

GROCERY INDUSTRY CODE OF CONDUCT PROGRESS REPORT

JANUARY 2023 | PRESENTED TO FEDERAL,
PROVINCIAL AND TERRITORIAL (FPT) MINISTERS



INTRODUCTION

The Grocery Industry Code of Conduct Steering Committee is pleased to present this progress report to Federal, Provincial and Territorial (FPT) Ministers. Since our last report in November 2022, we are pleased to confirm that in addition to completing the draft Code of Conduct provisions, we are in the final stages of developing the (a) administrative governance, (b) adjudication model and (c) enforcement mechanisms.

The Steering Committee continues to work with legal counsels and many other experts, including the Industry Sub-Committee Working Group, to inform and guide the Committee to arrive at a Grocery Industry Code of Conduct.

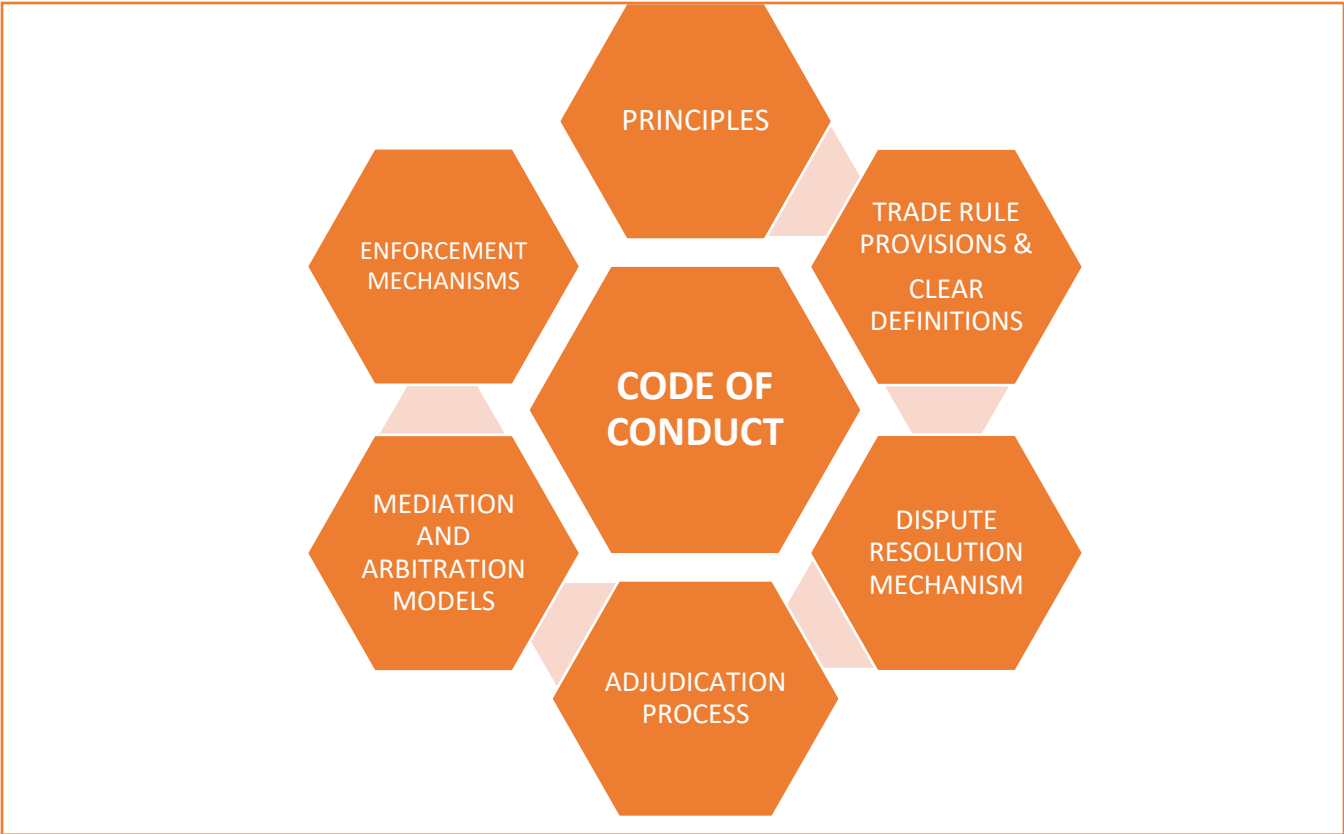
Industry Sub-Committee Working Group

- Serge Boulanger - Metro
- Errol Cerit - FHCP
- Ted Lawson - Nortera Foods
- Patrice Leger Bourgoïn - APM Québec
- Doug Nathanson - Sobeys
- Luc Prevost - Vegpro
- Mark Taylor- Lactalis
- Giancarlo Trimarchi - Vince's Market

