

**PIAC Report: A Review of Restrictive Covenants and
Grocery Competition in Canada**



**PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC**

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B- Introduction and Executive Summary

PIAC with this project sought to conduct a comprehensive review of restrictive covenants, a form of property control that limits how real estate can be used by competitors, and how they impact competition in food sales. The goal was to examine legislative as well as regulatory and policy solutions to restrictive covenants, with a view to enhance competition in the grocery sector. The central question of this research was how restrictive covenants are impeding competition in food sales and how negative implications of such restrictions can be mitigated.

Our research and stakeholder feedback suggested that exclusivity clauses, another form of property control imposed in the grocery sector also merits attention from a consumer perspective. This was covered because of their potential consumer impact as we note that any restrictions that deny consumers' access to food, including fresh produce, an essential means of sustenance, should be questioned with a clear attempt made to challenge, remove and/or limit such restrictions. However, our review indicated that the law behind restrictive covenants and exclusivity clauses is deeply rooted in history, complicated and hard to challenge.

PIAC found that the legal nature of restrictive covenants, their scope, operation, and effects on competition in the grocery sector in Canada are not easily understood and widely known by consumers. They are also difficult to navigate because of their complexity and lack of easy access to relevant data. Similarly, there is limited public understanding of exclusivity clauses in the grocery sector and how they affect competition. The consumer-facing resources on this issue are far from limited, and the challenges in accessing these covenants and clauses make it more difficult to identify issues and raise awareness.

The data on how, and where restrictive covenants and exclusivity clauses apply in the grocery sector across Canada is not easily accessible. There is no comprehensive resource available nationally in Canada and/or provincially that provides a complete picture of these restrictions. Many stakeholders we spoke to also noted this gap. Even if it were available later, it should be questioned whether and how such a resource could be made easy to use, particularly by an average consumer who has limited knowledge of this issue. Data on how and where restrictive covenants have led to food deserts in Canada was also found to be limited. These data gaps need to be reviewed and addressed to enable a better understanding of these anti-competitive restrictions and their consumer implications in the grocery sector.

The study also explored the effect of restrictive covenants on consumers' consumption habits (especially nutrition). PIAC found that restrictive covenants can affect consumers' consumption habits by potentially influencing consumers' behaviours based on food options that are easily available and/or are affordable. This effect was also found to

disproportionately impact low-income and other vulnerable consumers, such as seniors in the affected communities.

PIAC also considered the implications of anti-competitive property restrictions on food prices. We did not come across significant evidence that directly linked anti-competitive property restrictions with higher food prices. However, we found some anecdotal references in the media as well as stakeholder comments that suggested a connection between limited competition and high grocery prices, with property controls making these price increases more likely.

Considering that the Competition Bureau has been actively investigating these anti-competitive property restrictions in the grocery sector, we asked the Bureau whether and how our research can add value to this issue. The Bureau representatives indicated that a lot more needs to be done, including consideration of what regulatory and legal approaches could be taken to address these anti-competitive restrictions. Thus, this research is relevant, and the Bureau also said that Canada cannot just rely on enforcement, various stakeholders have to be involved.

Methodology

The methodology for this Report involved literature review with legal and academic research undertaken to understand the law behind these anti-competitive restrictions and how they operate. Considerable research was also undertaken to understand how these restrictions in the grocery sector affect consumers, particularly their access to grocery stores and food. PIAC reviewed the history of restrictive covenants and engaged in an in-depth review and analysis of the federal legal framework. This was in relation to the powers of the Competition Bureau. PIAC reviewed relevant provincial frameworks, including under common law and civil law. PIAC also reviewed approaches adopted in selected international jurisdictions to address anti-competitive property restrictions in the grocery sector.

PIAC reached out to the Uniform Law Conference of Canada (ULCC) and various provincial Attorneys-General (and AGC) regarding legal reform. ULCC noted that they currently do not have any ongoing projects involving competition in the grocery industry. That said, ULCC would be open to examining a proposal for a project that looks at unifying the law on this consumer issue. We did not hear back from most Attorney-General offices with some Attorney General offices expressing an interest in reviewing this Report.

One of the key parts of our methodology was stakeholder interviews. PIAC prepared separate stakeholder questionnaires for different stakeholders based on their area of expertise. These were prepared for consumer groups; academics, researchers and policy experts; lawyers; the Competition Bureau, other federal regulators; all Attorney General's offices; Minister of Agriculture and Agri-Food Canada (AAFC); industry members; international regulators; and local food organizations/non-profits. PIAC also reached out

to the Honourable Minister Mintu Sandhu and Premier Wab Kinew who were the force behind Manitoba's Bill 31.

PIAC received written responses from several stakeholders and also had meetings with stakeholders. We reached out to 63 stakeholders in total and received feedback from 19 stakeholders. This included feedback from some consumer groups, several academics and researchers, one lawyer, the Competition Bureau, the AAFC, one local food organization, and the Honourable Minister Mintu Sandhu's office. We did not receive feedback from the major Canadian grocery stores.

Recommendations

Based on the findings of this research, PIAC recommends:

- ❖ Comprehensive data regarding the application of restrictive covenants in the grocery sector in Canada should be collected and published. Data on exclusivity clauses should also be published. This is important to identify the application and scope of these restrictions and how they affect access to food, including healthy food options.
- ❖ A national registry should be created on all property restrictions in the grocery sector that should be publicly searchable through an online database. This should be done in collaboration with federal agencies, such as ISED and all provincial and territorial authorities. This registry should be accessible free of cost with the data available in different formats. This registry should include details, such as all the locations with addresses that are subject to property restrictions in the grocery sector, the scope of restrictions and timelines. Short summaries of restrictions must be provided in simple and plain language. If this cannot be done at the national level, then at least all provinces and territories should create and manage this specialized registry. Importantly, legislative changes should be considered in all provinces and territories to enable the creation and maintenance of this registry.
- ❖ Considering the jurisdictional challenges in addressing restrictive covenants, and how they impact access to food in Canada, a comprehensive national strategy should be developed to remove restrictive covenants that limit competition in the grocery sector. The details of who has placed these covenants should be considered, with covenants imposed by large grocery chains to be more strictly scrutinized. This strategy should be planned in collaboration with the Competition Bureau and all the provincial and/or territorial authorities and be overseen by ISED. Those municipalities with the highest prevalence of restrictive covenants should be involved in this process. Such a strategy should take into account the unique circumstances, and challenges of all the different regions in Canada, and must provide for at least common standards to ensure uniform consumer safeguards apply across Canada.

- ❖ The federal agencies, such as the ISED, and the Bureau along with all the provincial and territorial governments should also consider reaching out to the ULCC to determine whether and how a uniform law and regulation could be developed to address anti-competitive property restrictions in the grocery sector. In this regard, a working group should be created to prepare and submit a detailed proposal to the ULCC.
- ❖ The legislative and enforcement approach being taken in Manitoba to address these anti-competitive property restrictions should be closely monitored to learn lessons for developing the legislative and regulatory policy either nationally or by other provinces and territories.
- ❖ Our research and stakeholder feedback suggested that not all exclusivity clauses may hinder competition in the grocery sector and even if they do, their scope and consumer impact can be much less than that of a restrictive covenant. Given this, and the varied scope of these restrictions, a nuanced legal and regulatory response should be considered. This is to ensure that these clauses are only allowed when justified, limited to clear and short terms, and limited in geographic scope. It is important that all these restrictions are placed under the consumer lens to better assess their impact on consumers and to develop appropriate responses.
- ❖ Canadian regulators and lawmakers should refer to the UK CMA's *Groceries Market Investigation (Controlled Land) Order 2010* in drafting nuanced laws and policies that address this issue. The Order provides different levels of regulation based on retailer size and specifically targets major retailers. Additionally, it provides a clear test for determining whether there is reduced competition in a geographic area that merits further inquiry. It targets exclusivity arrangements of more than five years rather than prohibiting all such clauses. Canadian provincial and federal lawmakers should adopt this targeted approach to adequately address the problem.
- ❖ The creation of food deserts, and limitations on access to food, particularly healthy food, is a matter of significant concern. Our research found that the present resources on food deserts in Canada are limited and only provide details on some regions. A mapping tool should be created to identify food deserts across Canada. The mapping tool and resources available on the website of National Institute of Public Health of Quebec should be considered. This tool should be developed nationally if feasible, if not then at least all provinces and territories should have something similar to that available in Quebec.
- ❖ A national grocery pricing study should be done, similar to Manitoba's grocery pricing study with one of the objectives of this study being to review whether and how anti-competitive property restrictions affect and/or result in higher food prices.

Consumers and all interested stakeholders should be invited to participate in this study.

C- Background and Context

This research report focuses on the use of anti-competitive property controls, particularly restrictive covenants in the grocery sector to limit competition in food sales. Restrictive covenants are a form of property control that limits or restricts the way competitors can use commercial real estate. This problem is one example of how certain commercial legal mechanisms to restrict competition can negatively impact consumers.

We review and analyze how these restrictions impact consumers in the affected communities and the broader Canadian food ecosystem, particularly in relation to access to nutritious food choices and rising prices. Canadian consumers have felt the impact of rising grocery costs, exacerbated by rising inflation and cost of living. According to the most recent Consumer Price Index Annual Review, prices for groceries continued to accelerate in 2025 at a rate of 3.5%, up from 2.2% in 2024.¹

In this section, we provide an overview of restrictive covenants and their use in the Canadian grocery sector to limit competition. Next, we distinguish them from other forms of property controls.

a. What Are Restrictive Covenants?

A property law restrictive covenant is a restriction placed on a piece of land that legally prevents an owner from using that land for specific purposes. Covenants exist in other areas of law as well. In employment law, restrictive covenants can appear as contractual non-compete clauses to prevent an employee from working for an employer's competitor for a given period of time. In real estate terms, a covenant is a written rule, registered on title, that says what can or cannot be done with a parcel of land.² Unlike public land use controls like zoning, restrictive covenants are created through private agreements but are designed to "run with the land", meaning that restrictions remain in force even when the land is sold and ownership changes. By virtue of these instruments being private in nature, they operate with minimal public oversight and operate "largely hidden from view."³

In the grocery sector, major retailers have been found to use restrictive covenants to limit competition by preventing other grocery stores from opening on the land for the duration of the covenant. In some cases, these covenants apply to a geographic radius surrounding

¹ Statistics Canada, "Consumer Price Index: Annual Review, 2025," *The Daily*, January 19, 2026, <<https://www150.statcan.gc.ca/n1/daily-quotidien/260119/dq260119b-eng.htm>>.

² Bruce H. Ziff, "Bumble Bees Cannot Fly, and Restrictive Covenants Cannot Run," in Anneke Smit & Marcia Valiante, eds, *Public Interest, Private Property: Law and Planning Policy in Canada* (Vancouver: UBC Press, 2015) at 59

³ Bruce Ziff & Ken Jiang, "Scorched Earth: The Use of Restrictive Covenants to Stifle Competition" (2012) 30:2 *The Windsor Yearbook of Access to Justice* 79 at 81

the affected land, preventing competitor grocery stores from opening nearby. Ziff and Jiang describe a resulting ‘scorched earth’ policy, where land use is controlled by one property owner for lengthy periods of time.⁴

Example of Restrictive Covenant in the grocery sector:

A landowner who leases to *grocery store A* may register a restrictive covenant on the title to a parcel of land to prevent competitors from opening on that land in the future. When *grocery store A* leaves, competitor *grocery store B* is unable to lease the same land for food retail purposes due to an existing restrictive covenant. The land and existing infrastructure remain vacant for the duration of the covenant, which may be indefinite.

The Competition Bureau defines a restrictive covenant as “a restriction on land that prevents a purchaser or owner of a commercial property from using the location to operate or lease to operators of certain types of businesses that compete with a previous owner.”⁵ These written covenants are placed directly on the title of real estate properties and are passed along to future owners. The result is that restrictions on land use from covenants can last for lengthy periods of time, are difficult to challenge and are held in title documents in land registries that are challenging to access. As discussed throughout this report, our findings show that this phenomenon is under-studied and may pose profound challenges to Canadian food ecosystems.

b. What are Exclusivity Clauses?

The Competition Bureau distinguishes exclusivity clauses as a second form of competitor property control, defined as “a clause within a commercial lease that limits how the land can be used by competitors to a tenant.” These clauses can be used to prevent a landlord from renting space to a competing business or restrict the types of products that can be sold.⁶ Landlords often agree to these clauses as they contribute to the tenant’s success as a business.⁷ Importantly, these clauses are contractual in nature and do not endure over time as restrictive covenants often do.

⁴ Bruce H. Ziff & Ken Jiang, “Scorched Earth” at 81

⁵ Competition Bureau Canada, *Competitor Property Controls and the Competition Act*, last modified June 4, 2025, <https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/competitor-property-controls-and-competition-act>

⁶ *Ibid*

⁷ Pamela Green and Shanae Soor, “From Exclusivity to Fair Play: Understanding exclusivity clauses and restrictive covenants in commercial real estate.” *KPMG Canada*, April 2025, <https://kpmg.com/ca/en/insights/2025/04/from-exclusivity-to-fair-play.html>.

Examples of Exclusivity Clause in the grocery sector:

A commercial lease agreement between *grocery store A* and a shopping plaza has an exclusivity clause preventing other similar retail competitors from opening in the same plaza. Competitor *grocery store B* is prevented from opening in the same plaza for the duration of the lease. Once *grocery store A* leaves the shopping plaza and terminates the lease, *grocery store B* faces no barriers to opening in the plaza as the exclusivity clause has been terminated with the prior contract.

In another example, an exclusivity clause gives *grocery store A* the sole right to sell certain product brands in a given location. Nearby *grocery store B* is restricted from selling these brands but may nonetheless operate nearby and sell other brands of the same product type.

Some stakeholders we spoke with stated that restrictive covenants should be regulated separately from exclusivity clauses. They told us that covenants pose a significantly higher threat to competition given their lasting impact once a grocery store leaves a community, resulting in a greater likelihood for reduced food access and food deserts. One stakeholder told us that exclusivity clauses should be entirely permitted. The stakeholder believes that these property controls have a clear benefit to businesses with minimally clear burdens for consumers.

From a consumer perspective, the impacts of both forms of property controls in the grocery sector can overlap. They both limit consumer choice and may affect access to food, particularly healthy food choices. Our study is primarily focused on restrictive covenants given their unique challenges and lasting impact on competition in the grocery sector. Many existing attempts to regulate anti-competitive property controls in Canada target both restrictive covenants and exclusivity controls together under the umbrella term 'competitor property control.' As will be elaborated below, there are benefits and drawbacks to this legislative approach. Next, we review the consumer impacts of restrictive covenants and exclusivity clauses in the grocery sector.

D- Consumer Impact of Restrictive Covenants and Exclusivity Clauses in the Grocery Sector

a. Existing Evidence and Limitations

PIAC's research relies mostly on anecdotal evidence, stakeholder feedback as well as academic literature to discuss the consumer impact of restrictive covenants and exclusivity clauses in the grocery sector, particularly how these restrictions impact consumers' access to food and grocery stores within Canada.

PIAC sought to find empirical evidence, including relevant public opinion polls in published peer-reviewed studies as well as federal government polls or any other consumer studies related to these restrictions. However, we did not come across any material empirical data indicating the consumer implications of either restrictive covenants and/or exclusivity clauses in the grocery sector except for a few limited research studies that are discussed below. These studies were often limited to a specific area and/or province.

We also raised this issue during the stakeholder consultations, particularly, during the stakeholder interviews. The general consensus from stakeholders was that quantitative research exploring restrictive covenants and exclusivity clauses in this sector is necessary but not available. This is not just the case for Canada. Christopher R. Leslie, a Professor at the University of California, Irvine School of Law, specializes in antitrust law, competition policy, and intellectual property and has done significant research on this matter. He also pointed to the absence of relevant data in the US during the stakeholder interview with PIAC. Professor Leslie noted that this data is also crucial for identifying trends and patterns in relation to these anti-competitive covenants in the grocery sector.

Given the above, PIAC notes that the review of these anticompetitive restrictions and their impact on consumers requires more attention than it has received. Further research, particularly empirical research, is required to better inform the design of any necessary legal and regulatory responses to anticompetitive restrictions that limit competition in the grocery sector. As noted earlier, PIAC's research is only concerned with those property controls or restrictions as they might be called that limit competition in the grocery sector.

b. Overall Consumer Impact can vary

Overall, PIAC's research showed that both restrictive covenants and exclusivity clauses that limit competition can impact consumers in the grocery sector. However, the magnitude of this impact can vary based on the nature of restriction, and different factors—such as the geographic location of these restrictions, their scope as well as their duration. A recent investigation on property controls by CBC *Marketplace* found that the scope of

these controls varied significantly from one property to another and noted that the scope of controls can be particularly broad.⁸

Marketplace obtained legal documents for dozens of properties across Canada — locked behind opaque systems and paywalls — and found several property controls buried in lease agreements or even registered directly on property titles. The scope of the terms negotiated by grocery giants varied significantly from property to property.

While some contracts stipulate the giants cannot “unreasonably” withhold permission for competitors to open up or to sell food, others explicitly grant them any and all discretion.⁹ [Emphasis added]

PIAC’s review as well as stakeholder meetings further indicated that restrictive covenants that limit competition can have more serious and long-lasting impact as compared to exclusivity clauses because they are registered on the land title, and often run for 10, 20, 40 years and even longer. Likewise, the Competition Bureau in its consultation about property controls in the Canadian grocery sector found that “[t]hese restrictions can remain in place for long periods of time and, in some instances, forever.”¹⁰

A 2012 article on the use of restrictive covenants to stifle retail competition by Bruce Ziff and Ken Jiang explored the use of these covenants in a commercial setting in Edmonton, Alberta.¹¹ Covenants registered on title to properties in Edmonton were reviewed with all these documents found to have some anti-competition restriction.¹² About 50 covenants were examined with the most common restrictions related to service stations and grocery stores.¹³ The duration of these covenants was found to vary considerably from 10 to 40 years with some having the capability to remain in force indefinitely.¹⁴

The duration of the covenants varied considerably. All else being equal, a restrictive covenant is capable of remaining in force indefinitely. Three approaches were evident. In some, a specific time period was set out, ranging from 10 to 40 years. Alternatively, the duration was fixed by a formula. The most common approach was to state that the restriction was to remain in place on the servient property so long as the dominant tenement was being used for X purposes, that purpose being the same as the prohibited

⁸ Katie Pedersen, Jenny Cowley, Chris Glover, and Tomi Joseph-Raji, “How grocery giants control who can sell food in your neighbourhood,” *CBC Marketplace* (23 January 2026), online: <<https://www.cbc.ca/news/canada/grocery-giants-control-9.7055067>>.

