

**Office of the Grocery Sector Code of Conduct (OGSCC)/
Bureau du code de conduite pour le secteur des
produits d'épicerie (BCCSPÉ)**

Operating Rules

ADOPTED - Day, month, year

Background to Grocery Sector Code of Conduct

On November 27, 2020, the Agriculture 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 grocery supply at affordable prices. Federal, Provincial, and Territorial (FPT) governments agreed that collaborative action was the best approach.

In July 2021, FPT Ministers called for an industry-led process to develop broad consensus around a concrete Code proposal to improve transparency, predictability, and respect for the principles of fair dealing within the supplier/retailer relationship.

Following the July 2021 announcement, a Steering Committee comprised of individuals from ten key stakeholder associations was convened with the goal of developing terms of reference and a work plan aimed at facilitating the development of a formal Grocery Sector 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, (e) mediation and arbitration models, and (f) enforcement mechanisms, which work together to promote fair and ethical trading and contractual certainty.

Operating Rules

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[To be reinserted when text complete.]

I. INTERPRETATION

- (a) Terms used herein and not otherwise defined shall have the meaning given to such terms in the Articles or By-Laws. Where terms are not defined in the Articles or By-Laws, they shall have the meaning given to such terms in the Act. Terms defined herein shall have the meanings given to them herein.
- (b) In addition, the following terms shall have the following meanings:

“Annual Sales” shall have the meaning determined by the Board from time to time and shall, unless otherwise determined by the Board, include the annual sales of any Affiliates of a Member.

“Grocery Products” shall have the meaning set out in the Code and can only be amended by amending the Code.

“DRMP” shall have the meaning set out in the Code and can only be amended by amending the Code.

“Independent Retailer” means [*].

“Large Manufacturer/Supplier” means [*].

“Non-Affiliated Wholesaler/Distributor” means [*].

“Primary Producer” means [*].

“Retailer” shall have the meaning set out in the Code and can only be amended by amending the Code.

“SME Manufacturer/Supplier” means [*].

- (c) Pending a French translation of these Operating Rules being approved by the Board in accordance with the requirements herein, the English version of these Operating Rules shall be paramount in the event of any discrepancy or inconsistency between the English and French versions of these Operating Rules. On approval of the French translation of these Operating Rules by the Board, the English and French versions shall be equally valid and neither shall be paramount.

II. ROLE OF THE BOARD

The role of the Board is strategic in nature, with a focus on governance, policy and high-level strategic decisions. The Board is not an operational board and all operational decisions will be delegated to the President and Adjudicator when he/she are retained. Each Director has a fiduciary duty to the Corporation, which requires them to act honestly and in good faith with a view to the best interests of the Corporation in respect of all matters involving the Corporation and before the Board. The Board shall ensure that the purposes of the Corporation, as well as the objectives and principles of the Code, as modified from time to time, are upheld.

III. PRESIDENT & ADJUDICATOR

The President & Adjudicator is the most senior employee of the Corporation and shall be the chief executive officer of the Corporation. In general, the President & Adjudicator shall direct and manage all business and affairs of the Corporation. In particular, the President & Adjudicator shall, subject to his/her employment contract and the direction of the Board:

- (a) supervise the carrying out of the policies and orders of the Board;
- (b) prepare an annual draft budget for the Corporation, for consideration by the Board;
- (c) be authorized from time to time, and within the budget of the Corporation, to employ such persons as the President & Adjudicator may deem necessary for the proper conduct of the affairs of the Corporation, and determine the compensation to be paid therefore;
- (d) do all and every such other things and acts pertaining to the role of President & Adjudicator, and shall make such reports, recommendations, and suggestions to the Board as in their judgment will be for the benefit of the business of the Corporation; and
- (e) be the public face of the Corporation, and proactively communicate with members, governments and the general public.

