Fees
- Cost Price Increase process
- Delisting
- Confidentiality
- Price matching deductions
- Force Majeure
- Marketing/Infrastructure costs
- Scope of companies and products to be included in the code.
- Forecasting / Allocation of supply

Failure to resolve or find common ground specific to the points listed above is noteworthy. While we are endeavouring to find solutions, ongoing discussions at the Steering Committee and Working Group have yet to find resolution on these key provisions. We are currently at a critical period within the Code of Conduct development process. Unless there is progress on the points noted above, we will not achieve the alignment necessary to move forward.

Equally important, are the other aspects of the Code, including the dispute resolution and governance mechanism which are currently in development. These will be based on the principles of the Code of Conduct, with a dispute resolution based of a fair dealing test to resolve outstanding grievances thus providing confidence to stakeholders that a resolution process for dispute is actionable. It is also expected that the governance system will be led by an Adjudicator with the power to investigate systemic issues and trends that may be impacting the supply chain relationships. Without a strong governance structure and an adjudication process with authority to act we will not achieve the needed changes to the supplier/retail relationship. It is critical that this step occur to ensure momentum continues towards development of a code of conduct.

Next Steps

The Steering Committees first goal continues to be development of a mandatory and enforceable Code of Conduct with all participants engaged and unanimous in their support. While we believe that continuing discussion may eventually gain positive results, we acknowledge we are at a critical juncture and that we may require government intervention to assist us in moving the process forward. It is therefore our hope that Ministers will continue to support our efforts.

To facilitate our ongoing work, we are recommending a deadline of November 2022 for the Steering Committee and Working Groups to resolve the outstanding issues noted above. If we are unable to resolve these issues by that time, we will ask the FPT Ministers to actively engage in the process and to assist in guiding the Code to its conclusion.

Upon resolution of the outstanding issues, the Steering Committee anticipate an additional phase that involves introducing the draft Code of Practice to a broader audience for consultation. While the Steering Committee and Working Groups include a very broad representation of the grocery supply chain It will be important to seek input from stakeholders not currently engaged in the Code development process to ensure that we have not overlooked any key issues and ensure a representative process in the Code's development.

We remain strongly committed to taking all necessary steps to ensure a Grocery Industry Code of Conduct that supports fairness in the commercial dealings between suppliers, independent retailers, and large Canadian grocers, to ensure that consumers continue to enjoy affordable and innovative product choices, as well as to support the long-term sustainability and growth of the Canadian food, health and consumer goods manufacturing sectors and retailers across Canada. Thank you for your continued support and guidance as we advance this initiative on behalf of all Canadians.