⁹ *Ibid.*

¹⁰ Competition Bureau Canada, “Call-out for information about property controls in the Canadian grocery industry,” (21 October 2024), online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/call-out-information-about-property-controls-canadian-grocery-industry>>.

¹¹ Bruce Ziff and Ken Jiang, “Scorched Earth: The Use of Restrictive Covenants to Stifle Competition,” (2012) 30:2 *The Windsor Yearbook of Access to Justice* 79

¹² Bruce Ziff and Ken Jiang, “Scorched Earth: The Use of Restrictive Covenants to Stifle Competition,” (2012) at p.82.

¹³ *Ibid.*

¹⁴ Bruce Ziff and Ken Jiang, “Scorched Earth: The Use of Restrictive Covenants to Stifle Competition,” (2012) at p.83.

use imposed on the servient land. The remaining covenants do not specify a time-limit.¹⁵ [Emphasis added, footnote within the quote omitted]

Meanwhile, exclusivity clauses end with the duration of the lease. One stakeholder PIAC spoke to said that exclusivity clauses were accessible on land title searches along with restrictive covenants, during their research. However, some other stakeholders noted that this was not necessarily the case for all exclusivity clauses and nor was it true for all different jurisdictions as exclusivity clauses are often found in private commercial leases. In either case, both these property restrictions are not easily accessible by consumers. This is considered in more detail below.

Some stakeholders also said exclusivity clauses were less concerning because of their shorter duration and limited scope of restrictions. That being said, all such constraints that limit competition in the grocery sector call for stronger public scrutiny because of their serious implications on consumers' access to food, including fresh produce and healthy food choices.

Many stakeholders we spoke to and/or those who responded to our questionnaire raised concerns regarding anti-competitive property controls, particularly restrictive covenants. Craig Patterson, founder and publisher of Retail Insider Media Inc., noted that restrictive covenants can be a significant barrier to competition in the grocery sector, particularly at the local market level, limiting choice and entrenching incumbents.

Restrictive covenants can act as a significant barrier to competition in the grocery sector, particularly at the local market level. In practice, these covenants often prevent new grocery operators from entering specific trade areas, even where there is consumer demand. This limits choice and can entrench incumbents in ways that are not purely driven by competitive performance. – Craig Patterson, Founder and Publisher, Retail Insider Media Inc.

Keldon Bester, Executive Director of the Canadian Anti-Monopoly Project (CAMP) said in response to our stakeholder questionnaire that property controls provide another means through which dominant companies shape the competition they face in their own interests rather than that of consumers, undermining choice and competition for consumers.¹⁶

¹⁵ *Ibid.*

¹⁶ Response to PIAC Stakeholder Questionnaire.

Property controls provide another avenue for dominant companies to shape the competition they face toward their interests rather than that of consumers. They are a direct intervention into a market that would otherwise generate more choice and competition for consumers. By restricting available options, property controls create the appearance of a saturated market when we know, absent these controls, more intense competition is possible. The impact of these controls on consumers is uniformly negative, resulting in either higher prices or greater travel times to access the options they want and need. –Keldon Bester, Executive Director, CAMP

PIAC also reached out to several consumer groups and heard back from ACORN Canada (ACORN) and Option Consommateurs. Judy Duncan, Head Organizer at ACORN, expressed significant concern regarding anti-competitive property restrictions during our stakeholder consultation and noted that ACORN will be keen to collaborate on any future efforts to stop these practices in the grocery sector.

Option Consommateurs referred to their study *Baromètre de confiance* from 2024, which indicated that one in four respondents (28%) considered food costs to be the most concerning element of the cost of living, although this result was noted to be significantly lower than their previous Baromètre in March 2023 (35%). They further noted that this level of concern can vary depending on the province and income.¹⁷

c. Access to Food and Grocery Stores

One direct and serious consequence of restrictive covenants that limit competition in the grocery sector is that they prevent another grocery store from opening in a location that is often left abandoned after the previous grocery store is closed. Notably, an important element of a restrictive covenant is that the restriction can only apply while land changes hands if it benefits some other identified property, and often that property is something nearby, but this area could be fairly broad.¹⁸ The law related to restrictive covenants is examined below.

For instance, a large chain may have several stores in an area, and the restrictive covenant on one site could remain in place as long as the 'nearby' stores of the same chain are open for business.¹⁹

¹⁷ Reference made to: See p.15 of Option Consommateurs, Baromètre, online: <<https://s3.ca-central-1.amazonaws.com/option-consommateurs-assets/production/Revendications/rapport-option-consommateurs-an-3-16356-003-final-1-avec-compression.pdf>>.

¹⁸ Sughandhi del Canto and Rachel Engler-Stringer, "Prohibitive Property practices: The impact of restrictive covenants on the built food environment," in in Allison Gray & Ronald Hinch, eds, *A Handbook of Food Crime: Immoral and Illegal Practices in the Food Industry and What to Do About Them* (Bristol: Policy Press, 2018) at 146-147.

¹⁹ Sughandhi del Canto and Rachel Engler-Stringer, "Prohibitive Property practices: The impact of restrictive covenants on the built food environment," in in Allison Gray & Ronald Hinch, eds, *A Handbook*

Likewise, the Retail Grocery Market Study Report from the Competition Bureau (2023) explained that when a grocery store is being sold, the seller may want to prevent this same site to be used by a competing grocery store if they are relocating to another site nearby, and that doing this would limit the number of other grocery stores it would have to compete with.²⁰

The consumer effect of the above is that there can be no other grocery store on the same location that is often left vacant after the previous grocery store closes and/or at least that site has no grocery store. Notably, in some cases, this prohibition on the opening of grocery stores may extend to nearby locations, depending on the wording and scope of the covenant. This often means that consumers have to travel longer distances to access food. This might also result in more fuel or transit costs for many consumers, which can be a significant concern for low-income and other vulnerable consumers.

Our research indicated that access to fresh produce and healthy food can be particularly challenging, which is either not available or limited options are available²¹ in any nearby convenience stores. Ottawa Public Health during its Good Food Corner Store initiative done between 2015 and 2018 found that most corner stores sell primarily processed foods and beverages high in sugar, salt and fat; few offer fresh produce or other healthy food options.²² In its 2016 resident survey with 603 Ottawa residents, it found that proximity to home and convenience are top reasons to shop at corner stores and also 48% of respondents considered the availability of fresh produce at corner stores poor or very poor.²³

The impact on seniors of these anti-competitive restrictive covenants in this sector also needs to be carefully reviewed. Many seniors live on their own with minimal support and for them to travel an extra distance to access something basic as groceries is a serious red flag that needs immediate attention. There are also concerns regarding these anti-competitive limitations affecting affordability and food prices that are noted below.

While exclusivity clauses generally last for a much shorter duration, based on the length of the lease, and might just limit what foods can be sold rather than completely prevent a grocery store from opening in a location, again this would depend on the specific terms of these exclusivity clauses. Jenna Khoury, an associate lawyer at Kinch Eddie Litigation

of Food Crime: Immoral and Illegal Practices in the Food Industry and What to Do About Them (Bristol: Policy Press, 2018) at 147.

²⁰ Competition Bureau Canada, "Canada Needs More Grocery Competition," Competition Bureau Retail Grocery Market Study Report, (27 June 2023), online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/canada-needs-more-grocery-competition>>.

²¹ Jeff Hayward, "Why Convenience Stores Are a 'Corner' Stone of Canadian Culture," *Medium* (23 March 2025), online: <<https://medium.com/canadeh/why-convenience-stores-are-a-corner-stone-of-canadian-culture-7a6dfbd29b47>>.

²² Ottawa Public Health, "Good Food Corner Store Initiative," online: <https://www.ottawapublichealth.ca/en/public-health-topics/gfcs.aspx#Resident-survey>>.

²³ *Ibid.*

Professional Corporation in Campbellford, has done considerable research in this area and was one of the stakeholders we contacted. Jenna said that the impact of these restrictions is not the same for consumers, with restrictive covenants, the previous grocery store stays empty, as an example her former community grocery store closed in approximately 2009 and remains an empty building now, while this is not the case with exclusivity clauses.

Likewise, Christopher R. Leslie emphasized that restrictive covenants are much worse during our stakeholder interview. Professor Leslie noted that covenants result in not only store closures but also in making sure that no other store can open. Meanwhile, exclusivity provisions do not inherently mean lack of groceries. He further noted that exclusive use clauses can be justified in some circumstances, while restrictive covenants have no plausible justification.

We recognize that there are differences related to the scope and overall impact of these restrictions, the point we emphasize is that both kinds of restrictions go to the core consumer issue underscoring this research- denying consumers' access to food, including fresh food and/or other healthy food choices. We understand that the varied scope of these restrictions and their impact may require a nuanced legal and regulatory response, but all these restrictions need to be placed under the consumer lens and carefully examined to ensure that the grocery sector is supported with fair competition standards that lead to increased food access and consumer choice, not less.

We also understand that issues such as food insecurity and access to food are broader than the scope of this research, which is limited to reviewing the use of anti-competitive covenants and to some extent, exclusivity clauses in the grocery sector and their impact on consumers. PIAC, in its response to the Competition Bureau's market study of retail grocery also noted that while restrictive covenants are not the only limitation on access to food, as income, access to a vehicle, age and other factors are important, they are an important competition-related limitation which should be studied.²⁴

Feed Nova Scotia lists several key root causes of food insecurity, such as inadequate income, rising cost of food, restrictive covenants in multiple communities in cities/towns and other factors.²⁵ The study of these different factors is outside the scope of this research, though we review some related issues such as food prices, and low-income communities in the context of restrictive covenants and exclusivity clauses. PIAC further notes that the findings of this research can be useful and contribute towards a more comprehensive understanding of different factors leading to food insecurity.

²⁴Response from the Public Interest Advocacy Centre to the consultation on the Market study of retail grocery, (December 16, 2022), online: <<https://competition-bureau.canada.ca/sites/default/files/attachments/2023/PIAC-Market-Study-Submission.pdf>>.

²⁵ Feed Nova Scotia, Advocacy Framework Overview (December 2025), online: <<https://feednovascotia.ca/wp-content/uploads/2025/12/Advocacy-Framework-External.pdf>>.

Importantly, we note that any restrictions that deny consumers' access to food, including fresh produce, an essential means of sustenance, should be questioned with a clear attempt made to challenge, remove and/or limit such restrictions. However, our review indicated that the law behind restrictive covenants and exclusivity clauses is deeply rooted in history, complicated and hard to challenge.

The Competition Bureau has been investigating this issue, including the use of exclusivity clauses but as we note ahead, these investigations have been quite narrow in scope, and the main outcomes have been commitments from a large grocery chain, such as Loblaw, to not impose these restrictions.²⁶ Whether, and how these commitments pan out remain to be seen. Much of this investigatory work is also not publicly accessible with few consumer-friendly resources from the Bureau being their news releases and guide related to competitor property controls and the *Competition Act*.²⁷

Some provinces, such as Manitoba have taken initial steps towards addressing these limitations (see below). Given the limited awareness of this issue and its impact as well as jurisdictional challenges, the chances of having any meaningful and uniform changes across the grocery sector in Canada appears to be just a remote possibility at this stage unless strong and concrete steps are taken by government agencies to address this issue.

Anecdotal Evidence Based on Media Coverage

The Canadian media has been covering the use of anti-competitive restrictive covenants in the grocery sector for a long time. A 2003 newspaper article in the Vancouver Public library archives said that the Council is pushing for Safeway to remove restrictive covenants.²⁸ *CBC* reported in 2011 that the city of Edmonton is seeking to end grocery store 'deserts'.²⁹ We also came across various recent media stories regarding Edmonton again pushing for removing these restrictions,³⁰ as well as stories regarding the recent

²⁶ Competition Bureau Canada, "Competition Bureau monitors Loblaw's commitment to end property controls ," (12 June 2025), online: <<https://www.canada.ca/en/competition-bureau/news/2025/06/competition-bureau-monitors-loblaws-commitment-to-end-property-controls.html>>. Also see: Competition Bureau Canada, Backgrounder: Competition Bureau monitors Loblaw's commitment to end property controls, (12 June 2025), online:<<https://www.canada.ca/en/competition-bureau/news/2025/06/backgrounder-competition-bureau-monitors-loblaws-commitment-to-end-property-controls.html>>.

²⁷ Competition Bureau, Competitor property controls and the Competition Act, (June 4, 2025), online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/competitor-property-controls-and-competition-act>>.

²⁸ O'Connor, Naoibh, "Council pressing Safeway to remove restrictive covenant," Vancouver Public Library, [Newspaper article] (July 27, 2003), online: <<https://localhistory.vpl.ca/link/cni29734>>.

²⁹ CBC News, "City seeks to end grocery store 'deserts'," *CBC News Edmonton* (19 October 2011), online: <<https://www.cbc.ca/news/canada/edmonton/city-seeks-to-end-grocery-store-deserts-1.1127302>>.

³⁰ Angela Amato, "Mayor to write letter urging province to nix grocer property restrictions," *CTV News Edmonton* (17 March 2026), online: <<https://www.ctvnews.ca/edmonton/article/mayor-to-write-letter-urging-province-to-nix-grocer-property-restrictions/>>.

efforts in Manitoba to remove these covenants after it passed Bill 31³¹ that prohibits new property controls in the grocery sector, and makes existing property controls void unless registered.³²

Even though the use of anti-competitive property controls in the grocery sector has been in Canadian news for at least the past 20+ years, our research and stakeholder consultations suggest limited consumer awareness of these anti-competitive restrictions and their implications. As noted earlier, PIAC did not come across material empirical data regarding the consumer impact of these covenants and nor did we come across any consumer centric surveys that specifically discussed consumer awareness of this issue. This is likely due to these covenants being private in nature, as a result “this kind of private zoning is largely hidden from view.”³³ The Competition Bureau also noted that many consumers do not know about these restrictions during their stakeholder interview with PIAC.

The media stories though indicate that some affected residents are familiar with this issue. Despite the limitations of empirical evidence, PIAC notes that there is significant anecdotal evidence that indicates there are underlying problems associated with these anti-competitive restrictions that warrant attention. We note some stories below.

- In 2011, *CBC Edmonton* reported that the City Council sought to ask the province to impose limits on legal agreements that prohibit competitors from opening stores in a neighbourhood after a grocery chain has closed one of its locations.³⁴ These covenants were said to have created “food deserts”- where there no grocery stores within walking distance in affected neighborhoods.³⁵ Notably, the former Highlands Safeway store located at 66th Street and 118th Avenue is covered by a restrictive covenant and has been vacant since it closed with other grocery stores barred from opening there.³⁶ Challenges faced by seniors in accessing stores, including by those who relied on a cane were raised by one of the affected resident.³⁷ The issue was raised in 2007 as well.³⁸ However, the more recent stories indicate that

³¹ Ian Froese, “Manitoba asks Sobeys to scrap property restrictions near its stores or it’ll go to municipal board,” *CBC News Manitoba*, (12 March 2026), online:

<<https://www.cbc.ca/news/canada/manitoba/sobeys-manitoba-property-controls-9.7125151>>.

³² See: Bill 31, *The Property Controls For Grocery Stores And Supermarkets Act (Various Acts Amended)*. Online: <<https://web2.gov.mb.ca/bills/43-2/b031e.php>>.

³³ Also, see: Competition Bureau, “Response from the Public Interest Advocacy Centre to the consultation on the Market study of retail grocery,” (December 2022), online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/response-public-interest-advocacy-centre-consultation-market-study-retail-grocery>>.

³⁴ CBC News, “City seeks to end grocery store ‘deserts’,” *CBC News Edmonton* (19 October 2011).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

not much progress has been made in Alberta since then, with the council again pushing for removing these restrictions.³⁹

- A *CBC* story from 2024 covered the consumer impact of these restrictions in one of Halifax’s neighborhoods.⁴⁰ It reported that Sobeys occupied 2300 Gottingen St. in the late 1950s, operating until the mid-1980s, until it built a newer store 1.5 kms away on North Street, which is in place now, while leaving behind a food desert-with barriers to accessing affordable and nutritious food within one km.⁴¹ It also reported that although Sobeys sold the Gottingen Street property, the covenants were still in place at 13 addresses as of 2019, including at 2274, 2278, 2290, 2272, 2300, 2302, 2306, 2220 Gottingen St., and 5501, 5511, 5515, 5519, 5523 Cunard St.⁴² It further noted that this means there can be no stores that sell fresh or frozen meats, vegetables or dairy at these addresses until the covenant is altered or removed.⁴³
- The *CBC Marketplace* investigation from earlier this year found that “[L]oblaws, Sobeys and Metro — are using property law to control how other grocery stores, dollar stores, pharmacies and gas stations can compete with them.”⁴⁴ *CBC* obtained legal documents for dozens of properties, and found that when developers own larger tracts of land, property controls indicating a radius of up to five kilometres limited retailers from selling fresh food within that land.⁴⁵ *CBC* found this to be the case in Picton, Ontario, about 80 kilometres west of Kingston.⁴⁶ A consumer, Teresa Petrie from this town pointed to increased grocery prices, and after learning that both No Frills and the Foodland, she shops at have property controls preventing anyone else from selling fresh food in their plazas, it has raised concerns that this lack of competition is contributing to high food prices.⁴⁷ These limitations not only control who sells food but what food items can and cannot be sold.⁴⁸
- The *Edmonton Journal* reported in early 2026 that a restrictive covenant in Griesbach imposed by Sobeys means that the neighbourhood estimated to have

³⁹ CBC News, “Edmonton city councillor wants province to revisit rules on restrictive covenants to help prevent food deserts,” (31 January 2026), online: <<https://www.cbc.ca/news/canada/edmonton/food-deserts-restrictive-covenants-edmonton-alberta-groceries-9.7069029>>.

⁴⁰ Feleshia Chandler, Cassidy Chisholm, “Decades-old clause keeping grocers out of Halifax neighbourhood hurts community, say residents,” *CBC Nova Scotia* (27 July 2024), online: <<https://www.cbc.ca/news/canada/nova-scotia/restrictive-covenants-gottingen-street-1.7272419>>.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Katie Pedersen, Jenny Cowley, Chris Glover, and Tomi Joseph-Raji, “How grocery giants control who can sell food in your neighbourhood,” *CBC Marketplace* (23 January 2026).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

around 14,000 citizens upon its completion may never have a grocery store.⁴⁹ The story also noted that a restrictive covenant also exists on the site of a former Safeway in Highlands, this means for both neighbourhoods, residents without vehicles lack accessible and affordable grocery options within walking distance.⁵⁰

- Another media report noted that in south Edmonton, where a grocery store moved out of the Lansdowne Centre strip mall on 122 Street at 51 Avenue, it stayed vacant for years until Find thrift store moved in 15 years ago.⁵¹

The above stories illustrate that the impact of these anti-competitive covenants and/or exclusivity clauses is not just about creating barriers to accessing food and grocery stores, it also creates barriers to accessing healthy, nutritious food, which can have detrimental effects on consumers' health and well-being (discussed ahead).