IV. CRITERIA FOR MEMBERSHIP

- (a) For the purposes of Section 2.1(b)(ii) of the By-Laws, to be eligible for Class B membership in the Corporation, the Annual Sales of the applicant must have been equal to or less than Three Hundred and Fifty Million Dollars (\$350,000,000.00) in the applicant's fiscal year immediately preceding the application. To maintain Class B membership in the Corporation in each fiscal year of the Member, the Annual Sales of the Member must be equal to or less than Three Hundred and Fifty Million Dollars (\$350,000,000.00).
- (b) For the purposes of Section 2.1(b)(iii) of the By-Laws, to be eligible for Class C membership in the Corporation, the Annual Sales of the applicant must have been more than Three Hundred and Fifty Million Dollars (\$350,000,000.00) in the applicant's fiscal year immediately preceding the application. To maintain Class C membership in the Corporation, in each fiscal year of the Member the Annual Sales of the Member must be more than Three Hundred and Fifty Million Dollars (\$350,000,000.00).
- (c) For the purposes of Section 2.1(b)(v) of the By-Laws, to be eligible for Class E membership in the Corporation, the Annual Sales of the applicant must have been equal to or less than One Billion Dollars (\$1,000,000,000.00) in the applicant's fiscal year immediately preceding the application. To maintain Class E membership in the Corporation, in each fiscal year of the Member the Annual Sales of the Member must

be equal to or less than One Billion Dollars (\$1,000,000,000.00).

- (d) For the purposes of Section 2.1(b)(vi) of the By-Laws, to be eligible for Class F Membership in the Corporation, the Annual Sales of the applicant must have been more than One Billion Dollars (\$1,000,000,000.00) in the applicant's fiscal year immediately preceding the application. To maintain Class F membership in the Corporation, in each fiscal year of the Member the Annual Sales of the Member must be more than One Billion Dollars (\$1,000,000,000.00).

V. APPLICATIONS FOR MEMBERSHIP

- (a) Only persons who meet the requirements of the Articles, By-Laws, these Operating Rules and the Code as to membership shall be admitted as members of the Corporation.
- (b) Every application for membership shall be in the form determined by the Board and shall contain such information required by the Board, including further information about the applicant, and the information supplied on the application and information that may be required by the Board in order to verify compliance with the Articles, By-Laws, these Operating Rules and the Code. Applications shall be submitted to the President & Adjudicator who shall recommend to the Board whether the applicant should be admitted to membership in the Corporation.
- (c) Every application for Membership shall be signed by the applicant if the applicant is an individual or sole proprietorship, any general partner of the applicant if the applicant is a partnership, or a duly authorized signing officer of the applicant if the applicant is a corporation or company.
- (d) If it is the intention of the Board to refuse an application, the applicant shall be provided with notice of the refusal in writing and with an opportunity to respond in writing within 10 days of sending the notice. If no response is received within 10 days or the response is insufficient, the refusal will become effective. The Corporation will notify the applicant regarding whether the applicant will be admitted into membership in the Corporation upon a full review of the application and related information.
- (e) An applicant's membership in the Corporation shall commence on the day the applicant's application for membership has been approved.

VI. Eligibility Criteria for Directors

- (a) In accordance with section 5.03 b) i) of the by-laws which provide for Class A members to elect two (2) directors to the Board, Class A members shall elect two (2) directors to the Board from among the Class A Members.
- (b) In accordance with section 5.03 b) ii) of the by-laws which provide for Class B members to elect two (2) directors to the Board, Class B members shall elect one

(1) director on the board from among the manufacturers/suppliers with Annual Sales equal to or less than \$50 million, and one (1) director to the Board from among the manufacturers/suppliers with Annual Sales between \$50 million and \$350 million.

- (c) In accordance with section 5.03 b) iii) of the by-laws which provide for Class C members to elect two (2) directors to the Board, Class C members shall elect two (2) directors to the Board from among the manufacturers/suppliers with Annual Sales over Three Hundred and Fifty Million Dollars (\$350,000,000.00).
- (d) In accordance with section 5.03 b) iv) of the by-laws which provide for Class D members to elect one (1) director to the Board, Class D members shall elect one director to the Board from among the Class D Members.
- (e) In accordance with section 5.03 b) v) of the by-laws which provide for Class E members to elect two (2) directors to the Board, Class E members shall elect two (2) directors to the Board from among the Independent Retailers with Annual Sales equal to or less than One Billion Dollars (\$1,000,000,000.000).
- (f) In accordance with section 5.03 b) vi) of the by-laws which provide for Class F members to elect three (3) directors to the Board, Class F members shall elect three (3) directors to the Board from among the Retailers with Annual Sales of more than One Billion Dollars (\$1,000,000,000.000).