Steering Committee Members

- Denise Allen / Food Producers of Canada
- Diane J. Brisebois/ Retail Council of Canada – *Co-Chair*
- Mathieu Frigon / Dairy Processors Association of Canada
- Michael Graydon/ Food Health & Consumer Products – *Co-Chair*
- Rebecca Lee / Fruit and Vegetable Growers of Canada
- Ron Lemaire / Canadian Produce Marketing Association
- Scott Ross / Canadian Federation of Agriculture
- Gary Sands / Canadian Federation of Independent Grocers

ELEMENTS OF THE CODE OF CONDUCT



The Code of Conduct is not a singular document. It is a set of integrated measures including: (a) principles, (b) trade rule provisions supported by clear definitions, (c) a dispute resolution mechanism, (d) an adjudication process, (e) mediation and arbitration models, and (f) enforcement mechanisms, which work together to promote fair and ethical trading and contractual certainty.



SUMMARY TIMELINES



2020

- In November 2020, FPT Ministers agree to collaborative action to address concerns of stakeholders regarding retail fees in the Canadian food industry



2021

- In July 2021, FPT Ministers called for an industry-led process
- Government co-leads (Ms. Akman/Mr. Doyle) met with industry representatives and shortly thereafter Intersol was retained as facilitator for the Code development
- A few months later, ten multi-stakeholder industry representatives were convened to address the Ministerial request and engaged in an intensive program of weekly meetings to develop Terms of Reference and a Work Plan for development of a Code of Conduct, a dispute resolution mechanism, and an implementation framework.

2022

- Steering Committee met weekly to study several model Codes – Australia, UK, Payments Code (Canada) – and had in-depth discussions on the type of Code Canada should adopt, and the overall principles it should live up to. The former UK adjudicator was retained to provide input.
- A large cross-industry working group was established to bring on-the-ground experience and provide insights – considering the unique nature of the industry in Canada, the distinctive legislative framework, and elements advanced such as reciprocity. (Met regularly from April to July)
- Subsequently, a subset of the cross-industry working group was established, and it met frequently to determine the trade rule provisions which were then reviewed by the Steering Committee.
- Steering Committee consulted widely with its own member Boards and/or working groups throughout the year and webinars were provided to review the work in progress and to seek input.
- Due to changes to the Steering Committee membership, additional outreach took place with several provincial organizations to seek further input and to inform next steps.
- In tandem with the above, the Steering Committee began its work on the development of a dispute resolution mechanism, an adjudication process, mediation and arbitration models, enforcement mechanisms, and organizational structure (see next page)

CURRENT ACTIVITIES

DRAFT PROPOSAL UNDER REVIEW

SUMMARY OVERVIEW

Working Paper #1 - Governance of the Grocery Code Adjudicator Office

The Grocery Code Adjudicator Office (GCAO) will be a membership-based organization incorporated under [Canada not for Profit Act](#). The membership in GCAO will be initially voluntary, but the Steering Committee remains of the view that the Code should be mandatory and enforceable.

Membership Category

The GCAO will include six categories of members:

- Category A - Farmers selling directly to distributors/wholesalers/retailers
- Category B - Food processors with \$500 million or less in sales in Canada
- Category C - Food processors with more than 500 million in sales in Canada
- Category D - Wholesalers/Distributors
- Category E - Independent retailers (Less than \$1 billion in total sales in Canada)
- Category F - Large retailers/Clubs (\$1 billion and more in total sales in Canada)

Board Composition

- The GCAO board will include a total of ten directors, including eight directors elected by members and two independent directors. All ten directors will be elected for a one-year term.
- The eight directors will be elected by members.

* *Additional details regarding by-laws, voting procedures, operating rules and related matters are under review via external legal counsel which has been funded by the Steering Committee.*

Working Paper #2 - Operating Principles and Role of the Grocery Code Adjudicator Office

The Grocery Code Adjudicator Office (GCAO) will be a membership-based organization incorporated under the [Canada not for Profit Act](#). Fundamentally the role of the adjudicator will be to uphold the objectives and principles set out in the Code. The operational principles of the GCAO will be:

- 1) **Objectivity:** Objectivity and procedural fairness will guide the GCAO in all its actions. The GCAO will start from the assumption that no one wants or intends to work in contravention of the Code and possibly face sanctions and/or end up in arbitration.
- 2) **Efficiency:** The Code exists to support business and to increase the efficiency and effectiveness of the grocery sector. The industry is fast moving, so speed in achieving Code compliance and issue resolution is essential.
- 3) **Pro-active:** Pro-actively identifying issues and clarifying their status under the Code for the benefit of the entire industry will be key in limiting the number of formal disputes between members.
- 4) **Light touch:** Retailers and suppliers are readily capable of solving issues themselves if the Code is clear and they understand it. By highlighting and encouraging good practices whilst shining a light on and discouraging poor practices, the adjudicator will drive positive behaviour change.