It is also important to note that the above are just some media stories regarding these restrictions in the grocery sector. There might be many unreported stories regarding anti-competitive covenants and/or exclusivity clauses in this sector, which continue to affect consumers. If proactive attention is not given to this matter and action taken now rather than later, these restrictions will continue to remain in place and silently and severely hurt consumers' access to food, including healthy food options.

2019 Empirical Research Findings

Jenna Khoury undertook empirical research in 2019 while studying at Dalhousie University – Schulich School of Law to review grocery store covenants in the Halifax area and explore potential options for removing these covenants.⁵² This research explored how covenants could relate to the issue of food insecurity in Nova Scotia,⁵³ while acknowledging that access to food means more than just simply access to grocery stores.⁵⁴ The methodology involved a targeted approach in which a spreadsheet of addresses was made for grocery stores in Halifax and Dartmouth using city directories and phonebooks from 1980 to 2018 as media stories stated that Safeway covenants were started to be placed on properties

⁴⁹ Noreen Willows, "Opinion: Alberta can lower food prices by banning supermarket property controls," (28 January 2026), online: <<https://edmontonjournal.com/opinion/columnists/opinion-alberta-can-lower-food-prices-by-banning-supermarket-property-controls>>.

⁵⁰ *Ibid.*

⁵¹ Karen Bartko, "Edmonton aims to kibosh restrictive covenants in name of grocery access, food affordability," *Global News* (17 March 2026), online: <<https://globalnews.ca/news/11735252/edmonton-grocery-restrictive-covenant/>>.

⁵² Jenna Khoury-Hanna, "A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them," (April 20, 2019), Directed Research Paper, Dalhousie University, Schulich School of Law.

⁵³ *Ibid.*

⁵⁴ Jenna Khoury-Hanna, "A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them," (April 20, 2019) at p6.

in the 1980s.⁵⁵ The land titles for the relevant addresses were searched at the Land Registration Office. The research found the following:

In total, 55 covenants were identified that were registered by grocery stores on properties within Halifax Regional Municipality. The covenants varied greatly in their scope and application from property to property, and there was no standard form for the covenants, despite that they were primarily put in place by the two major grocery retailers in the area. All of the covenants can be characterized as being anti-competitive in nature, and many of them were contained within a lease agreement which was then registered as a restrictive covenant. [...]⁵⁶ [Emphasis added]

The research characterized these covenants into four main categories as summarized below:

- **The “20 Years from Closing” Covenants:** Sobeys only registered these. The covenants said that the property cannot be used for food stores, grocery stores, food supermarkets, convenience stores or the sale of food for human consumption in any way, as well as the operation of drug stores or retail community pharmacy businesses. Most of the affected properties had active/open stores. Assessing whether these covenants raised concerns with a grocery store still on the property was outside the scope of this research.⁵⁷
- **The “Gottingen” Street covenants:** These were registered on 12 properties in the North End, including 7 addresses on Gottingen Street, 5 addresses on Cunard Street, plus a PID [premises identification number- a unique number assigned to a premises in Nova Scotia] with no associated civic address (41068990). This covenant was noted to be similar to the above covenant, except that there appeared to be no expiry date.⁵⁸
- **The “Specific Limitations” covenants:** Almost all of the Loblaws covenants and some of the Sobeys covenants imposed specific limits on what other types of stores or products in some cases, could be carried on the property. These seemed to apply more in the context of grocery stores that are located in a plaza or shopping centre, and rather than serve outright bans, their intended effect appeared to be to limit competition in a different manner.⁵⁹
- **The “Radius” Covenants:** The two Loblaws covenants found specifically banned grocery stores within a specific radius of their location.⁶⁰

⁵⁵ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p11. (See Methodology)

⁵⁶ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p12-13. (See Findings).

⁵⁷ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p13.

⁵⁸ *Ibid.*

⁵⁹ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p14.

⁶⁰ *Ibid.*

The 2019 research in its analysis noted that the “20 years from closing,” and the “Gottingen Street” covenants are arguably the most concerning in terms of their potential long-term impact in a neighbourhood, particularly after a grocery store has left that neighborhood.⁶¹ The specific limitation covenants were said to be the least concerning as these were mostly within shopping centres or plazas and seemed to facilitate competition within those locations, while radius covenants’ effects would depend on details, such as the owner of the building and what other properties they own within that radius to review the potential impact.⁶² The paper also noted in relation to Gottingen Street area covenants that more research is needed to determine what contribution these covenants are making to reduced access to food.⁶³

PIAC agrees that the “20 years from closing” covenants and the “Gottingen Street” type covenants with the latter having no expiry date can significantly undermine residents’ access to food and leave them with no easily or even reasonably accessible options to purchase food after the grocery store closes in the affected neighbourhood. This can be the case for 20 years or even longer, depending on the type of covenant. This can be particularly worse for rural and remote areas as well as lower-income communities where there are already less grocery store options for residents. Such limitations can also affect competitors and local grocery stores from doing business, with neighbourhoods often left with vacant spaces.

As for the specific limitation covenants and the radius covenants, PIAC notes that these can be concerning as well, and we would advise caution in taking a more lenient view of these covenants. This is because specific limitation covenants may have a narrower scope of limitations, but they could still distort competition with their negative impact depending on the specific wording of the covenant, and their duration. If for instance, one specific limitation covenant prevents fresh produce from being sold in that plaza or shopping centre, consumers might only have few stores in the plaza to get fresh produce from and/or just one store to rely on. The radius covenants also call for closer scrutiny because again the precise wording of this covenant matters as well as factors such as who has placed this covenant and who owns the surrounding properties, with this overall picture indicating the kind of limits that could be put in place. Moreover, the local market, land availability, and again the location of this covenant in rural, remote or lower-income urban area(s), also need to be considered.

Overall, this 2019 empirical study from Jenna Khoury is effective and particularly useful in terms of presenting empirical evidence regarding the existence of these covenants in the grocery sector, their different types and indicating their consumer impact. That said, it is important to note that this research’s review is specific to selected locations in Halifax. It

⁶¹ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p15.

⁶² *Ibid.*

⁶³ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia- Where they are and how to remove them,” (April 20, 2019) at p16.

should not be viewed as a generalized review of all different types of anti-competitive restrictive covenants in the grocery sector in Nova Scotia and other provinces and territories across Canada.

There is no national resource or database that provides a detailed overview of the different types of covenants and even exclusivity clauses applied in the grocery sector. This is a considerable gap, which prevents us from acquiring a complete overview of the scope and types of anti-competitive restrictive covenants that have applied and continue to apply in the grocery sector across Canada.

Competition Bureau's Findings and Limitations

The 2023 study by the Competition Bureau found that property controls reduce consumer choice, can be very broad as the Bureau heard that they could exclude businesses even if they do not compete directly with a grocery store, like bakeries and other specialty food stores, and noted that the biggest effect is on Canadians who have the fewest options.⁶⁴

24% of Canadians said that there are only one or two grocery stores within 15 minutes of their home. For those who walk, the proportion is 39%. We also heard that lower-income Canadians (earning less than \$40,000 a year) are more likely than others to have fewer stores in proximity to their home. For these Canadians, if a local grocery store is closed and property controls prevent new ones from opening in their community, it may leave them without easy access to a supermarket. This is not a theoretical problem—examples of “food deserts” have been documented across Canada.⁶⁵ [Emphasis added]

These findings from the Bureau are corroborated with their more recent and ongoing investigations. Below is a snapshot of these investigations, which have either resulted in the Bureau requiring the specific grocery chain to remove the anti-competitive property restrictions and/or voluntary commitments to eliminate these restrictions.

- In June 2024, the Competition Bureau issued news that its investigating Empire Company Limited's and George Weston Limited's use of property controls. Empire is the parent company of Sobeys Inc. and George Weston is the parent company of Loblaw Companies Limited.⁶⁶ The Bureau obtained court orders from the Federal court to require the companies to produce relevant records and information to conduct this investigation.⁶⁷ These investigations reviewed the use of anti-competitive restrictions in Halifax and whether these restrictions impact competition in the retail sale of food products.⁶⁸

⁶⁴ Competition Bureau Canada, “Canada Needs More Grocery Competition,” Competition Bureau Retail Grocery Market Study Report, (27 June 2023).

⁶⁵ *Ibid.*

⁶⁶ Competition Bureau Canada, “Competition Bureau advances investigations into Sobeys and Loblaw's use of property controls,” (11 June 2024), online: <<https://www.canada.ca/en/competition-bureau/news/2024/06/competition-bureau-advances-investigations-into-sobeys-and-loblaws-use-of-property-controls.html>>.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

- In January 2025, the Competition Bureau issued brief details regarding its investigation of Empire Company Limited's use of property controls in the Crowsnest Pass region, Alberta.⁶⁹ The Bureau became aware of a restriction imposed by Empire in Crowsnest Pass since 2017 that protected it from competition and ensured that Empire would continue to be the only grocery store in the area. After this investigation, Empire agreed to remove the property control in this region.⁷⁰
- In June 2025, the Bureau announced that it is monitoring Loblaw's recent commitment towards eliminating property controls in Canada.⁷¹ Loblaw has publicly committed to end its use of property controls with the details of these commitments being as follows:⁷²

For restrictive covenants, Loblaw has committed to:

- eliminating existing restrictive covenants. Loblaw plans to either remove the restrictive covenant from land titles or inform landowners that it will not enforce the restrictive covenant; and
- not entering into new restrictive covenants.

For exclusivity clauses, Loblaw has committed to:

- waiving all exclusivity clauses in the Halifax Regional Municipality and in communities across the country where they operate the only grocery store;
- granting waivers for, and not entering into, exclusivity clauses that prohibit other tenants from operating a retail store that sells only a subset of the products typically sold by a grocery store. For example, a butcher, bakery, or store that sells produce;
- not enforcing, or entering into, exclusivity clauses that extend beyond the land where the Loblaw store is or will be located;
- not including restrictions on the sale of food products in new leases for Shoppers Drug Mart (Pharmaprix in Quebec), effective November 2024.⁷³

The above scrutiny from the Bureau is an important step in the right direction. However, these investigations have been limited in scope, and the outcomes in the form of voluntary commitments from Loblaw, even if relatively broad than the individual investigations, rely on mere voluntary assurances. We look at the gaps related to these investigations below, and what role the Bureau could play in addressing this consumer issue.

⁶⁹ Competition Bureau Canada, "Competition Bureau takes action to protect competition in the grocery industry in an Alberta community," (16 January 2026), online: <<https://www.canada.ca/en/competition-bureau/news/2025/01/competition-bureau-takes-action-to-protect-competition-in-the-grocery-industry-in-an-alberta-community.html>>.

⁷⁰ *Ibid.*

⁷¹ Competition Bureau Canada, "Competition Bureau monitors Loblaw's commitment to end property controls," (12 June 2025).

⁷² Competition Bureau Canada, Backgrounder: Competition Bureau monitors Loblaw's commitment to end property controls, (12 June 2025).

⁷³ *Ibid.*

Competition Bureau's Consultation on Competitor Property Controls

In October 2024, the Bureau did a consultation on Competitor property controls and the *Competition Act* that invited market participants to provide comments on the use of property controls in the Canadian grocery sector.⁷⁴ The Bureau sought to examine whether these controls imposed by grocery retailers are harming competition.⁷⁵ Some individuals also filed written responses to this consultation as noted below.⁷⁶

Few individuals asked for monopolies to be broken down for true competition,⁷⁷ several individuals stated that harsher consequences should be there for large corporations and that fines are ineffective,⁷⁸ while one individual (a restaurant owner) complained about so many different restaurants being available in the same food court, meanwhile there is only one grocery store every 10 square kilometers.⁷⁹ Another individual commented on the creation of food deserts in Canada, while specifically referring to the operation of restrictive covenants by Safeway and Sobeys's in the Edmonton area.⁸⁰ These comments illustrate consumers' frustration with the ongoing property restrictions.

The use of restrictive covenants on food store locations is and has created food deserts in Canada. For years Safeway and Sobeys's have used restrictive covenants on their stores in the Edmonton area, which has blocked food sales on sites where the Safeway or Sobeys's has closed down. The resulting vacant store cannot be re-used or redeveloped with a food retailer, which has placed a number of inner city neighbourhoods in a situation where a vacant retail plaza cannot provide food for the neighbourhood. This perpetuates the need for residents to travel long distances to purchase food, perpetuates urban sprawl and the decline of inner city neighbourhoods, and exposes residents to poor nutrition or forces people into long commutes in deeply cold or hot temperatures. This exposes people to safety, expense, and health problems and makes our cities and communities unhealthy.⁸¹

The Bureau noted during one of our discussions that through their consultation on competitor property controls guidance, Canadians were invited to inform the Bureau of

⁷⁴ Competition Bureau News release, "Competition Bureau seeks information from market participants on property controls to advance investigations," (21 October 2024), online: <<https://www.canada.ca/en/competition-bureau/news/2024/10/competition-bureau-seeks-information-from-market-participants-on-property-controls-to-advance-investigations.html>>.

⁷⁵ Competition Bureau, "Call-out for information about property controls in the Canadian grocery industry," (October 21, 2024), online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/call-out-information-about-property-controls-canadian-grocery-industry>>.

⁷⁶ Written responses from individuals to the consultation on the Competitor property controls and the Competition Act, online: <<https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/written-responses-individuals-consultation-competitor-property-controls-and-competition-act>>.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Written responses from individuals to the consultation on the Competitor property controls and the Competition Act, individual written response from Christie, restaurant owner.

⁸⁰ Written responses from individuals to the consultation on the Competitor property controls and the Competition Act, individual written response from Colton Kirsop.

⁸¹ *Ibid.*

property controls causing issues. The Bureau said that receiving complaints was also a useful avenue for them to be better informed about these issues. Considering that a significant amount of work done by the Bureau is confidential, we cannot say whether or not they have received any individual complaints on this specific issue.

PIAC notes that even though some consumer feedback was received in response to this consultation, more consumer outreach should be considered. This can be instrumental in not only raising consumer awareness but also result in more informed policymaking. If the Competition Bureau is limited in its capacity to do so because of its mandate and/or resources, then other federal organizations, such as ISED, should collaborate to ensure more consumer feedback is collected. These issues directly affect consumers, yet they are often not involved or only marginally involved in these matters.

d. Creation of Food Deserts and Challenges in accessing Healthy Food Options

A serious concern arising from the use of these anti-competitive property restrictions in the grocery sector is the creation of food deserts and limiting access to healthy food, including fresh produce. Food deserts is not a novel concept, there have been studies as well as discussions surrounding food deserts in Canada.⁸² However, the discussion of this term in Canada in the context of anti-competitive property restrictions in the grocery sector has been limited. We look at some existing literature and evidence below as well as the increased risks of creating food deserts due to restrictive covenants in particular.

⁸² See: Joyce Slater, Stefan Epp-Koop, Megan Jakilazek and Chris Green, "Food deserts in Winnipeg, Canada: a novel method for measuring a complex and contested construct," Vol 37, No 10, *Health Promotion and Chronic Disease Prevention in Canada Research, Policy and Practice*, (October 2017), online: <<https://doi.org/10.24095/hpcdp.37.10.05>>. Also, see: Patrycia Menka, Dana Olstad, Adrian Buttazzoni, and Leia Minaker, "Food deserts, food mirages, and gentrification in Toronto, Canada," *Health & Place* 94 (2025) 103490.

Understanding Food Deserts

There appears to be different definitions of food deserts and/or how and where they exist. Canada's Open Government portal defines food deserts as offering poor access to food stores.⁸³

The food desert is a sector offering poor access to food stores (grocery stores, supermarkets and public markets), i.e. a distribution area (AD) in which residences are located on average more than 1 kilometer from a food store in urban areas and more than 16 kilometers in rural areas, and characterized by very high material deprivation (quintile 5).

Accessibility to food stores is a quantitative measure used to assess the geographic ease of access with which individuals or populations can access food stores (grocery stores, supermarkets, and public markets) from where they live.⁸⁴

One 2014 study reviewed food deserts in Winnipeg, Canada.⁸⁵ It defined food deserts as “[r]esidential geographic spaces, typically in urban settings, where low-income residents have limited or no access to retail food establishments with sufficient variety at affordable cost.”⁸⁶ This study noted that even though food deserts is a contested concept, it was useful for discussions to address food insecurity and inequity issues.⁸⁷ This study found that food deserts affect a significant proportion of the population in Winnipeg, and while it was concentrated in the urban core, these existed in suburban neighbourhoods also.⁸⁸

Another study from Hannah Genosko, “Food Deserts in urban Halifax/Dartmouth,” which won the Canadian Cartographic Association’s 2023 award cited the food deserts definition provided by the Canadian Environmental Health Atlas as “urban neighborhoods where residents have little or no access to stores that provide fresh, healthy and affordable foods.”⁸⁹ The study noted that the alternatives in this case are usually convenience stores, fast food outlets, or other less healthy and affordable options, while noting that these deserts likely impact low-income communities and contribute to residents’ poor health outcomes.⁹⁰ The walking distance to access grocery stores for selected urban and rural areas were covered in two maps and categorized into good access, neutral and

⁸³ Open Government [Portal], “Indices of food desert and accessibility to food shops,” online: <<https://open.canada.ca/data/en/dataset/c69d8357-061a-4122-b8b9-51bcbc786aa7>>.

⁸⁴ *Ibid.*

⁸⁵ Joyce Slater, Stefan Epp-Koop, Megan Jakilazek and Chris Green, “Food deserts in Winnipeg, Canada: a novel method for measuring a complex and contested construct,” Vol 37, No 10, Health Promotion and Chronic Disease Prevention in Canada Research, Policy and Practice, (October 2017).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Hannah Genosko “Food Deserts in urban Halifax / Dartmouth,” Canadian Cartographic Association (2023), online: <<https://cca-acc.org/2023-cca-presidents-prize-winner-food-deserts-in-urban-halifax-dartmouth.html>>.