VII. Grocery Sector Code of Conduct

A. Operating Principles of the Corporation regarding the Application of Grocery Sector Code

of Conduct

The operating principles of the Corporation when it comes to the application of the Code are:

- (a) **Objectivity:** Objectivity and procedural fairness will guide the Corporation in all its actions. The GCAO will start from the assumption that no member wants or intends to work in contravention of the Code.
- (b) **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.
- (c) **Pro-active:** Pro-actively identifying thematic issues and clarifying their status under the Code.
- (d) **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 and discouraging poor practices, the President & Adjudicator will help drive positive behavior change.

B. Role of the Corporation when it comes to the Grocery Sector Code of Conduct

The role of the Corporation when it comes to the Code are:

- (a) training & education of Members;
- (b) reporting & accountability to Members;
- (c) managing the dispute resolution process between Members.
- (d) review of issues and ensuring compliance through various tools (including members' discipline and corrective measures); and
- (e) maintaining a Code that is responsive and relevant to current industry trends.

C. Commercial Relationships Covered by the Code

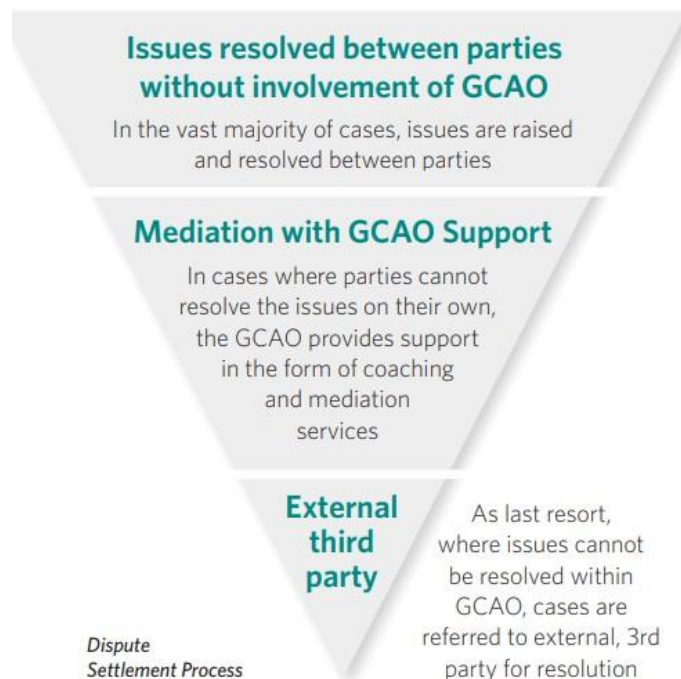
The following commercial relationships are covered by the Code:

- (a) Class A Members selling Grocery Products to Class D Members, Class E Members and/or Class F Members.

- (b) Class B Members and Class C Members selling Grocery Products to Class D Members, Class E Members and/or Class F Members.
- (c) Class D Members selling Grocery Products to Class E Members and Class F Members.
- (d) Class F Members selling Grocery Products to Class E Members.

D. Dispute Resolution Process

The First Board will direct the President & Adjudicator to develop of fulsome DRMP for use in respect of matters governed by the Code, for approval by the Board. The DRMP will be based on the following principles:



VIII. COMMITTEES AND ADVISORY GROUPS

A. Committees

- (a) As set out in the By-Laws, the Board may establish such committees as it deems appropriate with such goals and terms of reference as it deems appropriate. If the Board does not establish terms of reference for any committee, the committee may approve its own terms of reference, subject to the fact that any such terms of reference are subject to approval by the Board.

- (b) The Board shall be entitled to admit and remove members of committees and fill vacancies that occur in a committee from time to time. Committee members shall remain in office until the Annual Meeting following their appointment or as otherwise determined by the Board.
- (c) Committees have no independent authority, shall not speak on behalf of the Corporation, cannot bind the Corporation in any way and report to the Board.

B. Nominations Committee

Not less than thirty (30) days following the Annual Meeting of the Corporation, the Board shall appoint a nominations committee, the members of which shall hold office for a term of one (1) year from the date of their appointment, or until their successors are appointed. The nominations committee shall be comprised of six (6) current Directors of the Corporation whose terms are not up for re-election or where their term is up, they have chosen not to run for re-election at that time. The make-up of nomination committee shall be comprised of a minimum of six (6) individuals, one from each class of membership. The committee will select its own chair. The primary task of the nominations committee shall be to recruit and secure strong balanced leadership for the Corporation in accordance with the composition of the Board established in By-Law No. 1. In particular, the nominations committee will:

- (a) prepare a nominations committee report which shall include a slate of one or more candidates for each Director's office which will be vacant and for which an election is to be held at the Annual Meeting, the slate to be determined in accordance with the OGSCC Nominations and Director Selection Process attached as Appendix A to these Operating Rules; and
- (b) provide its report to the Board for its consideration at least sixty (60) days before the Annual Meeting each year.
- (c) present the nominations committee report to the Members at the Annual Meeting;
- (d) make recommendations to the Board regarding nominees for the appointment of Officers on an annual basis;
- (e) make recommendations to the Board regarding nominees to fill vacancies on the Board, in Officer's positions or on committees that occur throughout the year.