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DRAFT PROPOSAL UNDER REVIEW CONT'D

The GCAO will have **five main roles**:

1. Training & education of members.
2. Reporting & accountability to members.
3. Review of issues and ensuring compliance through various tools (including members' discipline via corrective measures).
4. Managing the dispute resolution process between two members.
5. Maintaining a Code that is responsive and relevant to current industry trends.

Based on analysis of trends, industry performance, and relevant information gathered from the above roles, the Adjudicator will recommend annually to the Board of Directors changes (if any) to maintain a Code that is relevant to the needs of its members and in keeping with its mandate. (However, it is anticipated that a formal and automatic review of the Code would be undertaken 18 months following its implementation.)

A detailed description of the five main roles has been developed and is under review by the Steering Committee and legal counsel.

Example of Text Under Review (role #3 used here as example)

Review of Issues and Ensuring Compliance through Various Tools

Where credible evidence of a breach of the Code is provided, the GCAO would conduct its own research on the alleged breach which could lead to corrective measures, such as sanctions. Sanctions (including fines) would be imposed as a last resort. The following process would be followed by GCAO staff, which could ultimately lead to sanctioning or fining of member(s).

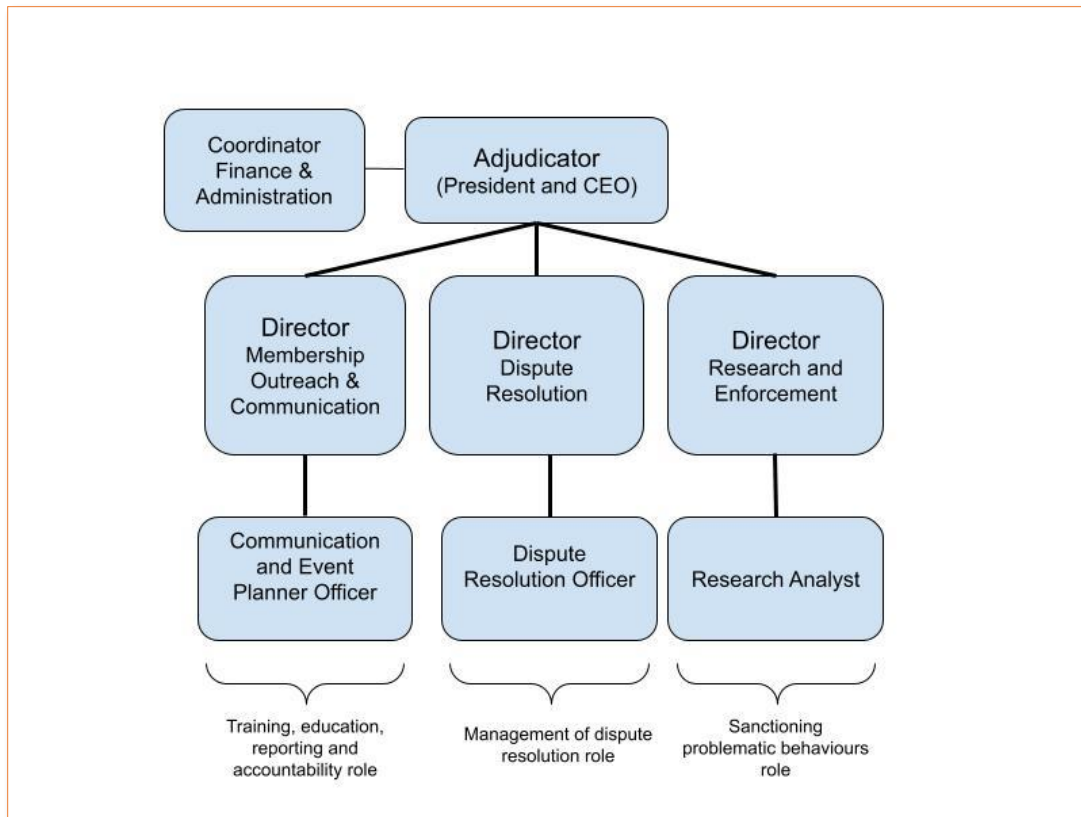
1. The GCAO will gather insight on the nature of the potential or serious breach from a range of sources including an annual survey, meetings with members, trade associations and other stakeholders, and from direct engagement with the plaintiff in the case where a member ("the complainant") raises a specific complaint. The complainant can present any evidence it deems relevant to the GCAO.
2. After determining that the issue falls within the scope of the Code, the GCAO raises the issue with the member alleged to have breached the Code while protecting the complainant's (if any) confidentiality unless otherwise agreed with the complainant(s) ahead of disclosure.
3. The respondent (i.e., the member alleged to have breached the code) reports back to GCAO on the issue(s) that have been raised and presents its perspective and any evidence relevant to the case.
4. After analyzing the facts of the case, the adjudicator (President and CEO of GCAO) prepares a summary of findings recommending either closure of the case and reports back to the complainant (if any) or corrective actions to be taken by the parties.
5. GCAO staff tracks progress on the corrective actions, and reports back to the parties if progress is satisfactory.
6. If progress is not satisfactory (based on consultations with parties), a directive may be issued by the Adjudicator to achieve resolution in a timely fashion. Where the directive issued by the Adjudicator is not adhered to, sanctions (including fines) could be levied on the non-compliant member(s) by the Adjudicator¹.