⁹⁰ *Ibid.*

concerning inaccessible.⁹¹ The study also noted that more research is required to have a complete and accurate map in relation to food deserts in rural Nova Scotia.⁹²

The above studies at least clearly indicate that the issue of food deserts exist in Canada and measurements in relation to walking distance from grocery stores can indicate challenges faced by particularly low-income consumers and some rural areas in accessing food, including healthy food. However, these studies are limited to just a few areas across Canada.

At a broader level, considerable reference to food deserts in Canada has related to access to healthy food. That said, our research indicated that there are variations in how food deserts are defined in Canada. PIAC also noted that different terminologies are used to discuss issues related to food access and insecurity.⁹³

We also considered how food deserts are defined in the US, and it seems that there are different ways in which food deserts are defined or access to food is measured.⁹⁴ There are also concerns that the definition of food deserts as defined by the US Department of Agriculture (USDA) is too narrow with the focus on proximity to food providers, rather than factors, such as racism, cost of living, and several other factors.⁹⁵

We asked Christopher R. Leslie on how to define food deserts during the stakeholder interview. Professor Leslie referred to these as neighbourhoods where residents do not have access to healthy, affordable food. This is also covered in detail in his paper, Food Deserts, Racism, and Antitrust Law in the California Law Review.⁹⁶ Professor Leslie noted in this paper that food deserts are not natural or inevitable, rather many of them arise due to deliberate decisions made by supermarkets to maximize profits.⁹⁷

Millions of Americans live in food deserts, a term that describes urban neighborhoods and rural regions where residents do not have access to healthy, affordable food. Food deserts are neither natural nor inevitable. Many food deserts result from the deliberate choices of supermarkets to maximize their profits by shifting resources to suburban consumers while

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Also see: Oliver Leblanc-Laurendeau, "Food Insecurity in Northern Canada: An Overview," Library of Parliament, (28 November 2025), Publication No.2020-47-E, online: <<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2020-47-E.pdf>>.

⁹⁴ Michele Ver Ploeg, David Nulph and Ryan Williams, "Mapping Food Deserts in the United States," Economic Research Service, U.S. Department of Agriculture (USDA), Amber Wales, (1 December 2011), online: <<https://www.ers.usda.gov/amber-waves/2011/december/data-feature-mapping-food-deserts-in-the-u-s>>.

⁹⁵ Food Empowerment Project, "Food Deserts," online: <<https://foodispower.org/access-health/food-deserts/>>.

⁹⁶ Christopher R. Leslie, "Food Deserts, Racism, and Antitrust Law," (2022) 110:6 Cal L Rev 1717 at p 1717. Also see, online: <https://www.californialawreview.org/print/food-deserts-racism-and-antitrust-law>>

⁹⁷ Christopher R. Leslie, "Food Deserts, Racism, and Antitrust Law," (2022) 110:6 Cal L Rev 1717 at p 1717.

affirmatively blocking other grocery stores from operating in food deserts. [...] ⁹⁸ [Emphasis added]

A detailed review of these concepts and the differences in terminologies is outside the scope of this research. That said, PIAC notes that there needs to be a wider discussion on terminologies related to access to food and common standards across Canada should be considered to better identify issues on food accessibility and security. This should factor in any nuances applicable to different regions of Canada, including the rural and remote areas that already have less grocery stores than urban areas. For instance, Feed Nova Scotia notes that in rural Nova Scotia, many residents face barriers to basic food access because of limited local stores, lack of public transit and necessary infrastructure to support food production.⁹⁹ Likewise, the Competition Bureau in its 2023 Report considered grocery store proximity in relation to lower-income communities and rural areas, and said:

In terms of **grocery store proximity**, lower-income Canadians (earning less than \$40,000 a year) and those living in rural areas said that they are more likely to have fewer than three grocery stores within 15 minutes of their home.¹⁰⁰

Risk of creating food deserts due to Restrictive Covenants

There is limited research that directly connects these anti-competitive property controls to food deserts in Canada. Ziff and Jiang's (2012) article noted that restrictive covenants raise concerns regarding the creation of "food deserts," in various cities- these are areas in a city within which access to healthy foods is limited.¹⁰¹ This problem was noted to be particularly acute in low-income areas with the presence of a covenant preventing an otherwise ideal site from being used as a grocery store that can contribute to the emergence or continuation of a food desert.¹⁰²

Craig Patterson, in response to our stakeholder questions, also noted the negative impact of exclusivity clauses on the market, which is particularly problematic in communities with limited grocery options.

⁹⁸ *Ibid.*

⁹⁹ Feed Nova Scotia, Advocacy Worksheets, online: <<https://feednovascotia.ca/wp-content/uploads/2025/12/Advocacy-Worksheets.pdf>>.

¹⁰⁰ Competition Bureau Canada, "Canada Needs More Grocery Competition," Competition Bureau Retail Grocery Market Study Report, (27 June 2023).

¹⁰¹ Bruce Ziff and Ken Jiang, "Scorched Earth: The Use of Restrictive Covenants to Stifle Competition," (2012) at p.81.

¹⁰² *Ibid.*

From a real estate perspective, exclusive-use clauses have historically been justified as a way to protect anchor tenants that invest heavily in buildout and traffic generation. However, when such controls extend beyond reasonable commercial protection and effectively block alternative food retail formats, they may distort market dynamics. This is especially problematic in communities with limited grocery options, where consumers have few alternatives within a practical travel radius – Craig Patterson, Founder and Publisher, Retail Insider Media Inc.

Several media coverage noted above mentions food deserts. Any limitation to accessing healthy and affordable food is a serious issue, which requires careful analysis, including a review of all the underlying factors, including anti-competitive property restrictions that affect such access. Restrictive covenants by their very nature prevent new grocery stores from being opened and can present challenges in accessing food, particularly healthy food. Meanwhile, exclusivity clauses can also place limitations, including where fresh produce and healthy food might be available.

Existing Data, Limitations and Next Steps

The present resources and findings on food deserts in Canada are limited to some regions. They do not present a comprehensive picture of how access to food for different consumers in different regions of Canada is affected and precisely how and where are restrictive covenants creating food deserts. This is something that must be reviewed and ideally done in collaboration with ISED and all provincial and territorial governments.

During our research, we came across data on identification of food deserts, available on the website of National Institute of Public Health of Quebec.¹⁰³ This includes a mapping tool that allows for identification of areas with limited access to places that offer nutritious food as well as food deserts across Quebec.¹⁰⁴ This provides a useful model to consider for other places across Canada.

Health Implications and Consumption Habits

PIAC also explored the effect of restrictive covenants on consumers' consumption habits (especially nutrition). The resources we came across focused on how limited access to healthy food can influence consumers' dietary habits, including how restrictive covenants contribute to limiting this access.

The Alberta Policy Coalition for Cancer Prevention in its paper from 2015 stated that supermarkets are a key source of healthy food for consumers in Alberta.¹⁰⁵ Unfortunately,

¹⁰³ See online: <<https://www.inspq.qc.ca/en/toolbox-co-op/Identifying-deserts>>.

¹⁰⁴ *Ibid.*

¹⁰⁵ Alberta Policy Coalition for Cancer Prevention, *Combating Restrictive Covenants: Breaking Down Neighbourhood Barriers to Accessing Healthy Food* (December 2015), online:

the lack of access to these supermarkets was noted to be a barrier to healthy consumption of food and preventing obesity, some cancers and other chronic diseases.¹⁰⁶

Notably, this 2015 study observed that the presence of restrictive covenants could undermine access to healthy foods and highlighted the challenges for new retailers to establish stores in mature neighbourhoods that are already built.¹⁰⁷ It also found that reduced access to nearby healthy food may have an impact on the diet of local residents, particularly seniors and low-income consumers, and also that far distance from essential facilities was linked to promoting unhealthy diets.¹⁰⁸

Presence of restricted covenants in certain areas has the potential to diminish local access to healthy foods. As mature neighbourhoods are already fully built up, it is challenging for new retailers to find an alternate site for a supermarket, or even a medium-sized grocery store. Six of the eighteen covenanted former supermarket sites in the 2010 Edmonton study were considered to have a potentially serious impact on neighbourhoods with no other operating supermarket within walking distance of the former sites. The study also found that reduced access to nearby healthy food may impact the diet of local residents, particularly vulnerable groups such as seniors, as well as individuals with low-incomes and lack of access to affordable transportation. Further research has found that inadequate access to nutritious foods due to far distance from important amenities is linked to promoting diets that lack appropriate nutritional quality for healthy functioning. Yet, only preliminary action has been taken to regulate supermarket restrictive covenants in Alberta.¹⁰⁹ [Emphasis added, footnotes within the quote omitted]

Professor Leslie also discussed how food deserts lead to unhealthy dietary choices in one of his articles, where he said that: “Unable to access healthy, affordable food, residents of food deserts consume unhealthy fast food because it is cheap and accessible. Unhealthy food temporarily relieves hunger but at a high cost to long-term well-being. Life in a food desert is tough, often grim.”¹¹⁰

The findings from these cited articles are significant from a consumer perspective as they indicate that the application of anti-competitive property restrictions can not only result in inconvenience and reduced access to grocery stores and healthy food but also shape consumer behaviors and increase reliance on convenient and often less nutritious food options. This may not necessarily be the case for all residents, particularly those who can manage and afford to travel and purchase food from grocery stores available at a distance. However, for low-income and other vulnerable consumers, traveling such distances is unlikely to be an easy and/or affordable option.

<https://www.abpolicycoalitionforprevention.ca/wp-content/uploads/2016/08/final-apccp-issuebrief-restrictivecovenants_dec15-2.pdf>.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Christopher R. Leslie, “Food Deserts, Racism, and Antitrust Law,” (2022) 110:6 Cal L Rev 1717 at p 1719

A 2024 *CBC* news story that covered these anti-competitive property restrictions in the grocery sector in the Halifax area indicated similar consumer experiences as those discussed above:

Rodney Small, who spent his youth in the Gottingen Street area and is now the executive director of One North End, a community economic development organization, said the negative effects of losing the neighbourhood's large grocer are still being felt decades later, especially in the Black community.

"When we talk about the processed foods and the foods that aren't so great for us, they were readily available through the corner stores, and then we had, you know, a lot of the restaurants there that were serving the greasy foods," said Small. "So these eating habits, they passed down from one generation to the other, so we watch what our parents eat and we pick up on that."

Had the covenants not been in place when Sobeys left the area, Small said he believes Gottingen could be a very different place, and perhaps would not have been gentrified.¹¹¹ [Emphasis added]

The story also shared experiences of two consumers, Anne McDonald and Shana Colley, both longtime residents of the community who pointed to the lack of affordable nutritious food in the community, and the inconvenience of taking transit to access affordable healthy food, respectively.¹¹²

Several stakeholders we contacted also noted challenges in accessing food, and their impact on consumers' consumption habits. Keldon Bester from CAMP said that "restrictive covenants mean consumers must travel farther to access choice when shopping for groceries. This creates a hurdle that makes it more likely that consumers are willing to accept suboptimal price or product varieties."

While, Jim Stanford, Economist and Director, Centre for Future Work in his response reflected on this issue in relation to higher food prices and said that "whatever their cause, definitely impact both the quantity and the composition of food purchases, and lower-income Canadians will experience that pressure the most severely."

An academic study, *Elderly Perception of Distance to the Grocery Store as a Reason for Feeling Food Insecurity—Can Food Policy Limit This?* (2020)¹¹³ revealed results consistent with our above analysis. It involved a quantitative survey with a group of 763 Polish elderly people to review the relationship between the perception of food insecurity and their perception of the distance between where they live and the place of food

¹¹¹ Feleshia Chandler, Cassidy Chisholm, "Decades-old clause keeping grocers out of Halifax neighbourhood hurts community, say residents," *CBC Nova Scotia* (27 July 2024).

¹¹² *Ibid.*

¹¹³ Robert Gajda, and Marzena Jezewska-Zychowicz, *Elderly Perception of Distance to the Grocery Store as a Reason for Feeling Food Insecurity—Can Food Policy Limit This?* (2020) *Nutrients* 12, 3191. [Published 19 October 2020].

purchase.¹¹⁴ It found that more distance between these two places led to lack of a sense of food security as well as restricted consumption of some healthy food.¹¹⁵

Too large a distance from the place of residence to the place where food was purchased was the cause of a lack of a sense of food security in the studied group of elderly people, especially in the groups of men, people aged 75 and more, those living in a rural environment and those living alone. People informing about a lack of food due to living too far from the place of purchase had socio-demographic characteristics similar to people declaring a lack of a sense of food security. Restricted food consumption due to distance to the place of sale, including of fish, some fruit and vegetables, and beef, may contribute to deterioration of the diet and, as a result, the health of older people.

Including distance to food sales points in food policy as a factor contributing to the food security of older people can help to ensure a better quality of life. The self-purchase of food helps to meet physiological needs but also to maintain contact with the community and avoid exclusion. In a situation of limited independence, food insecurity in elders due to causes other than financial limitations should be a focus of food policy.¹¹⁶ [Emphasis added]

The 2020 polish-based quantitative study even if it is based in another jurisdiction, it suggests similar to the above articles that close proximity to food stores, including access to healthy food options can influence consumers' behavior. It particularly indicated that proximity to food stores also affected elderly consumers' sense of food security besides their actual consumption habits. This also suggests that when any limits are placed on access to food, the underlying implications of this can be more than just access and consumption habits, it can also undermine some consumers' sense of food security. PIAC has only reviewed this issue briefly in the context of seniors, and notes that further research on this specific issue will likely provide more insight.

Overall, the above clearly indicates that restrictive covenants can affect consumers' consumption habits (especially nutrition) by potentially influencing consumers' behaviours based on food options that are easily available and/or are affordable. This effect was also found to disproportionately impact low-income and other vulnerable consumers, such as seniors in the affected communities.

e. Implications of these Anti-competitive Restrictions on Food Prices

Some comments in the media reports suggest that removing restrictive covenants by itself cannot bring down the high food prices.¹¹⁷ PIAC recognizes that there might be several factors contributing to high grocery bills in Canada. This research is only concerned with the role restrictive covenants and possibly exclusivity clauses play in leading to reduced competition and higher food prices.

¹¹⁴ *Ibid*

¹¹⁵ *Ibid*. See Conclusion.

¹¹⁶ *Ibid*. See Conclusion.

¹¹⁷ Ian Froese, "Manitoba asks Sobeys to scrap property restrictions near its stores or it'll go to municipal board," *CBC News Manitoba*, (12 March 2026).

We did not come across significant evidence that directly linked anti-competitive property restrictions with higher food prices. However, we found some anecdotal references in the media as well as stakeholder comments that suggested a connection between limited competition and high grocery prices, with property controls making these price increases more likely. Keldon Bester from CAMP said that even if inflation is driven by external factors, the level of competition determines how the cost increases resulting from inflation are shared across the supply chain, consumers and retailers. Keldon further noted that Canadian grocers have been able to maintain steady margins while passing the costs onto consumers with property controls making such price increases more likely.

Similarly, Jim Stanford in response to our stakeholder questionnaire said that restrictive covenants “incrementally strengthen pricing power by limiting competitive constraints on retailers who are protected by property controls in specific local areas.”

It is important to note that high prices of groceries can also affect consumers’ consumption habits. These issues have to be considered together to have a holistic understanding of different issues affecting consumers’ health and consumption habits. For instance, Option Consommateurs in their stakeholder response said that in their 2024 *Baromètre*, respondents shared they were changing their habits due to rising prices with 23% of respondents stating that they were prioritizing the cost of food, regardless of nutritional value with this number higher in lower-income households.¹¹⁸

In our 2024 *Baromètre*, respondents shared they were changing their habits due to rising prices. 23% of respondents said they were prioritizing the cost of food, regardless of nutritional value.

In lower income households ($\leq 39k$), this proportion was 30%, whereas in higher income households ($\geq 100k$), it was 21% [...] – Option Consommateurs

We also note that Manitoba recently announced its pricing study, which is meant to identify new ways to reduce costs and improve affordability for residents in Manitoba.¹¹⁹ The study will review different issues related to increased grocery prices, including “outdated antitrust and anti-competition policies, such as restrictive covenants, that inhibit market entry, suppress competition and contribute to higher prices.”¹²⁰

¹¹⁸ See online: <<https://s3.ca-central-1.amazonaws.com/option-consommateurs-assets/production/Revendications/rapport-option-consommateurs-an-3-16356-003-final-1-avec-compression.pdf>>.

¹¹⁹ Manitoba Grocery Price Study: Mandate and Analytical Framework, online: <https://news.gov.mb.ca/asset_library/en/newslinks/2026/BG-Grocery_Price_Study-PR_FIN.pdf>.

¹²⁰ *Ibid.* (See: 2. Problem Definition: Rising Grocery Prices and Market Dynamics)

It is early to state as to what this study will reveal. However, it might indicate how these anti-competitive restrictions are contributing to higher food prices in Manitoba and also suggest some trends and issues that could be relevant for other parts of Canada. One of the expected deliverable of this study is to conduct a comprehensive, data-driven analysis of grocery pricing in Manitoba.¹²¹ PIAC suggests that such data should be published with subsets for food prices in regions that are subject to restrictive covenants, and not just for Manitoba but all parts of Canada to have more clarity regarding the impact of these restrictions on grocery prices and affordability.

f. Access to Information Challenges

An important aspect to consider is who has placed these restrictions in the grocery sector in the first place, and how to find and track them. Ziff and Jiang (2012) noted that there is no easily accessible record of restrictive covenants.