C. Grocery Code Advisory Group and Process to Change the Code

The President & Adjudicator shall suggest potential members for the Board to appoint to the Grocery Code Advisory Group (the "**Advisory Group**"). The Grocery Code Advisory Group shall be comprised of a minimum of six (6) persons representing all

membership classes. The President & Adjudicator will be the chair of the Advisory Group.

Each year the Grocery Code Advisory Group shall meet to consider whether any amendments to the Code are necessary or desirable and, as part of this process, shall review the annual member wide survey report in respect of the Code regarding behaviors, issues, and opportunities experienced in the previous year. The Grocery Code Advisory Group may or may not recommend changes to the Code, depending on the review set out above. Any changes to the Code recommended by the Grocery Code Advisory Group shall require the unanimous approval of all members of the Grocery Code Advisory Group. If the Grocery Code Advisory Group recommends changes to the Code, such changes shall be submitted to the Board and Members for approval as set out in the By-Laws.

D. Finance and Audit Committee

The Board may appoint a Finance and Audit Committee to assist the Board in discharging its oversight responsibilities for internal control, financial accounting and reporting practices, the external audit process and material risk management processes. The committee shall consist of a minimum of four (4) to a maximum of six (6) Directors. The chairperson of the Committee shall be appointed by the Board on an annual basis and may be removed by the Board in its discretion.

E. Governance Committee

The Board may appoint a Governance Committee to ensure that there is a robust and effective process for evaluating the performance of the Board, committees and advisory groups to ensure that the organization fulfills its legal, ethical, and functional responsibilities. The committee shall consist of a minimum of four (4) to a maximum of six (6) Directors. The chairperson of the Governance Committee shall be appointed by the Board on an annual basis.

F. Remuneration of Committee Members

Committee members will serve as such without remuneration, but shall be entitled to be reimbursed for reasonable expenses incurred in the exercise of their duties provided such expenses are pre-approved by the Chair or the President & Adjudicator.

I. AMENDMENTS TO THE OPERATING RULES

Unanimous approval of the First Board is required to approve the inaugural version and modify the Operating Rules prior to the election of the First Elected Board. Following the election of the First Elected Board these Operating Rules shall only be amended by the Board by Special Director Vote.

APPENDIX A: OGSCC Nominations and Director Selection Process

A. Goal

To increase the pool of qualified Director candidates and to provide transparent process for Director selection.

B. Overview

At least one hundred and twenty (120) days prior to Annual Meeting, the Nominations Committee will post and circulate to the Members a call for nominations to the Board. The Nominations committee shall identify the key attributes required on the Board at that time and include or attach this information to the call for nominations to the Board.

The nominations committee shall select candidates based on Director having at least some of the attributes outlined in the Director Competency Matrix below and based on the direction of the Board in respect of such nomination year, if any.

Based on qualifications and balancing the Board membership, the Nominations committee will present its report to the Board at least sixty (60) days prior to the Annual Meeting for consideration. The final slate of nominations determined by the Board will be presented to the Members for a vote at the Annual Meeting.

C. Director Attributes

The nominations committee will seek candidates who bear some of the attributes outlined in the Director Competency Matrix which are in addition to the mandatory Qualifications for Directors set out in the By-Laws.

Table 1: Director Competency Matrix

Director Competency Matrix
Core Board Knowledge, Skills and Experience
CEO / Enterprise Leadership
Industry Sector / Value Chain Representation
Governance / Board
Financial
Desired Knowledge, Skills and Experience
Accounting / Audit
Advocacy / Communications
Development / Fundraising
Diversity
Geography
Government / Public Sector Relations
HR / Performance Management, Compensation
IT / E-Commerce / Privacy Management
Legal / Regulatory
Marketing / Sales
Member Relations
Risk and Controls
Operational / Organization Activities
Resource / Project Management
Strategic Planning