

May 30, 2023

Grocery Industry Code of Conduct Steering Committee members
C/O Steering Committee Co-Chairs
Sent via email to: Michael Graydon (michael.graydon@fhcp.ca)
and Diane J. Brisebois (djbrisebois@retailcouncil.org)

Dear Grocery Industry Code of Conduct Steering Committee members,

Re: Grocery Code of Conduct Consultative Document

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations administered by all levels of government. We are passionate and dedicated to ensuring that the agri-food sector and rural communities are considered and consulted with for any new or changing legislation that would impact the sustainability and growth of our farm businesses.

Ontario's agri-food sector is an economic powerhouse – producing more than 200 farm and food products, fuelling rural communities, generating nearly 750,000 jobs, and contributing over \$47 billion to Ontario's annual GDP. The province's agri-food strategy, Grow Ontario, aims to strengthen the agri-food sector, support economic growth, and ensure an efficient, reliable and responsible food supply. By removing barriers, unnecessary costs and red tape, Ontario farmers will be positioned to seize opportunities and rise to the challenge of an ambitious growth strategy, allowing the agri-food sector to drive the economy forward.

OFA wishes to thank the Steering Committee for developing the proposed Grocery Code of Conduct (Code) and for their continued work.

OFA fully supports the Code's key objectives:

1. Contribute to a thriving grocery industry, delivering the vital goods upon which Canadians in every community depend, recognizing the needs of all stakeholders in the grocery value chain, including the unique realities facing small and medium enterprises and the realities of the Canadian marketplace.
2. Promote reciprocal trust and collaboration amongst grocery value chain partners, based on clear standards for fair dealing.
3. Allow all parties governed by the Code to make informed business decisions in a context of commercial certainty, governed by clear agreements.
4. Provide for an effective, equitable mechanism for resolving commercial disputes.

OFA also supports the Code's principles of Transparency and Certainty; Fair Dealing Across the Value Chain; Timely Dispute Resolution; and Simplicity.

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We wish to share our comments, submitted online through the Consultation Document Poll, with the Steering Committee directly:

Please identify those elements of the Code where you need more information or clarification.

We wish to highlight the following Code Provisions (Trade Rules) clauses and suggest wording (underlined below) to clarify their meaning:

1. Clause 1.4 is vague as to whether it is to be interpreted as “subject to clause 1.3” or “notwithstanding clause 1.3”. Our preference would be “subject to clause 1.3” or adding “by mutual consent” to make it clear that unilateral agreement revisions are not permitted: “1.4 Parties to the Code may prospectively or retroactively alter an agreement by mutual consent, provided that the agreement provides for doing so.”
2. Clause 2.4 should be made more specific. We suggest: “2.4. No party, who conducts or intends to conduct business with another party, shall purposely avoid or refuse entering into a commercial agreement (particularly a written agreement) with that other party.”

Please identify those elements of the Code that are most important or of greatest value to you.

We consider the Code provisions, the dispute resolution framework, and the Grocery Code Adjudicator Office (GCAO) important in creating a fair and prosperous business environment for all parties.

The Federal-Provincial-Territorial (FPT) Ministers of Agriculture’s attention to grocery supplier concerns was heightened by the unilateral actions by some retailers that resulted in suppliers receiving less than the negotiated price for their products due to the deduction of additional retailer fees.

It is the intention to conduct a full review of the Code 18 months from its implementation. Is there anything substantive and fundamental in nature that we should consider prior to implementation, recognizing that the Code will be subject to review 18 months from implementation? If so, please specify below.

Given adoption of the Code by each party will be voluntary, it is important Code adopters see value in participating. By being a party to the Code, adopters are stating their commitment to fairness and accountability in their commercial dealings, thereby providing an opportunity to nurture trusting partnerships along the value chain. It is anticipated that parties will favour entering into agreements with Code adopters over non-adopters. Additionally, if the code were to operate in a similar fashion to the Better Business Bureau of Canada, parties may have more confidence in their initial dealings with a new business partner. Retailers could use Code adoption in their branding to consumers to demonstrate they are fairly treating their suppliers.

We believe that continuing with voluntary Code adoption is only possible if the five largest grocery retailers decide to voluntarily adopt the Code. Should any one of the five largest grocery retailers choose not to adopt the Code, then a government imposed Mandatory Code will be needed.

We believe all value chain participants should be eligible to be Code adopters, including producers, wholesalers, retailers of food, flowers, and nursery stock. We recommend that as a Code adopter, each adopter should have access to the Dispute Resolution Process even when their dispute involves an agreement with a non-adopter. Of course, non-adopters would have the option to not participate in the Dispute Resolution Process. However, we recommend the GCAO make public a report of all stage 2 and 3 disputes, and the parties involved regardless of whether they are Code adopters or non-adopters. GCAO reporting of stage 2 and 3 disputes will motivate Code adopters to attempt to address disputes at stage 1 (Resolution between parties with no GCAO involvement).

We also recommend expanding access to the Dispute Resolution Process to third parties, industry associations and others representing impacted parties. As currently drafted, it appears only parties to an agreement can raise, discuss, and ideally resolve disputes specific to that agreement through the three stages of the proposed Dispute Resolution Process. However, individual suppliers/retailers may be reluctant to raise their grievance with a business partner fearing reprisal. Industry associations and other representing impacted parties may be better positioned to raise these concerns on behalf of a party or group of impacted parties. In addition, certain practices contrary to the Code Provisions (Trade Rules) have the potential to impact the business competitiveness of third parties. These third parties could play an important role in ensuring adherence to the Code Provision (Trade Rules), if they could access the Dispute Resolution Process.

We also recommend the GCAO investigate any alleged reprisals taken by a party when a dispute is under investigation or following such an investigation.

It must be acknowledged that some value chain participants possess significant market power. The misuse of market power is problematic. When anti-competitive behaviour is found to exist, we believe the GCAO should be obliged to inform Canada's Competition Bureau.

We believe input from Code adopters and industry associations will be valuable as part of the 18-month review of the Code. In addition, during the review, we recommend the GCAO consider ways in which agreement disputes could be avoided or lessened, such as developing standard contract provisions.

OFA appreciates the opportunity to provide our feedback and agricultural perspectives on the proposed Grocery Code of Conduct. OFA supports measures to improve competitiveness across the agriculture and agri-food sector. Ensuring farmers have access to competitive markets is important to the sustainability of our farm businesses and farm families.

Sincerely,



Peggy Brekveld
President

cc: OFA Board of Directors