There is no easily accessible record for restrictive covenants. Although a restrictive covenant must normally be recorded on title to be binding against a new owner of land, there is no cadastre denoting where any of these are situated. Instead, the presence or not of a covenant can be discovered only by searching individual titles, one-by-one.¹²² [Emphasis added]

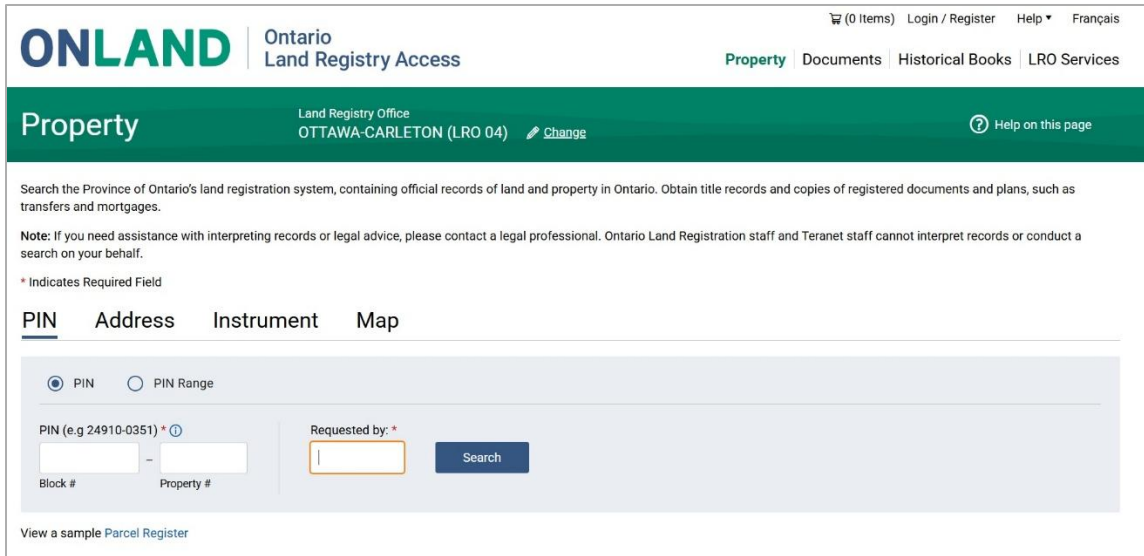
PIAC's research found that the situation is not much different now than it was more than a decade ago. There is no comprehensive resource available nationally in Canada and/or provincially that provides a complete picture of these restrictions. Many stakeholders we spoke to also noted this gap. Even if it were available later, it should be questioned whether and how such a resource could be made easy to use, particularly by an average consumer who has limited knowledge of this issue.

These restrictions are legal limitations that are set out in land titles, leases and/or private contracts, depending on the nature of this restriction. The restrictive covenants can be primarily found through land title searches of properties. The process and fees for doing title searches varies from one province or territory to another. For instance, in Ontario, this information can be accessed through OnLand (Ontario Land Registry Access).¹²³ The process can be started by entering the relevant Land Registry Office (LRO) (see figure 1).

¹²¹ *Ibid.* (See: 4. Study Expected Deliverables)

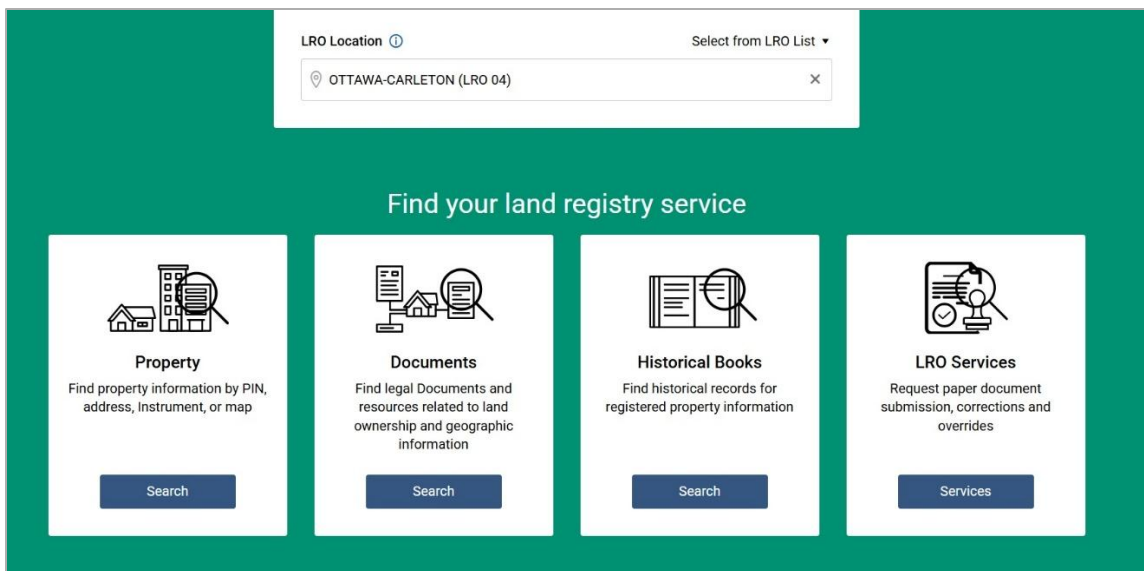
¹²² Bruce Ziff and Ken Jiang, "Scorched Earth: The Use of Restrictive Covenants to Stifle Competition," (2012) at p.81.

¹²³ Ontario Land Property Records Portal, online: <<https://www.onland.ca/ui/>>.



Source: Screenshot from the Ontario Land Registry Access Website (Accessed in March 2026)

Four options are available after the relevant LRO is selected- search for property information by PIN, address, instrument or map; legal documents and resources related to land ownership and location; historical records; and LRO services (see figure 2).¹²⁴ Importantly, this process is not free. If one chooses to get property information, there is an option to buy parcel register for around \$38.20 without deleted documents, and \$45.40 with deleted documents.¹²⁵



Source: Screenshot from the Ontario Land Registry Access Website (Accessed in March 2026)

These costs are burdensome for any average consumer, let alone a low-income consumer. Our research also shows that these costs vary from one province to another.

¹²⁴ This is based on the Ontario Land Registry Access website.

¹²⁵ *Ibid.*

Even if these costs might be lower in other places than in Ontario, this is not a simple and straightforward process for consumers to find out about these restrictions, their scope and duration.

E- History of Restrictive Covenants

In this section, we review the legal origins of covenants in the common law, as well as historical uses of restrictive covenants. Next, we review the federal and provincial legal and regulatory framework in relation to restrictive covenants.

a. Legal Origins of covenants in the common law

Present day anti-competitive restrictive covenants have their origins in the use of freehold land covenants developed in the English Courts of Equity over 150 years ago.¹²⁶ These instruments placed restrictions on the set of rights conferred upon owners of real property. Ownership in property law under the common law is often described as a ‘bundle of rights’ constituting an estate or interest in land, rather than full unrestricted ownership.¹²⁷ The property interest that is closest to absolute ownership is the fee simple estate, through which the holder has full rights to the property that include the right to use, develop or alter the land as they choose. A covenant was historically used as a private legal instrument that attached onto fee simple land title as a means of controlling its future use. A restrictive covenant does not represent an interest in land but exists as an independent and removable limitation on an existing property interest. Its effect is to prevent a fee simple landowner from using the land for a stated purpose or set of purposes.

Modern covenant law is typically traced back to the landmark 1848 English case *Tulk v. Moxhay*. This decision affirmed that equitable land covenants could bind subsequent owners who acquired land with notice of their existence.¹²⁸ Importantly, this case only required that future landowners have knowledge of existing covenants for them to be enforceable. The decision establishes the rule, still existing today, that covenants will “run with the land” to bind future purchasers. This allows individual freehold landowners to control the use of land long after their ownership has expired.

In their study on commercial restrictive covenants in Edmonton AB, Bruce Ziff and Ken Jiang outline the legal requirements for a valid common law restrictive covenant. Canadian law requires four structural requirements for a valid restrictive covenant:¹²⁹

- ❖ **Negative in substance:** a restrictive covenant must prohibit an act rather than compel one;
- ❖ **Intent** for the covenant to run with the land;

¹²⁶ Bruce H. Ziff & Ken Jiang, “Scorched Earth” at 80

¹²⁷ Bruce H. Ziff, *Principles of Property Law*, 4th ed (Toronto: Thomson Carswell, 2006) at 70.

¹²⁸ *Tulk v Moxhay* [1848] 41 ER 1143

¹²⁹ Bruce H. Ziff & Ken Jiang, “Scorched Earth” at 84

- ❖ The purchaser must have **notice**: this is typically done through registration on title;
- ❖ There must be an identified **dominant tenement** that is **physically proximate** to the burdened land.

The fourth requirement suggests that a valid covenant must provide some form of benefit to an affected piece of land. In 1914, English law introduced the legal requirement for an identified 'dominant and servient tenement' to establish an enforceable covenant on land.

This requirement in Canadian law states that for a covenant to 'run with the land' and bind future owners, it must "touch and concern" a dominant property that derives benefit. Scholars on the law of covenants have suggested that the requirement for a dominant tenement may exist "as a proxy for the idea that a covenant should only be enforceable when the holder of the benefit has a legitimate interest in seeking enforcement."¹³⁰ The Supreme Court elaborated on this principle in *Galbraith v. Madawaska Club Ltd.* (1961) where the Court clarified the standard for when a covenant would "touch and concern" a dominant tenement. To be valid and enforceable, a covenant must either "affect the land as regards mode of occupation" or it must "be such as per se, and not merely from collateral circumstances, affect the value of the land."¹³¹ The law on covenants therefore must have a measurable impact on a benefitted piece of land, either through impacting *how the land is used or the value of the land.*

An additional critical component of the "touch and concern" requirement is physical proximity. Ziff and Jiang state that a property cannot be "benefited" by a restriction if the two parcels of land are too far apart.¹³² In the context of non-competition covenants, this is often determined by a "competition radius" or "catchment area". If a new business on the servient (burdened) land would draw customers away from the dominant land, the covenant is seen as touching and concerning the dominant land by protecting its commercial advantage. The size of this radius matters when considering whether a restrictive covenant impacts a dominant tenement with sufficient proximity to a servient tenement. The issue of enforceability is relevant when considering potential strategies litigants or regulators may wish to pursue in challenging the validity of existing covenants. This will be discussed below when we propose legal and policy solutions.

b. Historical uses of restrictive covenants

Restrictive covenants have been used as a form of private urban planning and residential development tool to establish a lasting impact of private landowners on the use of land over time. Prior to formal zoning regulations and municipalities, covenants enabled private parties to control the use of land for development purposes within communities. Property law scholar Eran Kaplinsky writes of today's restrictive covenants as private planning tools that offer a durable alternative or complement to public zoning by allowing owners to

¹³⁰ *Ibid* at 85

¹³¹ *Galbraith v. Madawaska Club Ltd.*, 1961 CanLII 16 (SCC), [1961] SCR 639 at p.652

¹³² Bruce H. Ziff & Ken Jiang "Scorched Earth," at 87

bypass collective action problems and secure a "stable set of amenities" over time.¹³³ In this way, restrictive covenants are seen as a manifestation of private interests in land that have a lasting impact on future use.

It is important to consider that restrictive covenants themselves are not inherently against the interests of everyday Canadians. As manifestations of private power, they can also be used to resist controversial public planning initiatives. Kaplinsky gives the example of private environmental conservation initiatives that rely on covenants to protect land from urban or suburban development. He writes that covenants are "relied on for conservation of farmlands, woodlands, wetlands, and protection of ecosystems where governments fall short," and that they represent "untapped potential to protect the urban forest and even the supply of affordable housing."¹³⁴ This report is focused on those restrictive covenants in the grocery sector that limit competition to the detriment of Canadian consumers. We expand below on the need for legislation and regulation to be targeted to harmful covenants and avoid regulating those that may be beneficial.

Ziff and Jiang's analysis emphasizes that restrictive covenants can also be a form of "dead hand control" that can freeze the character of a neighbourhood over time. They cite an example in central Edmonton AB in which a century-old use of restrictive covenants to maintain single family dwellings on numerous parcels of land is still in force today.¹³⁵ Restrictive covenants have had a darker history through their use as a form of overt racial or religious discrimination. Covenants were formerly used as a mechanism of social exclusion to bar racial or religious minorities from owning or using parcels of land, a practice that has been outlawed since the 1951 landmark Supreme Court of Canada decision in *Noble v. Alley*.¹³⁶ Despite these covenants being void today, contemporary scholarship cites the ongoing legacy of racial covenants and their lasting socioeconomic impact on urban neighbourhoods.¹³⁷

¹³³ Eran Kaplinsky, "Strawberry Fields Forever? Some Observations About Restrictive Covenants and Zoning," *Alberta Law Review* 61, no. 1 (2023): 101–110, at 103.

¹³⁴ *Ibid*, at 109.

¹³⁵ *Ibid*, at p. 80.

¹³⁶ Bruce H. Ziff & Ken Jiang "Scorched Earth," at 87

¹³⁷ See Kaplinsky, "Strawberry Fields Forever" at 104; Christopher R. Leslie, "Food Deserts, Racism, and Antitrust Law," (2022) 110:6 *California Law Review* 1717.

F- Current Canadian Legal Frameworks

a. Jurisdictional Concerns

Federal regulation of competitor property controls in Canada poses unique jurisdictional challenges that may require multiple concurrent approaches to effectively target this issue. Restrictive covenants and exclusivity clauses are components of private agreements, as they are found in leases and deeds of sale between two contracting parties. The jurisdiction to regulate both forms of competitor property controls in Canada primarily come under provinces pursuant to ss. 92(13) of the *Constitution Act, 1867* pertaining to “Property and Civil Rights in the Province.” The provinces might therefore appear to be better suited to pass legislation to address the use of anti-competitive property controls. However, there are some underlying challenges that need to be considered as discussed below.

The federal government, through the mandate and powers of the Competition Bureau has authority to at least review and investigate these anti-competitive property controls under the competition and enforcement lens. Issues affecting competition can be brought by a litigant at the Competition Tribunal, resulting in binding orders on private parties.

Another concern is Canada’s bi-jurisdictional nature as a country with both common law and civil law provinces. The Quebec civil law treatment of this issue is different from common law provinces. This distinction is also discussed below.

b. Current Competition Law Approach

Efforts at the federal level to address the harmful effects of restrictive covenants in the grocery sector stem from a competition law framework. Recent legislative changes afford new possibilities to challenge restrictive covenants as anti-competitive firm behaviour at the federal Competition Tribunal. At the time of writing, investigations on anti-competitive property controls are ongoing against major Canadian grocery retailers.

The Competition Bureau can investigate businesses that they suspect are engaging in anti-competitive behaviour in violation of relevant legislation. Importantly, the Competition Bureau is not a decision-maker and cannot make final rulings or impose penalties on its own. If the Bureau suspects anti-competitive behaviour, it conducts an independent and confidential investigation, pursues court orders for evidence disclosure if necessary, and brings cases before the Competition Tribunal or courts to allege specific legal breaches.¹³⁸

¹³⁸ Competition Bureau Canada, “About the Competition Bureau,” Government of Canada, accessed March 18, 2026, <<https://competition-bureau.canada.ca/en/about-competition-bureau>>.

c. Changes to the Competition Act with Bill C-56

Recent legislative changes have broadened the enforcement approaches available to the Competition Bureau in their efforts to target anti-competitive property controls. Following their 2023 Retail Grocery Market Study and their October 2024 consultation (*Call-out for information about property controls in the Canadian grocery industry*), the Bureau formally noted the use of competitor property controls as a problem with potentially serious competition concerns.¹³⁹

In a recent online publication, the Bureau cited changes to specific provisions of the federal *Competition Act* as relevant to their enforcement approach in targeting competitor property controls.¹⁴⁰ Parliament enacted Bill C-56, the *Affordable Housing and Groceries Act* in December 2023 to address competition concerns in concentrated sectors like grocery retail through amendments to the existing *Competition Act*.¹⁴¹ Changes to the abuse of dominance provisions contained in sections 78 and 79 of the Act, and to the anti-competitive collaboration provision in section 90.1, may facilitate applications to the Competition Tribunal to target restrictive covenants.

Abuse of dominant Position (ss.78-79)

The Abuse of Dominant Position provisions in the *Competition Act* are contained under the set of ‘Restrictive Trade Practices’ that are subject to review by the Competition Tribunal under Part VIII of the *Act*. Section 78 enables the Tribunal to grant remedies when a firm is seen to have engaged in anti-competitive behaviour by way of taking advantage of their dominant position in a marketplace. S.78(1) defines an anti-competitive act as “*any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition*”.¹⁴² S.79 outlines the essential elements for a finding of abuse of dominance:

[...] if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in:

(a) a practice of anti-competitive acts; or

(b) conduct

(i) that **had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest**, and

¹³⁹ Competition Bureau Canada, Competitor Property Controls and the Competition Act, last modified June 4, 2025, <https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/competitor-property-controls-and-competition-act>

¹⁴⁰ *Ibid*

¹⁴¹ Bill C-56, *An Act to amend the Excise Tax Act and the Competition Act*, 1st Sess, 44th Parl, 2023 (assented to 15 December 2023), SC 2023, c 26.

¹⁴² Bill C-56, s.78(1).

(ii) the effect is not a result of superior competitive performance.¹⁴³

This provision allows the Tribunal to render an order for dominant firms who either engage in or have engaged in one of the enumerated anti-competitive acts in s.78 or engaged in other conduct that has or may have the effect of lessening competition. Prior to the 2023 legislative amendments, a finding of abuse of dominance under s.79 required that a dominant firm or group of firms engage in the intentional practice of anti-competitive acts that had the effect of substantially lessening or preventing competition. The *Act* formerly required that all three essential elements of dominance, anti-competitive intent, and anti-competitive effects be established.¹⁴⁴ This change lowered the threshold for the finding of abuse of dominant position through removing the requirement to prove subjective intent. This broader standard may reduce barriers to future Tribunal challenges to restrictive covenants in the grocery industry by the Competition Bureau.

Anti-Competitive Collaboration Provision

Section 90.1 of the *Competition Act* provides a pathway to challenge private agreements that unduly restrict competition. It is a civil provision that places limits on the ability of private parties to enter into agreements with one another that may impact competition substantially in a market. S.90.1 empowers the Competition Tribunal to render orders against anti-competitive agreements “between persons of whom two or more competitors.”¹⁴⁵ Prior to the 2023 amendments following Bill C-56, restrictive covenants were not subject to challenges under the anti-competitive collaboration provision of the *Act*, as these agreements do not occur between competitors. The provision was intended to prevent horizontal agreements between competitors in a market from engaging in anti-competitive agreements, similar to those regulated under the cartel provisions of the *Act*. More serious offences in relation to agreements or arrangements between competitors are governed by the section 45 criminal conspiracy provision. Section 91 is a civil provision that targeted exclusively horizontal agreements between competitors.

The amended *Act* now includes an exception to the anti-competitive collaboration provision in s.90.1. It states:

(1.01) If the Tribunal finds that a significant purpose of the agreement or arrangement, or any part of it, is to prevent or lessen competition in any market, it may make an order under subsection (1) **even if none of the persons referred to in that subsection are competitors.**¹⁴⁶ [Emphasis added]

The new exception enables the use of the anti-competitive collaboration provision to target agreements between any parties, not just those between direct competitors. This includes

¹⁴³ *Competition Act*, R.S.C. 1985, c. C-34, s. 79, emphasis added.