¹ An appeal process to the Adjudicator can also be contemplated before the fines are levied.

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DRAFT PROPOSAL UNDER REVIEW CONT'D

Working Paper #3 - Structure, Staffing and Budget of the Grocery Code Adjudicator Office



Budgeted Total Expenses

Based on staffing needs and the overall expenses of the Dispute Resolution Corporation which has a similar staff level, it is suggested that the GCAO consider an annual budgeted total expense of \$1.8 million based on the graph shown above. That said, the office should start with a smaller budget and gradually add staff based on identified needs.

The Steering Committee understands that it will take time to operationalize the Code of Conduct and to staff the office to serve all affected stakeholders. It is thus requesting that governments provide \$2 million in a non-repayable contribution to set up the office (pre-operating funding) and grow the membership.

Budgeted Membership Revenue

It is suggested that the GCAO Board set a membership fee per dollar of sales with a minimum and maximum level of total annual membership dues per member. The GCAO Board would set that membership fee per dollar of sales annually to reach a level of revenue that is 10% above

CURRENT ACTIVITIES

DRAFT PROPOSAL UNDER REVIEW CONT'D

budgeted total expenses. Assuming that expenses are \$1.8 million, then a surplus of \$180,000 would accrue annually to a contingency fund, which would be used to fund special activities, including support for smaller members (e.g., subsidized arbitration or legal fees to resolve issues), additional training, communication, and other related matters. (Steering Committee continues to focus on the needs of SMEs to ensure they have access to the services provided keeping simplicity and affordability front of mind)

OTHER MATTERS

Code Distinction in Canada (as compared to the UK)

- Voluntary yet mandatory and enforceable (versus regulated at the national/federal level in the UK)ⁱ
- Reciprocal which means that the Code applies to both retailers and suppliers (versus to large retailers only in the UK)
 - Serves all stakeholders in the grocery supply chain (independent retailers, large retailers, farmers, producers, processors, distributors, and wholesalers) – which means that thousands of businesses will be covered by the Code
- All services provided in both official languages
- The Grocery Code Adjudicator Office (GCAO) will be a membership-based organization incorporated under [Canada not for Profit Act](#) and subject to its rules and regulations
- The GCAO will have a multi-stakeholder Board of Directors including two independent directors

Consultation

- In addition to the consultations that have and continue to take place with the Steering Committee members' constituents and regional associations, broader consultation will take place throughout the first quarter of 2023 (with first webinars taking place at end of January)
- Coupled with the above, the Steering Committee's facilitator, Intersol, has and will continue to offer association specific webinars to those interested or those requesting said webinars/information sessions
- Members of the Steering Committee have also agreed to reach out to other stakeholders to provide information and continue to seek input and recommendations

Ongoing Work

- The Steering Committee continues to meet weekly (and in some cases more frequently) to finalize details of the elements of the Code of Conduct (as shown on page 2 of this report)
- The Industry Sub-Committee Working Group has also agreed to support the work of the Steering Committee and will continue to serve in an advisory capacity to assist the

CURRENT ACTIVITIES

DRAFT PROPOSAL UNDER REVIEW CONT'D

- The Steering Committee continues to fund all legal and expert counsel work that is required to arrive at a final Code of Conduct.

The Steering Committee intends to continue working within its existing industry led structure to focus on the remaining issues and to broaden the scope of consulted parties. We want to ensure that a wide range of stakeholder voices are heard and that the intended purpose of Code reflects the needs of all stakeholders affected, 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.

Respectfully submitted,

Code of Conduct Steering Committee
January 2023

¹ The Steering Committee favours a universal system - all suppliers and retailers are covered and affected companies must participate - thus is proposing that Industry adopt a national industry-wide voluntary yet mandatory and enforceable model. It is unknown what the take-up will be, particularly amongst the larger retailers and suppliers, but it is possible that industry could achieve near universal participation. To aid in this, it would likely be necessary to support a voluntary regime with an understanding that if we do not obtain broad participation, other alternatives would be considered. While regulation takes considerable time, this option may be inevitable if the desired participation levels are not achieved.

Previous Steering Committee Reports to FPT Ministers

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

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

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

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

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

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

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