

How to Navigate the Canada Grocery Code of Conduct

About This Document

This document is intended to assist members of the Office of the Grocery Sector Code of Conduct (the “OGSCC”) in navigating and applying the Canada Grocery Code of Conduct (the “Code”) within their organizations. It is not an interpretation of the Code, nor does it represent binding guidance or direction. Interpretation of the Code remains the responsibility of each member, with support from the OGSCC in cases where questions or conflicting interpretations arise.

Rather than prescribing specific actions, this document highlights key areas for consideration. It should be read alongside the Code itself and used as a tool to support compliance, foster understanding, and encourage fair and consistent practices throughout the grocery supply chain.

Who Does the Grocery Sector Code of Conduct Apply To?

The Code applies only to members of the OGSCC. In accordance with Sections 2.01 of the [OGSCC By-Laws](#), membership is open to retailers and suppliers, including primary producers, wholesalers/distributors and manufacturers, who are directly engaged in the grocery supply chain in Canada. Membership is not open to the general public, trade associations or to businesses outside the scope of the Code.

For the Code to apply to any commercial relationship, both parties must be members in good standing with the OGSCC. If one party is not a member, the protections, and dispute resolution mechanisms set out in the Code do not apply.

If you are unsure whether a business is a member, you can consult the member list available on the [OGSCC website](#) to confirm current membership status.

The Code – General

The Code is comprised of three distinct parts:

1. The first part covers the Objectives & Principles of the Code.



2. The second part lays out the “Provisions” which cover a range of business activities that are covered by the Code.
3. The third part contains a list of definitions (including a list of product categories covered by the Code).

When reading the Code, it is important to read all these parts together.

The Code is principle based – which means that the provisions lay out what is expected by parties to the Code, but, in many cases, it does not direct parties as to how to specifically meet the provisions, thus allowing for interpretation and flexibility in its application.

It is very important to pay attention to the language used in the Code as the provisions have been written intentionally where, in some cases, the Code **requires** specific actions to be taken. For example:

- Section 5.1 states: All Parties to the Code **shall** identify and make available, when required, a representative empowered to make decisions on relevant matters, for all issues pertaining to the Code and its administration.

In other cases, the Code **suggests/recommends** actions but do not require those actions. For example:

- Section 6.1 states: Parties **should** have clear dispute resolution and escalation mechanisms set out in their Agreements, if any.

What the Code Says About Agreements Between Parties

The Code does not cover all potential aspects of relationships between Code members, meaning that not all provisions in members’ agreements will be subject to the Code or to the DRMP. Once an organisation becomes a member of the OGSCC, their existing agreements and all future agreements are expected to be “Code compliant”.

- The Code favours written agreements that define commercial terms (Section 2.1) but does not require that agreements between parties be in writing.
- Section 2.5 of the Code states: No Party shall design an Agreement to explicitly work around or willfully disregard the provisions of the Code, and no Party may waive any of its rights or obligations under the Code. The Code recommends specific items that should be included in those agreements and offers a non-exhaustive list of elements that should be defined in agreements, where applicable (section 2.6).
- Where a written agreement does not exist, the provisions in the Code should be respected by all parties and the Code provides guidelines for those dealings.



- The existence or non-existence of a written agreement between members will not affect how the OGSCC deals with Code violations – violations will be treated equally.

Although members of the Code are expected to ensure that their agreements are Code compliant, the Code does not purport to override members' agreements or the general law of contract in the instance that aspects of agreements are not Code compliant. Through the Dispute Resolution Management Process (DRMP) the OGSCC may render an opinion that an agreement does not comply with the Code, but the OGSCC does not have the power to amend or nullify contractual obligations contained in an agreement.

Understanding the "Reasonableness" Test in the Context of the Code

Many provisions within the Canada Grocery Code of Conduct refer to actions, time frames, substantiation or costs that must be "reasonable." "Reasonable Notice" has been defined in the Code but the term "reasonable" on its own, has not. While this term is commonly used in business and legal settings, it is intentionally broad and can vary depending on the specific context. What is considered reasonable in one situation may not be considered reasonable in another—factors such as the nature of the relationship, the timing and circumstances of the issue, and the expectations of the parties involved all matter.

The concept of reasonableness is often assessed using what is known as the **"reasonable person test."** This test asks: *What would a reasonable person with ordinary judgment, acting fairly and prudently, have done in the same situation?* It is not about what one party personally subjectively believed to be fair, but rather what an objective, informed observer would generally consider acceptable and appropriate under the circumstances. In appropriate contexts, the concept of reasonableness also includes notions of transparency and justifiability, and of falling within a range of acceptable outcomes.