¹⁴⁴ Competition Bureau, “Guide to the December 2023 amendments to the *Competition Act*”. *Government of Canada*, online: <https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/guide-december-2023-amendments-competition-act#sec05>

¹⁴⁵ *Competition Act*, R.S.C. 1985, c. C-34, s. 90.1

¹⁴⁶ *Competition Act*, R.S.C. 1985, c. C-34, s. 90.1(1.01)

vertical agreements, such as those binding a commercial landlord and tenant. This reform could empower the Competition Bureau to challenge agreements like restrictive covenants existing between non-competitors. Importantly, the amended legislation requires an applicant to prove an anti-competitive purpose to successfully challenge an agreement on these grounds.

Remedies

In cases where the Tribunal finds a breach of either s.79 or s.90.1 of the *Act*, there are a range of available remedies that vary between provisions. Where the Bureau finds a company is abusing its position in a marketplace, they will typically seek to achieve voluntary compliance with the law through a formal consent agreement. If all parties agree on a solution, the consent agreement is registered with the Competition Tribunal and has the force of a court order.¹⁴⁷ In the case of litigation, where the Tribunal finds an abuse of dominance under s.79, it can make orders to prohibit the anti-competitive practice or conduct or take measures to overcome the effects of the conduct. The tribunal may also order Administrative Monetary Penalties (AMPs) against a company that breaches the provision.¹⁴⁸

For a breach of the anti-competitive collaboration provision (s.90.1), the Tribunal can make an orders to prohibit persons from doing anything under the agreement, or may require any person to take action with the consent of that person and the Commissioner.¹⁴⁹ The Tribunal can order any actions, “including the divestiture of assets or shares, that are reasonable and as are necessary to overcome the effects of the agreement or arrangement in that market.”¹⁵⁰ It may also order an administrative monetary penalty at an amount not exceeding the greater of:¹⁵¹

- (a) \$10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding \$15,000,000, and
- (b) three times the value of the benefit derived from the agreement or arrangement, or, if that amount cannot be reasonably determined, 3% of the person’s annual worldwide gross revenues.

It is important to note that the provisions above inform the Competition Bureau’s current enforcement approach to competitor property controls in the grocery industry. At present, there are no open and publicly available applications at the Competition Tribunal targeting competitor property controls in any retail sector. As such, the above legislation presents a theoretical pathway to litigation under a broader federal competition law framework.

¹⁴⁷ Competition Bureau, “Abuse of Dominance”, Government of Canada, online: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00511.html>.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Competition Act*, R.S.C. 1985, c. C-34, s. 90.1(a)(b)

¹⁵⁰ *Ibid*, s. 90.1(1.1)

¹⁵¹ *Ibid* at s.90.1(1.3)

While the issue has not reached the Tribunal level, enforcement efforts by way of confidential investigations and voluntary commitments from retailers are ongoing. These efforts and the commitments of retailers in light of recent pressures will be discussed in greater detail below.

d. Current Provincial Legal Frameworks

Manitoba

Manitoba is currently the only Canadian province or territory that directly regulates anti-competitive property controls through legislation. In June 2025, Bill 31, or *The Property Controls for Grocery Stores and Supermarkets Act (Various Acts Amended)* came into force and is the first of its kind to target restrictive covenants and exclusivity clauses in the grocery industry.¹⁵² Public Service Delivery Minister Mintu Sandhu sponsored the Bill. In a *CBC News* report, Minister Sandhu said that the goal of the bill was to “open up the market for more grocers, including independent businesses,” with the aim of bringing food prices down for consumers.¹⁵³

The Act amends three existing Manitoba statutes: *The Law of Property Act*, *The Real Property Act*, and *The Municipal Board Act* to add provisions which target the use of property controls in the grocery industry. The law defines these controls as:

- (a) a restrictive covenant that directly or indirectly restricts the sale, ownership, development or use of land as a grocery store or supermarket; or
- (b) an exclusivity clause that directly or indirectly restricts the sale, ownership, development or use of land as a grocery store or supermarket, granted in favour of a person who, directly or indirectly, owns or operates a supermarket, or a person related to such an operator.¹⁵⁴

The act targets new property controls through rendering those created on or after the day the law came into force void. Existing property controls are void under the act, unless the holder registers the agreement within the “Limited Registration Period.”¹⁵⁵ Even if a covenant or exclusivity clause is registered before the stated deadline, the Act creates an ongoing review mechanism administered by the Municipal Board. Members of the public who believe a property control to be contrary to public interest may challenge it on application by the Minister of Public Service Delivery. The Board will consider the impact on local market competition when reviewing whether a challenged covenant, with the onus

¹⁵² Jacob Stucken, Ryan J.T. Johnson, Joshua Chad, and Cameron Braun, “Breaking the Mold: Manitoba’s New Legislation Reshapes Grocery Store Property Controls,” McMillan LLP, June 9, 2025, <https://mcmillan.ca/insights/breaking-the-mold-manitobas-new-legislation-reshapes-grocery-store-property-controls/>

¹⁵³ CBC News, “Grocery store restrictive covenants targeted by new Manitoba law,” CBC News, March 2025, <https://www.cbc.ca/news/canada/manitoba/grocery-store-restrictive-covenants-bill-1.7482326>

¹⁵⁴ *The Law of Property Act*, CCSM c L90, s 7.1(3)

¹⁵⁵ *The Real Property Act*, CCSM c R30, s 152.1(3).

on the holder of the property control to establish the clear public interest component. The Board can strike down the property control entirely without compensation to the holder.¹⁵⁶

The Act carves out exemptions for controls granted in favour of or imposed by public bodies, such as local and federal governments, as well as a municipality. These rules do not apply to building restriction covenants or development schemes, as well as “a restrictive covenant that imposes restrictions based solely on the zoning of the land.”¹⁵⁷

The Manitoba legislation assists with federal Competition Bureau efforts to target restrictive covenants through the registration requirement. As registration is public, it provides increased transparency about the existence of anti-competitive property controls and enables federal regulatory efforts to review existing covenants.¹⁵⁸

Nova Scotia

Nova Scotia was the first province to attempt a legislative ban on restrictive covenants that limit competition in the grocery sector. Research conducted in the Halifax Regional Municipality has revealed the lasting impact of covenants on access to food and other necessary amenities in parts of the city. A study conducted in 2019 by Jenna Khoury-Hanna (who was a law student at the time of the research and is now a lawyer) as also noted above revealed 55 existing restrictive covenants, all of them being “anti-competitive in nature”.¹⁵⁹

In 2018, NDP MLA Claudia Chender introduced Private Member’s Bill 60, an Act to amend Chapter 385 of the Revised Statutes, 1989, *the Real Property Act*, to void restrictive covenants that restrict access to food or medicine. The Bill would have prohibited the creation of restrictive covenants that prevented the use of land for certain purposes and void any restrictive covenants in existence that already do so. The proposed Act would have applied to covenants that restrict the use of land for:

- (a) a grocery store or supermarket;
- (b) a convenience store selling fresh produce;
- (c) a pharmacy or drug store; or
- (d) a medical clinic.¹⁶⁰

The Legislation empowered the registrar to cancel or discharge restrictive covenants registered before or after the section comes into force.¹⁶¹ Though the Bill did not make it past the first reading, it shed light on the issue affecting numerous retail properties in Nova

¹⁵⁶ *Ibid*, ss. 104.2(2)-104.4

¹⁵⁷ *The Law of Property Act*, CCSM c L90, s.7.1(7)

¹⁵⁸ Maria Penner, Joshua Krane, and Shelly Neal, “New Law Voids Property Controls for Grocery Stores and Supermarkets in Manitoba,” MLT Aikins, June 4, 2025, <https://www.mltaikins.com/insights/new-law-voids-property-controls-for-grocery-stores-and-supermarkets-in-manitoba/>

¹⁵⁹ Jenna Khoury-Hanna, “A Preliminary Exploration into the Existence of Grocery Store Covenants in Halifax, Nova Scotia - Where they are and how to remove them,” (April 20, 2019) at p.12.

¹⁶⁰ Bill No 60, *An Act to Amend Chapter 385 of the Revised Statutes, 1989, the Real Property Act, to Eliminate Covenants that Restrict Access to Food or Medicine*, 2nd Sess, 63rd Gen Assem, Nova Scotia, 2018 (first reading), s.10A(1).

¹⁶¹ *Ibid*, s.10B(2)

Scotia. Chender gave a statement regarding the need to regulate restrictive covenants to “ensure that communities like Woodside don’t turn into food deserts when big box retailers decide to close up shop,” referencing a 20-year restrictive covenant in Dartmouth South.¹⁶²

In April 2023, the NDP made a second attempt to pass legislation to address this issue. Legislative Assembly Member Suzy Hansen sought to revive the previous Act through introducing Bill 296.¹⁶³ The Bill contained the same provisions to ban the use of restrictive covenants for land used for the above-mentioned purposes. The Bill similarly advanced past the first reading but was not passed into law. As of March 2026, there are several private member’s bills that aim to regulate restrictive covenants in the grocery industry, including Bill 224, the *Increasing Grocer Competition Act* introduced by NDP MLA Krista Gallagher. No legislation is currently in force, though the issue appears to be a priority among certain legislative assembly members. Some opposing voices of these Bills have previously cited concerns with government interference in private matters.¹⁶⁴

Alberta

Restrictive covenants in Alberta have been the subject of media reporting and academic study, as well as concrete enforcement efforts from the Competition Bureau. The 2025 agreement reached by the Bureau related to Sobeys parent company Empire Co. Ltd. removing a long-standing anti-competitive property control.

Efforts are on the rise in Alberta to adopt legislation similar to Manitoba that bans grocery store restrictive covenants. In early 2026, Edmonton City Council passed a motion directing the city’s mayor to formally ask the provincial government to eliminate these covenants due to their impact on local access to food. Service Alberta Minister Dale Nally is quoted in a recent CBC report stating his government is “watching the changes in Manitoba closely to see if they result in the intended change.”¹⁶⁵ In another news report, City councillor Michael Janz indicated that national grocers were “interested in making changes” regarding restrictive covenants in Alberta.¹⁶⁶

As of March 2026, the province of Alberta is accepting submissions to a public consultation on “Enhancing grocery accessibility engagement” in which stakeholders are invited to

¹⁶² Nova Scotia New Democratic Party, “Chender: Restrictive covenants should be removed for stores that sell food and medicine,” May 2, 2019, <<https://www.nsndp.ca/chender-restrictive-covenants-should-be-removed-stores-sell-food-and-medicine>>

¹⁶³ *Bill No 296, An Act to Amend Chapter 385 of the Revised Statutes, 1989, the Real Property Act, to Eliminate Covenants that Restrict Access to Food or Medicine*, 1st Sess, 64th Gen Assem, Nova Scotia, 2023 (first reading 4 April 2023).

¹⁶⁴ Jenna Khoury-Hanna, “Grocery Store Covenants” at p.30.

¹⁶⁵ Madeline Smith, “Restrictive Covenants Contribute to Food Deserts in Edmonton, Report Says,” *CBC News*, January 4, 2024, <https://www.cbc.ca/news/canada/edmonton/food-deserts-restrictive-covenants-edmonton-alberta-groceries-9.7069029>

¹⁶⁶ Karen Bartko, “Edmonton Aims to Kibosh Restrictive Covenants in Name of Grocery Access, Food Affordability,” *Global News*, March 17, 2026, <https://globalnews.ca/news/11735252/edmonton-grocery-restrictive-covenant>

provide input on “how retail grocery stores use property controls, such as restrictive covenants and exclusivity clauses”.¹⁶⁷ The government is seeking feedback from various stakeholders, including grocers, municipalities and consumers and food-security organizations, among others. This active consultation signals potential legislative or policy action underway to regulate grocery store restrictive covenants in Alberta.

Quebec

Quebec is the only civil law jurisdiction in Canada, resulting in a distinct legal framework for tackling competitor property controls. The concept of a real covenant that ‘runs with the land’ is implemented in Quebec through the civil law concept of real servitudes. Article 1177 of the Civil Code of Quebec defines a property law servitude:

Art. 1177

A servitude is a charge imposed on an immovable, the servient land, in favour of another immovable, the dominant land, belonging to a different owner.

Under the charge the owner of the servient land is required to tolerate certain acts of use by the owner of the dominant land or himself abstain from exercising certain rights inherent in ownership.¹⁶⁸

As in the case of restrictive covenants in the common law, servitudes must be for the benefit of a dominant tenement. Servitudes may be either positive or negative, requiring a property owner to do or refrain from doing something with the land.¹⁶⁹ Much like common law restrictive covenants ‘run with the land,’ servitudes are not affected by change of ownership and can therefore endure for lengthy periods of time.¹⁷⁰

Recent Quebec jurisprudence on the use of commercial exclusive use clauses may have significant implications for the use of exclusive-use servitudes in the Quebec retail setting. In the April 2020 case of *Société immobilière Duguay Inc. v. 547264 Ontario Limited*, the Quebec Court of Appeal dismissed a Superior Court judgment and struck down a commercial exclusive use clause.¹⁷¹ The clause was in the form of a servitude that restricted the types of businesses that could be operated on property in a shopping centre. The case has been viewed by some Quebec lawyers as putting an end to the use of servitude agreements that protect exclusive commercial use from competitors on a piece of property.¹⁷²

¹⁶⁷ Government of Alberta, “Enhancing Grocery Accessibility Engagement,” last updated March 18, 2026 <https://www.alberta.ca/enhancing-grocery-accessibility-engagement>.

¹⁶⁸ *Civil Code of Québec*, SQ 1991, c 64, art 1177

¹⁶⁹ *Ibid*, art 1178

¹⁷⁰ *Ibid*, art 1182

¹⁷¹ Vincent Tremblay, "Real Estate Transactions: Exclusive Use Servitudes Deemed Invalid," Langlois Lawyers, September 18, 2020. Accessed online: <https://langlois.ca/en/insights/real-estate-transactions-exclusive-use-servitudes-deemed-invalid>.

¹⁷² Jessica Syms, “Opinion: Exclusive use servitudes are now deemed invalid, writes Jessica Syms”, Canadian Lawyer, September 16, 2020, <https://www.canadianlawyermag.com/news/opinion/real-estate-transactions-in-quebec/333354>

PIAC notes that as our research does not engage in a thorough study on how the Quebec civil law applies to these agreements in the grocery sector, we recommend that more research is required to review the enforceability of these covenants in Quebec.

G- Exploring Legal and Regulatory Approaches to addressing Restrictive Covenants and Exclusivity Clauses

The application of restrictive covenants in the grocery sector is a part the broader problem of retail concentration in this sector. This issue affects consumers all across Canada, but the actions taken so far to address these anti-competitive restrictions have been narrow and fragmented, as discussed below. PIAC is concerned that in the absence of a uniform legal framework and/or at least identification of clear and common standards, the resulting safeguards from different provinces would be inconsistent, split and subject to numerous challenges on multiple fronts with the outcomes of these challenges likely to undermine consumer interest. Segregated actions also become easier to challenge as compared to a comprehensive national law and/or regulation.

PIAC notes that if the Bureau had more and clear powers in relation to addressing these anti-competitive restrictions, the possible legal and regulatory responses to address this issue might be quite different than what might be practical and achievable at this time. Thus, the federal government should consider strengthening and clarifying the Bureau's powers to tackle this. Even if a collaboration between the Bureau and provinces is deemed better to address this issue, clarifying and strengthening of Bureau's powers can greatly assist in this process.

In this section, we review the current and potential approaches that can be taken on a federal and/or provincial and territorial level to address the use of anti-competitive property controls in the grocery sector.

a. Current and Potential Approaches on a Federal Level

The efforts on the federal level to review these anti-competitive property controls in the grocery sector have centred around the work of the Competition Bureau. As discussed in detail in a previous section of this report, the Bureau has been conducting investigations in confidence into the use of property controls by major Canadian grocers to limit competition. These investigations have resulted in commitments by retailers to remove existing covenants and to cease establishing new competitor property controls.

In 2025, Loblaw made a broad commitment to eliminate certain competitor property controls across their retail locations as also noted above. The Bureau is monitoring Loblaw's commitment to end property controls while continuing its broader investigations into competitor property controls.¹⁷³ Similarly, Walmart committed to "unilaterally waive

¹⁷³ Competition Bureau Canada, "Backgrounder: Competition Bureau Monitors Loblaw's Commitment to End Property Controls," news release, June 12, 2025, <https://www.canada.ca/en/competition->

any competitive retail restrictions” in November 2024 in light of Competition Bureau investigations.¹⁷⁴ Enforcement efforts at the federal level at this time seem to be reliant on negotiations and voluntary waivers.

b. Analysis of Federal Efforts

The Competition Bureau’s investigations and enforcement actions against competitor property controls are an important regulatory tool to address this pressing issue. Nonetheless, there are limits to federal regulatory powers that prevent the Bureau from efficiently tackling this problem on its own. While federal efforts are necessary, they must be supplemented by other strategies to curb the problem at provincial and municipal levels. We therefore note a multi-pronged approach could be considered that addresses the issue in a uniform fashion across Canadian provinces and territories.

PIAC reached out to the Competition Bureau to gain more clarity on ongoing investigations into competitor property controls in the grocery industry. Due to the confidential nature of their work, we received limited input on ongoing investigations and were referred to existing public facing guidelines on the subject. This reinforces our broader concern at the lack of publicly available evidence for parties to challenge existing property controls that limit competition. Bureau representatives nonetheless provided important context and perspective for our analysis.

When asked about the adequacy of federal legislation on this issue, Bureau representatives said recent changes to the *Competition Act* are a positive step to addressing anti-competitive competitor property controls, but it is too soon to tell whether these changes alone will be sufficient. They acknowledged that competition issues relating to property controls impact diverse consumers in a variety of ways, such as the varying impacts on urban and rural consumers. The Bureau referred to the recent Manitoba legislation as a positive step towards increasing public scrutiny of competitor property controls.

Lack of transparency

PIAC is concerned with limited information available for consumers and advocacy groups to follow the Bureau’s ongoing monitoring efforts. While voluntary efforts like the commitments of Loblaw and Walmart are helpful, the Bureau’s monitoring and investigation efforts are conducted in confidence. As a result, the public is left without knowledge of existing accountability mechanisms or procedures to verify the compliance of grocery stores to their commitments to end this practice. PIAC submits that encouraging businesses to review their own covenants to ensure they comply with the law is insufficient, particularly in a significantly concentrated grocery sector. Without

[bureau/news/2025/06/backgrounder-competition-bureau-monitors-loblaws-commitment-to-end-property-controls.html](https://www.competitionbureau.ca/bureau/news/2025/06/backgrounder-competition-bureau-monitors-loblaws-commitment-to-end-property-controls.html).

¹⁷⁴ Rosa Saba, “Walmart Canada Axing Some Property Controls amid Grocery Competition,” *The Globe and Mail*, November 2024, <https://www.theglobeandmail.com/business/article-walmart-canada-axing-some-property-controls-amid-grocery-competition/>

transparency and accountability, businesses are unlikely to have incentives to review their own practices.

A recent *CBC* investigative report found that despite Loblaw's 2025 public pledge to remove all exclusivity clauses in the Halifax Regional Municipality, property controls were still in force in the area. The report found various grocery store properties around Halifax with existing restrictive covenants and exclusivity clauses, including leases with restrictions "on renting to other dealers in "meats, fruits, vegetables, fish, seafood, poultry, bakery, dairy, or delicatessen products."¹⁷⁵

The ongoing uncertainty surrounding the effectiveness of voluntary waivers, coupled with limited transparency in the Bureau's monitoring process, underscores the limitations of its current enforcement approach in addressing this consumer issue. Transparency and public disclosure are essential for increasing consumer awareness.

Timeliness and efficiency

Keldon Bester from CAMP, during our stakeholder consultation said: "The investigation into property controls by the Competition Bureau is welcome but the investigation is moving too slowly and likely too narrow in scope. The only action so far has occurred in a remote community in Alberta, despite reporting on the prevalence and effect of grocery controls in other communities. By now we are approaching nearly two years since the Bureau publicly announced its investigation and it should bring a case before the Competition Tribunal or drop it with public explanation for its rationale."

PIAC shares the concern that the Bureau's efforts, while a welcome step towards tackling this issue and spreading broader awareness, are not occurring at a fast enough pace to promptly address this issue.

Enforcement Power Limitations

During our consultation, the Bureau reminded us that they are not a regulator, and they do not have the power to issue orders on their own. Without the Competition Tribunal, the Bureau may not administer direct enforcement remedies such as ordering administrative monetary penalties. The Bureau can negotiate voluntary remedies with parties to address competition concerns. This can take the form of a consent agreement, which is registered with the Competition Tribunal and has the force of a Tribunal order.

We spoke with Canadian competition law scholar Jennifer Quaid about the Bureau's enforcement powers in light of recent changes to the *Competition Act*. She reiterated that the Bureau is not a decision-making body and their power is therefore limited to conducting investigations and filing an application before the Tribunal. While amended provisions in

¹⁷⁵ Shaina Luck, "Federal Investigation Probes Grocery Store Competition in Halifax," *CBC News*, November 12, 2025, <https://www.cbc.ca/news/canada/nova-scotia/federal-investigation-probes-grocery-store-competition-in-halifax-9.6971278>.

the Act under ss. 79 and 90.1 enable potential challenges to competitor property controls, the onus rests with the Bureau to build a case through sufficient evidence. She told us that this burden is among the most significant challenges for an applicant at the Tribunal like the Competition Bureau. Applications under the s.90.1 anti-competitive collaboration provision must demonstrate a material impact on competition. In cases where the agreement is not between competitors, the purpose of the agreement must be anti-competitive. She notes that the Bureau's enforcement efforts towards retailers have been a mostly "soft power approach" through their encouragement of voluntary compliance and negotiations of agreements to remove existing covenants.

The Section 11 Federal Court applications for evidence disclosure represents a firm step towards litigation and the potential for binding Tribunal orders. PIAC notes that the lengthy litigation and likely appeals from grocery retailers presents its own set of challenges. This further emphasizes the need to pursue multiple concurrent strategies to tackle competitor property controls in the grocery industry.

Lack of evidence

As referenced in the consumer impact section of this report, the lack of empirical evidence pertaining to the anti-competitive effects of property controls and the negative impact on consumers poses important problems for federal legal and regulatory approaches to this issue. Our consultations with stakeholders demonstrated a lack of national research initiatives on competitor property controls and their tangible impact on consumers.

We discussed Canada undertaking a study to review the impact of legislative changes on challenges to competitor property controls during our stakeholder consultations. Such a study would allow stakeholders to evaluate whether new laws are an effective tool to regulate these mechanisms. Other federal entities could similarly conduct pricing studies to determine the impact of this issue on grocery prices. PIAC's research has found limited comprehensive data available for those wishing to challenge restrictive covenants on competition grounds to draw on.

PIAC reached out to Jamie Baxter, Associate Professor and Associate Dean of Research at Dalhousie University to discuss our research on this issue. He has previously researched the subject of competitor property controls from competition law and property law frameworks and through supervising student research on the subject. He discussed the challenges of regulating this issue due to a broad lack of empirical evidence available to scholars and legislators. He noted the degree to which data on covenants and exclusivity clauses are inaccessible and expensive to access from local title registries. He proposed coordination between these entities and the use of statistical sampling techniques to demonstrate the impacts of property controls on consumer experiences.

Jamie Baxter emphasized the role of provincial and municipality-level regulation to target competitor property controls more efficiently. He was supportive of a more targeted approach and cautioned against overly broad regulations at the federal level.

The federal legal and regulatory framework requires more robust evidence and disclosure mechanisms to ensure private parties can successfully challenge competitor property controls. We elaborate below on our recommendations for better data collection on this issue.

c. Retailer perspectives

PIAC received limited stakeholder feedback expressing the perspective of retailers on the issue of anti-competitive property controls. Industry related stakeholders voiced a need for a balanced approach that considers the best interests of small and medium-sized retailers in addition to those of the main players. The stakeholders we spoke to were uniformly opposed to the use of restrictive covenants to limit competition and prevent new entrants into the market. However, they described the need to treat restrictive covenants with nuance in the law. One stakeholder we consulted with described the need to understand the motivations of the firms behind the establishment of restrictive covenants. They proposed a collaborative model with firms as a means to end this practice in the retail sector.

Craig Patterson from Retail Insider Media Ltd. provided insights into the retailer perspective on restrictive covenants in his answers to our research questionnaire. He acknowledged the potential for significant barriers to competition from these agreements, but advocated for a balanced approach to laws and regulations:

Governments could consider prohibiting new restrictive covenants in the grocery sector while phasing out or limiting the enforceability of existing ones over time. [...] In addition, competition authorities should closely examine whether such property controls substantially lessen competition in defined geographic markets. The goal should not be to undermine legitimate commercial agreements, but to prevent property tools from being used to suppress competition in essential food retail.

This stakeholder was wary of implementing new legislation without careful safeguards to “account for transitional issues, including existing lease agreements and financing arrangements that relied on exclusivity provisions.” He insisted that “a blanket and immediate invalidation of all covenants could create unintended legal and financial consequences.” advocating for a “phased or prospective approach.” He added that landlords may structure land developments around “anchor tenants whose leases support financing” cautioning against sudden regulatory changes that may alter these agreements. He ultimately supports reform in this area but recommends careful implementation “to avoid destabilizing development pipelines.”

When asked about the potential benefits for retailers of advocating against anti-competitive property controls, Patterson remarked on the positive impact of this advocacy

on “long-term market dynamism and brand credibility.” He writes that advocating for reforms in this area “promotes fair competition based on service, pricing, and innovation rather than contractual exclusion.” This would ultimately help a retailer’s reputation among consumers and policymakers. He insists that reducing barriers to entry can allow for new expansion opportunities for retailers:

Retailers seeking to enter new trade areas often encounter exclusivity clauses that limit available sites. A more open property market can create additional pathways for growth, especially for mid-sized or emerging operators.

Ultimately, a competitive grocery ecosystem benefits retailers that innovate and operate efficiently. While exclusivity may offer short-term protection, open competition can foster stronger brands and more resilient market structures over time.

Retailer perspectives emphasized the need to level the playing field for smaller competitors. We spoke with Canadian grocery retail consultant Peter Chapman regarding the use of restrictive covenants from a retail market perspective. He believes restrictive covenants are a barrier to a more competitive grocery sector, while advocating for more selective covenants that apply to major stores only:

Where it would benefit competition is more specialty stores that are under 15,000 sq ft. This could include fresh food stores such as butchers, produce, seafood, bakery, health and wellness etc.

Under this proposed model, restrictive covenants would apply to major grocery chains, while allowing smaller and medium sized competitors to enter a marketplace. The stakeholder was adamant that regulations should be uniform across all provinces and territories, insisting that fragmented legislation drives up the cost of operation for retailers and creates uncertainty. The targeted and uniform approach would allow major retailers to derive the commercial benefits of covenants without unduly restricting competition for smaller players to the benefit of small businesses and consumers. Peter Chapman cautioned against industry self-regulating, insisting that federal legislation is the best approach to tackle this issue.

PIAC agrees that legislation should be targeted and precise, though we do not think any retailers should be entirely exempted from rules governing the use of competitor property controls. The UK’s CMA Order could be referred to as a model for how to structure rules that target major players with exceptions for small retailers. The use of restrictive covenants to limit competition can be harmful even in cases of small and medium sized retailers in their impacts on consumer access to affordable food.

We reached out to representatives from the major Canadian grocery stores for our report and received no responses to our questionnaire or meeting requests. Our research shows that major retailers have had mixed reactions to attempts to regulate anti-competitive property controls, with some agreeing to voluntarily waive existing covenants. PIAC does not consider voluntary waivers are an appropriate and secure path forward to ensure uniform protections against anti-competitive property controls in the grocery sector. These

waivers are not subject to public scrutiny and rely on industry self-regulation to solve an issue with significant consequences for consumers. While ultimately supportive of attempts to pursue the conduct of individual grocery stores through investigations, voluntary commitments to end this practice are unlikely to be enough.

d. Potential Approaches on a Provincial, Territorial and/or Municipal Level

Another avenue to address these anti-competitive restrictions in the grocery sector could be on a provincial, territorial and/or municipal level. Property law matters primarily fall under provincial jurisdiction. Thus, provincial action might appear to be a more manageable and logical approach. However, this is also not without its challenges. Except for Manitoba, which has introduced legislative changes, and some other provinces who have been considering how to tackle these anti-competitive restrictions, not much has been done. Thus, it is hard to comment precisely as to how effective provincial approaches would be in addressing this issue.

Even if the provinces and/or territories were to take action in coordination with local governments, it is important to note that without considering and/or coordinating with what is happening in other provinces and/or territories, there is a risk of non-uniform standards and safeguards for consumers across Canada.

We heard different responses on this matter from stakeholders we contacted. Several stakeholders supported provincial legal actions, while some indicated that municipalities should be responsible for overseeing and addressing these anti-competitive restrictions. Meanwhile, few stakeholders advised caution in relying on provinces to address this issue and pointed to potential overreach and recommended careful analysis.

In response to our stakeholder questionnaire, Keldon Bester from CAMP expressed support for provincial action over the slower federal approach and said that “provincial regulation of property controls is more likely to spur competition in the grocery sector faster and at a wider scale.”

The ability of provinces to regulate conduct that we know to be problematic is superior to case-by-case treatment by the Competition Bureau which can take years while only providing relief for select communities. Provincial regulation of property controls is more likely to spur competition in the grocery sector faster and at a wider scale. –
Keldon Bester, Executive Director, CAMP

PIAC consulted with University of Alberta Law Professor, Eran Kaplinsky on how to effectively tackle this issue at the federal and provincial levels. He emphasized the need for a nuanced understanding of covenants when drafting new laws and regulations. From a land-use perspective, covenants provide an important avenue for private property

owners to resist the will of government and shift power away from municipal authorities. In the context of environmental preservation and conservation initiatives, they are an important tool for private entities to resist land development. He ultimately said that provincial or federal legislation against anti-competitive restrictive covenants must therefore be targeted and avoid overly broad prohibitions. He also said that “[f]or over a century, covenants have provided stability to property owners and investors when zoning policies are in a flux.”

Progress in Manitoba

Manitoba is one of the first provinces in Canada that has already made progress with the passing of Bill 31. PIAC reached out to the Honourable Minister Mintu Sandhu and Premier Wab Kinew, who were responsible for getting Bill 31 passed. We specifically asked what led to the introduction of this bill, the challenges faced in passing and implementing it. We also asked whether other provinces and territories should adopt something similar and what were the key barriers in their view to harmonizing the law on these anti-competitive property restrictions across Canada.

The Minister’s office in their response said that they did not think it was right for a grocery store to sit empty because one company wants to use property controls to limit competition, and so they took action. The office also noted that they are in the process of implementing this and hope that other provinces will follow Manitoba’s lead. The Minister’s office also emphasized banning property controls in the grocery sector is a direct-action governments can take to increase competition and push for affordability.

At a time when many Canadians are struggling with the cost of living, banning property controls in the grocery sector is a direct action governments can take to increase competition and push for affordability.

It is important for all governments across Canada to step up and take actions that help people with their monthly grocery bills. Banning property controls is just one tool available, and Manitoba is continuing to explore other ways to help Manitobans with their grocery costs. – Director of Ministerial Affairs to Hon. Mintu Sandhu Minister of Public Service Delivery

Manitoba is in the process of implementing Bill 31. The recent media reports suggest that it is on track to remove anti-competitive restrictions that affect competition in the grocery sector. A *CBC* story noted that Manitoba after passing its legislation is down to one grocery chain still using these restrictions, and is now asking that chain, Sobeys Capital Inc., to reconsider.¹⁷⁶ The story noted that all the remaining 43 agreements, across 25 locations

¹⁷⁶ Ian Froese, “Manitoba asks Sobeys to scrap property restrictions near its stores or it'll go to municipal board,” *CBC News Manitoba*, (12 March 2026).

in Manitoba belong to Sobeys.¹⁷⁷ It remains to be seen how this bill's implementation will progress and what kind of roadblocks and challenges might occur. In either case, the effort made by Manitoba to address these anti-competitive restrictions in the grocery sector is a significant and important example to consider in at least determining how to address this matter in other provinces and territories.

We also asked other stakeholders on whether other provinces and territories should adopt something similar to Bill 31. Few stakeholders said that it was too early to comment, while several others supported having a similar legislation in other provinces and territories. For instance, Craig Patterson in response to this question expressed support for other provinces and territories to have a similar legislation, particularly where grocery market concentration is high and entry barriers are significant. Craig further noted that property controls affect various issues, not just corporate competition but also pricing, product variety and potentially food accessibility in communities too.

There is a strong case for other provinces and territories to consider similar legislation, particularly where grocery market concentration is high and entry barriers are significant. Food retail is an essential service. When property controls prevent new entrants from opening stores, the impact is not limited to corporate competition. It affects pricing, product variety, and potentially food accessibility in communities. A legislative framework that limits or prohibits anti-competitive property controls could help facilitate new market entrants, including independents, specialty grocers, and alternative formats.–
Craig Patterson, Founder and Publisher, Retail Insider Media Inc.

Jim Stanford in his stakeholder response also supported other provinces having a similar legislation as Manitoba for protecting consumers and sending a message that these “forms of restriction on competition is not socially or legally acceptable.”

Potential Collaborative Approach

Considering the above, an approach worth considering would be a collaborative approach between the Competition Bureau and all the provincial and territorial authorities to ensure that a comprehensive national strategy could be planned to tackle these anti-competitive restrictions in the grocery sector, particularly restrictive covenants. This should also take into account the unique circumstances, and challenges of all the different regions in Canada. Comments from some stakeholders also indicated support for a similar approach. Keldon Bester from CAMP said that “[c]oordinated provincial action to set a common standard across provinces for the use of property controls, within and beyond the grocery sector, would be most effective.”

¹⁷⁷ *Ibid.*

This collaboration effort could be overseen by a federal government department, such as ISED. For instance, we asked the Agriculture and Agri-Food Canada (AAFC) in our stakeholder questionnaire, whether they have collaborated or considered collaborating with other federal agencies as well as provincial and/or territorial regulators to deal with anti-competitive property controls? AAFC in response noted that they have collaborated with ISED on issues affecting competition and market structure in the grocery sector, and particularly, in relation to the government response to the Standing Committee on Agriculture and Agri-Food's Report titled, *A Call to Action: How Government and Industry can Fight Back against food price volatility*. More broadly, AAFC said that “[e]ngagement with provincial and territorial governments on consumer affairs and competition-related matters falls primarily within ISED’s mandate.”

Another avenue for collaboration and possibly having a uniform law or at least common standards on anti-competitive property restrictions in the grocery sector, would be to consider reaching out to the Uniform Law Conference of Canada (ULCC). ULCC is the oldest law reform organization in Canada that provides independent and informed analysis and recommendations for the harmonization and reforms of law in Canada.¹⁷⁸ We reached out to ULCC for further inquiry regarding this project. ULCC noted that they currently do not have any ongoing projects involving competition in the grocery industry. That said, ULCC would be open to examining a proposal for a project that looks at unifying the law on this consumer issue.

H- International Jurisdictions

PIAC reviews approaches adopted in selected international jurisdictions to address anti-competitive property restrictions in the grocery sector, before proceeding to our main findings and recommendations. PIAC also reached out to several international regulators but did not hear back. We spoke to few subject matter experts from the US.

a. United States

Anti-competitive grocery store covenants are a growing concern in the United States. The problem has been documented in cities throughout the country, with emerging scholarship seeking to expose the link between anti-competitive grocery store covenants and the proliferation of food deserts.

Professor Christopher R. Leslie at University of California Irvine writes extensively of this problem from an antitrust legal framework. He gives examples of covenants used by grocery retailers in urban areas which disproportionately impact low-income neighbourhoods. In Chicago, for example, anti-competitive grocery store covenants have

¹⁷⁸ See online, Uniform Law Conference of Canada (ULCC) webpage, “What we Do,” online: <<https://www.ulcc-chlc.ca/About-ULCC/What-We-Do>>.

prevented the revitalization of low-income neighbourhoods to prevent new food retailers from opening.¹⁷⁹

Restrictive covenants in the United States are governed by a combination of state common law, federal antitrust statutes and local and state ordinances. Litigation has played a significant role in developing the American legal framework governing anti-competitive grocery store covenants. Historically, covenants were challenged individually under common law principles discussed in the previous section of this report to determine an agreement's enforceability. US courts have often upheld commercial restrictive covenants on the grounds that they protect legitimate business interests and incentivize companies to enter new markets.¹⁸⁰

One exception was the 1994 decision in *Davidson Bros v. D. Katz & Sons*. The deciding court applied a reasonableness test and struck down a restrictive covenant preventing a grocery store from opening in a city center. Scholar Jordan Jackson notes the consideration of "community injury" in the Court's determination of whether a restrictive covenant is reasonable and enforceable. He writes of the court's reasoning: "Emphasizing this overwhelming "personal hardship," the court held that the "scorched earth policy [wa]s so contrary to the public interest . . . that the covenant [wa]s unreasonable and unenforceable."¹⁸¹ This case shows the foundations for a public policy or community driven argument in American jurisprudence concerning the enforceability of anti-competitive covenants.