When a dispute arises under the Code and a question of "reasonableness" is at the core, the OGSCC will not automatically assume one party's interpretation is correct. Instead, if the dispute is escalated through the OGSCC's DRMP the OGSCC will ask each party to demonstrate why their actions were reasonable, including any relevant facts, documentation, communication, or context that informed their decision. The OGSCC will then apply a reasonableness lens to the situation and make a determination based on the evidence provided by both parties.

This approach allows for flexibility, fairness, and context-driven decision-making, while ensuring that expectations of responsible conduct remain high across the value chain



Acting Unilaterally or with Mutual Consent:

One of the key themes found throughout the Code is the concept of mutual consent. In many provisions of the Code, both parties are required to agree on the terms or actions for them to be “Code compliant”. In other provisions, Members can act without seeking the other’s consent.

For instance, Section 1 of the Code indicates that agreements need both parties to consent to the terms including subsequent changes to the terms. However, there are other sections of the Code that do allow for unilateral actions, especially where parties have agreed in advance as part of the terms of their agreements. For example, Section 4.11 allows for the de-listing of products or discontinuation of supply without the need for mutual consent, but with the requirement of reasonable notification as well as offering an opportunity for discussion.

If issues arise with respect to a provision of the Code where one party has, or wants, to act unilaterally, it is important to understand whether the Code requires notification, discussion and/or mutual consent for that action to be Code compliant.

Understanding “Good Faith”:

Similar to “Reasonableness”, “Good Faith” is a term used frequently in the Code and it is one of the Principles of the Code that: “Retailers, Suppliers, wholesales, larger and smaller entities – are expected to act in Good Faith....”. Good Faith is specifically defined in the Code as: “a standard of conduct applicable to a party’s obligations under this Code that is not only consistent with Applicable Laws but also with the Principles and Objectives set out in this Code, characterized by fair dealing, honesty, openness, and transparency without duress and with due regard to the interests of the other party. For clarity, Good Faith does not equate to not acting in or acting against one’s own legitimate interests.”

Considerations in Using the Code:

During the regular course of business, as issues arise, it is important to determine whether the Code applies and if so, whether a breach of the Code has occurred or is being contemplated. Just because there is something in dispute, or a situation may seem “unfair” or “unreasonable” does not mean that it is covered by the Code. To determine if something is covered by the Code, there must be a specific provision within the Code that applies to it. Below are some questions to help guide whether there is a Code-related issue:

Does the issue in question relate to a product category covered by the Code?



- Categories of products covered by the Code are listed in the Definitions within the Code.
- There is also a list of categories of products not covered by the Code.
- If the issue relates to a product category excluded from the Code, the Code provisions will not apply to the issue.

Is there a specific provision within the Code that applies to the issue?

- The specific provisions of the Code are laid out in Sections 1-4. For an issue to be covered by the Code, you must be able to identify a specific provision(s) that applies.
- While the Objectives and Principles of the Code are important sections of the Code, they must be read together with the provisions and do not stand alone as provisions unto themselves. For instance, a circumstance may appear to be “unfair”, but unless there is a specific provision in the Code related to the issue it is likely that the Code does not apply.

Have I consented to the terms or action in my written agreement?

- The Code strongly encourages the use of written agreements as a best practice. If the issue is addressed in an agreement that has been mutually consented to, and the agreement is Code compliant, then there would likely not be any recourse under the Code.

Do the provisions of the Code allow for the action/behaviour?

- The applicable provision in the Code must be consulted to determine if there has been a breach. For instance, some provisions do not allow for unilateral decisions by one party, while others do under specific circumstances.

Does the language in the provision offer flexibility in interpretation?

- There are many instances in the Code where terms such as “reasonable” are used that may have different interpretations amongst parties.
- Perceived Code breaches based on individual interpretation of the meaning of certain words may not necessarily be breaches.
- It is important in all cases to read the Code in its entirety including the objectives and principles and to discuss differences in interpretation with the other party when seeking resolution.

Seeking Guidance & Escalating Issues:

The OGSCC is in place to help members understand how to use the Code and to provide guidance and support where appropriate. The OGSCC will not provide members with specific



interpretations of Code provisions, nor will the OGSCC, outside the DRMP, opinion whether an action by a member is a violation of the Code.

If questions arise related to the application of the Code or interpretations of the Code provisions, members are encouraged to first seek clarification internally from their designated Code representative. Members may also want to seek guidance from their industry trade associations who may have advice on the Code provisions and their application specific to the sectors they represent.

Information, such as FAQ's, can be found on the OGSCC website which may provide valuable information regarding the Code.

If members exhaust the resources listed above and still have questions related to the Code, they can reach out directly to the OGSCC at the following: info@canadacode.org