Under federal law, restrictive covenants have been challenged using the *Sherman Act* by way of antitrust lawsuits. These can involve a Section 1 challenge, prohibiting contracts or conspiracies in restraint of trade, or a Section 2 challenge prohibiting acts that monopolize or attempt to monopolize a market.¹⁸² In antitrust lawsuits, courts will weigh anticompetitive harms against procompetitive benefits in determining whether a restrictive covenant is enforceable.

Despite the possibility of litigation against covenants under common law or antitrust frameworks, individual lawsuits are rarely successful. Jordan Jackson's study identified a total of twenty-seven cases, in which twenty-two the court upheld the restrictive covenant, ruling in favour of the defendant supermarket. Only three cases were successful, where the court struck down the covenant on public policy grounds.¹⁸³

¹⁷⁹ Christopher L. Leslie, "Anti-Grocery Covenants" in *Reforming America's Food Retail Markets: Conference Compendium* (New Haven, CT: Thurman Arnold Project at the Yale School of Management, Information Society Project at Yale Law School, and Yale Sustainable Food Program, 2022), 106-113, at p.108.

¹⁸⁰ Jordan Jackson, "Running (Away) with the Land: A (Super) Market Problem," *Georgetown Law Journal* 112, no. 2 (2023): 413–436 p.417.

¹⁸¹ *Ibid*, at p.418. Emphasis added.

¹⁸² *Ibid*, at p.422.

¹⁸³ *Ibid*, at p.421

The stakeholders PIAC consulted with from the United States referred to the issue of market size definition in anti-trust litigation concerning grocery store restrictive covenants. They explained that courts tend to draw large geographic boundaries in defining a relevant market, making it harder to prove the negative effects of restrictive covenants on competition.

Legislative and regulatory trends signal a growing desire to crack down on restrictive covenants in the grocery sector. While Federal Trade Commission activities to implement blanket prohibitions have been limited, action has been taken at the local and state level to address this issue. Cities such as Washington DC, Chicago, Madison and Bellingham have passed ordinances prohibiting grocery store restrictive covenants. Jordan Jackson notes that these local rules may be inadequate due to their failure to regulate covenants retroactively.¹⁸⁴

In March 2026, Washington State became the first state to pass legislation to ban restrictive land covenants that target grocery stores and pharmacies.¹⁸⁵ The Act targets “negative use restrictions” as being “against public policy” for their impact on access to food.¹⁸⁶ The law contains a “relocation exception”, stating that stores can still use restrictive covenants to prevent a competitor from moving into their former location within two miles of the discontinued site, but this is limited to a maximum of five years. The Act gives the state Attorney General and local city governments the power to sue to void existing or new restrictions.

In California, Bill CA AB1857, the *Grocery Store Access Act* was introduced in February 2026 by Assembly Member Cecilia Aguiar-Curry. The bill aims to ban any recorded or unrecorded restrictive covenant that prevents a property from being used as a grocery store or supermarket. The text of the bill acknowledges the role of “racial and economic inequalities” in contributing to food insecurity, highlighting the historical role of restrictive covenants to reinforce racially segregated neighbourhoods.¹⁸⁷ The bill is currently under consideration and is set for a public hearing in April 2026.

While legislative initiatives are in the early stages at state and local levels, awareness of this issue is on the rise as food insecurity becomes a growing concern for American households. While litigation efforts are ongoing, this remains a costly route that is inaccessible to most consumers. Overall, though lawsuits have yet to experience much

¹⁸⁴ Jordan Jackson, at p.435-436.

¹⁸⁵ American Economic Liberties Project. "Economic Liberties Applauds Washington Law Banning Retail Covenants That Block Grocery and Pharmacy Competition." March 19, 2026. <https://www.economicliberties.us/press-release/economic-liberties-applauds-washington-law-banning-retail-covenants-that-block-grocery-and-pharmacy-competition/>.

¹⁸⁶ WA, Bill HB 2294, *An Act Relating to creating a consumer protection act violation for restrictive covenants that prohibit a grocery store or pharmacy from operating at a specific location*, 69th Leg, Reg Sess, 2026 (as passed by the House of Representatives 19 March 2026).

¹⁸⁷ Bill AB 1857, *An Act to add Section 714.8 to the Civil Code, relating to property*, 2025-26, Reg Sess, Cal, 2026 (as introduced 12 February 2026).

success, they contribute to a broader movement to raise awareness and prompt government action to tackle systemic food insecurity.

b. United Kingdom

The issue of restrictive covenants in the grocery industry has been the subject of considerable regulatory action in the UK. The Competition Markets Authority (CMA), formerly the Competition Commission (CC), has engaged with the issue of property controls under the “Controlled Land” framework for over 15 years. After a 2006-2008 inquiry into the big four grocery chains in the UK, the Competition Commission concluded that “Controlled Land” held or restricted by grocers posed a significant barrier to entry from smaller competitors. This led to the establishment of the *Groceries Market Investigation (Controlled Land) Order 2010* by the CMA, which formally established rules prohibiting the use of restrictive covenants and certain exclusivity clauses that threaten competition in the grocery industry.¹⁸⁸

The Order applies to the seven largest grocery retailers in the UK. It imposes a ban on new restrictions, preventing large grocery retailers from entering into new restrictive covenants that prohibit land from being used for a supermarket. The Order also bans exclusivity clauses that prevent grocery store competition that last longer than five years. Schedule 4 of the Orders sets out a detailed ‘Competition Test’ to be applied by the CMA in determining whether a covenant or exclusivity clause may restrict competition. It involves a review of the region around the relevant grocery store property to determine the area accessible by car from the property within a 10-minute timeframe.¹⁸⁹ If there are 3 or fewer large grocery retailers, or if a retailer owns more than 60% of stores in that area, the competition test is failed and the store must remove the restrictive covenant within six months.¹⁹⁰

Enforcement of the Order by the CMA has been ongoing, with numerous significant breaches occurring by major grocery retailers. In 2020, an investigation found that Tesco had breached the Order 23 times, prompting the CMA to conduct a broad audit of all major grocery chains. The audit revealed the ongoing use of anti-competitive land agreements by multiple retailers, including 107 breaches of the Order by grocery chain Co-Op in 2023.¹⁹¹ Enforcement efforts to find existing land controls among grocery retailers is ongoing in the UK, prompting caution when drafting commercial land agreements. The

¹⁸⁸ UK, *The Groceries Market Investigation (Controlled Land) Order 2010*, Competition Commission, 30 April 2010, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90449/1/groceries_land_order_PDF_A.pdf

¹⁸⁹ *Ibid*, Schedule 4.

¹⁹⁰ "When Competition Law Meets Commercial Property," Wedlake Bell, September 29, 2023, <https://wedlakebell.com/insights/news/when-competition-law-meets-commercial-property/>

¹⁹¹ William Dodds, "Co-op Guilty of 107 Breaches of Competition Rules," *Food Manufacture*, March 5, 2025, <https://www.foodmanufacture.co.uk/Article/2025/03/05/co-op-guilty-of-107-breaches-of-competition-rules/>.

CMA has published a consumer facing guidance on their website explaining the issue and their Order banning anti-competitive land controls.¹⁹²

The UK framework on this issue provides a model for how competitor property controls could be addressed through binding regulations. Notably, the Order uses precise language and tests to determine the anti-competitive nature of the property control being regulated. It targets 'long-term exclusivity arrangements' of more than 5-years rather than a blanket prohibition on all such clauses. The Order also outlines a precise framework to determine market size and impact on competition in a standardized test. It is also worth noting that Orders do not suffice on their own and require long-term commitment to monitoring and enforcement efforts.

c. Australia and New Zealand

Both Australia and New Zealand have recognized the issue of anti-competitive property controls as a barrier to competition in the grocery sector. New Zealand has taken a direct legislative approach to ban these mechanisms, while Australia has tackled the issue from various areas of law.

In New Zealand, under the *Commerce (Grocery Sector Covenants) Amendment Act 2022*, most grocery-related restrictive covenants are prohibited and unenforceable. The law not only prohibits new covenants but also provides a mechanism to remove existing restrictions from land titles.¹⁹³ In 2024 and 2025, the New Zealand Commerce Commission pursued significant enforcement efforts banning grocery store restrictive covenants. For example, Foodstuffs North Island was given a \$3.25 million penalty for its use of anti-competitive restrictive covenants. The Commission stated the fine was meant to deter other businesses from using these anti-competitive property mechanisms.¹⁹⁴

In Australia, competitor property controls are primarily regulated through the *Competition and Consumer Act 2010*, which prohibits any agreement that has the purpose or effect of substantially lessening competition. The Australian Competition and Consumer Commission has previously engaged in challenging restrictive covenants in the grocery industry to obtain court undertakings to stop their use. The Commission has reached multiple agreements with major Australian grocery stores in which stores have undertaken to phase out all restrictive covenants in their leases.¹⁹⁵ As of January 2026, the ACCC

¹⁹² UK Competition and Markets Authority, Groceries Market Investigation (Controlled Land) Order 2010: Grocery Land Agreements (London: CMA, updated November 27, 2020).

<https://www.gov.uk/government/publications/groceries-market-investigation-controlled-land-order-2010/grocery-land-agreements>

¹⁹³ *Commerce (Grocery Sector Covenants) Amendment Act 2022* (NZ), s 14.

¹⁹⁴ "Commerce Commission Secures Significant Penalty for Anti-Competitive Land Covenants," Minter Ellison Rudd Watts, August 28, 2024, <https://www.minterellison.co.nz/insights/commerce-commission-secures-significant-penalty-for-anti-competitive-land-covenants>.

¹⁹⁵ Australian Competition and Consumer Commission, "Supermarket agreement opens way for more competition," media release, September 18, 2009, <https://www.accc.gov.au/media-release/supermarket-agreement-opens-way-for-more-competition>.

began implementation of a major reform to Australia's merger control regime to include a mandatory notification requirement for major mergers. This reform specifically includes major supermarkets, requiring these stores to notify the ACCC when a land or asset acquisition is made.¹⁹⁶ This reform will allow for stricter oversight when grocery stores enter into new lease agreements or acquire new land, enabling them to crack down on the practice of 'land banking' to prevent competition.

Recent efforts to target restrictive covenants and exclusivity clauses in New Zealand and Australia signal a broader recognition that this problem is a worthwhile consumer issue meriting close attention.

I- Main Findings and Recommendations

PIAC found that the legal nature of restrictive covenants, their scope, operation, and effects on competition in the grocery sector in Canada are not easily understood and widely known by consumers. They are also difficult to navigate because of their complexity and lack of easy access to relevant data. Similarly, there is limited public understanding of exclusivity clauses in the grocery sector and how they affect competition. The consumer-facing resources on this issue are far from limited, and the challenges in accessing these covenants and clauses make it more difficult to identify issues and raise awareness.

The data on how and where restrictive covenants and exclusivity clauses apply in the grocery sector across Canada is not easily accessible. There is no comprehensive resource available nationally in Canada and/or provincially that provides a complete picture of these restrictions. Many stakeholders we spoke to also noted this gap. Even if it were available later, it should be questioned whether and how such a resource could be made easy to use, particularly by an average consumer who has limited knowledge of this issue. Data on how and where restrictive covenants have led to food deserts in Canada was also found to be limited. These data gaps need to be reviewed and addressed to enable a better understanding of these anti-competitive restrictions and their consumer implications in the grocery sector.

PIAC also found that restrictive covenants can affect consumers' consumption habits by potentially influencing consumers' behaviours based on food options that are easily available and/or are affordable. This effect was also found to disproportionately impact low-income and other vulnerable consumers. We did not come across significant evidence that directly linked anti-competitive property restrictions with higher food prices. However, we found some anecdotal references in the media as well as stakeholder comments that suggested a connection between limited competition and high grocery prices, with property controls making these price increases more likely.

¹⁹⁶ "Could Your Supermarket Lease Be Void? How Landlords Can Get Ahead of New ACCC Rules," Hamilton Locke, June 13, 2024, <https://hamiltonlocke.com.au/could-your-supermarket-lease-be-void-how-landlords-can-get-ahead-of-new-accr-rules/>.

Based on the findings of this research, PIAC recommends:

- ❖ Comprehensive data regarding the application of restrictive covenants in the grocery sector in Canada should be collected and published. Data on exclusivity clauses should also be published. This is important to identify the application and scope of these restrictions and how they affect access to food, including healthy food options.
- ❖ A national registry should be created on all property restrictions in the grocery sector that should be publicly searchable through an online database. This should be done in collaboration with federal agencies, such as ISED and all provincial and territorial authorities. This registry should be accessible free of cost with the data available in different formats. This registry should include details, such as all the locations with addresses that are subject to property restrictions in the grocery sector, the scope of restrictions and timelines. Short summaries of restrictions must be provided in simple and plain language. If this cannot be done at the national level, then at least all provinces and territories should create and manage this specialized registry. Importantly, legislative changes should be considered in all provinces and territories to enable the creation and maintenance of this registry.
- ❖ Considering the jurisdictional challenges in addressing restrictive covenants, and how they impact access to food in Canada, a comprehensive national strategy should be developed to remove restrictive covenants that limit competition in the grocery sector. The details of who has placed these covenants should be considered, with covenants imposed by large grocery chains to be more strictly scrutinized. This strategy should be planned in collaboration with the Competition Bureau and all the provincial and/or territorial authorities and be overseen by ISED. Those municipalities with the highest prevalence of restrictive covenants should be involved in this process. Such a strategy should take into account the unique circumstances, and challenges of all the different regions in Canada, and must provide for at least common standards to ensure uniform consumer safeguards apply across Canada.
- ❖ The federal agencies, such as the ISED, and the Bureau along with all the provincial and territorial governments should also consider reaching out to the ULCC to determine whether and how a uniform law and regulation could be developed to address anti-competitive property restrictions in the grocery sector. In this regard, a working group should be created to prepare and submit a detailed proposal to the ULCC.
- ❖ The legislative and enforcement approach being taken in Manitoba to address these anti-competitive property restrictions should be closely monitored to learn lessons for developing the legislative and regulatory policy either nationally or by other provinces and territories.

- ❖ Our research and stakeholder feedback suggested that not all exclusivity clauses may hinder competition in the grocery sector and even if they do, their scope and consumer impact can be much less than that of a restrictive covenant. Given this, and the varied scope of these restrictions, a nuanced legal and regulatory response should be considered. This is to ensure that these clauses are only allowed when justified, limited to clear and short terms, and limited in geographic scope. It is important that all these restrictions are placed under the consumer lens to better assess their impact on consumers and to develop appropriate responses.
- ❖ Canadian regulators and lawmakers should refer to the UK CMA's *Groceries Market Investigation (Controlled Land) Order 2010* in drafting nuanced laws and policies that address this issue. The Order provides different levels of regulation based on retailer size and specifically targets major retailers. Additionally, it provides a clear test for determining whether there is reduced competition in a geographic area that merits further inquiry. It targets exclusivity arrangements of more than five years rather than prohibiting all such clauses. Canadian provincial and federal lawmakers should adopt this targeted approach to adequately address the problem.
- ❖ The creation of food deserts, and limitations on access to food, particularly healthy food, is a matter of significant concern. Our research found that the present resources on food deserts in Canada are limited and only provide details on some regions. A mapping tool should be created to identify food deserts across Canada. The mapping tool and resources available on the website of National Institute of Public Health of Quebec should be considered. This tool should be developed nationally if feasible, if not then at least all provinces and territories should have something similar to that available in Quebec.
- ❖ A national grocery pricing study should be done, similar to Manitoba's grocery pricing study with one of the objectives of this study being to review whether and how anti-competitive property restrictions affect and/or result in higher food prices. Consumers and all interested stakeholders should be invited to participate in this study.

J- Appendix 1 – Stakeholder Questionnaire

[Please see next page]

Canadian Consumer Protection Initiative: Research Project of the Public Interest Advocacy Centre

“A review of Restrictive Covenants and Grocery Competition in Canada” - Stakeholder Questionnaire

Introduction:

Scope/goal:

The purpose of this project is to conduct a comprehensive review of restrictive covenants, a form of property control that limits how real estate can be used by competitors, and how they impact competition in food sales.¹⁹⁷ The goal is to examine legislative as well as regulatory and policy solutions to restrictive covenants, with a view to enhance competition in the grocery sector.

The project will also study the role of restrictive covenants reducing choice of food retailers available to consumers at a local geographical market level. PIAC will also explore the effect of restrictive covenants on consumers’ consumption habits (especially nutrition) and costs of food, as well as on grocery market participants and market structure at the local, city, provincial and national levels.

The Public Interest Advocacy Centre has received funding from Innovation, Science and Economic Development Canada’s Canadian Consumer Protection Initiative. The views expressed in this research are not necessarily those of Innovation, Science and Economic Development Canada or of the Government of Canada.

Main Research Question:

- How are restrictive covenants impeding competition in food sales and how can negative implications of such restrictions be mitigated?

Methodology

PIAC’s research includes an extensive literary review; analysis of regulatory legislative frameworks (federal, provincial and international); data analysis; interviews with stakeholders, regulatory authorities, advocacy groups and subject matter experts.

Instructions:

For the purposes of this study, we are seeking input from various stakeholders. Your views would be instrumental in informing our research and analysis. Please skip any questions that are not applicable to you or your organization, including any questions that you do not wish to answer, by marking it as N/A. We greatly appreciate your time in completing this questionnaire.

We would be happy to assist and can also schedule a meeting, if you prefer. Should you have any questions, please do not hesitate to contact us. Please note that information provided by you

¹⁹⁷ See here for details: Competitor property controls and the Competition Act, online: [Competitor property controls and the Competition Act](#).

in response to this questionnaire may be published in the final report. If you prefer, we can provide you with the proposed quotations in context to make any updates, as necessary.

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Representative Name, with designation (if applicable)	
Phone	
E-Mail Address	
Date	

[Please see next page]

Specific Questions

[a relevant set of questions were sent]

Additional comments

[space provided for more comments]

Questions: Consumer Groups

Consumer Views

1. Have you heard from consumers about limited grocery store options and/or high grocery prices? Can you share some consumer experiences?
2. What do consumers in Canada think is causing food prices to rise? Does this perspective vary based on household income?

Consumer Impact

3. In your view, is there any connection between restrictive covenants and rising food prices?
4. Do restrictive covenants play a role in reducing the choice of food retailers available to consumers at a local geographical market level? Please elaborate.
5. Has your organization undertaken surveys, polling, or other research examining consumer perceptions of limited grocery stores and/or food price increases? If so, please share your research findings.
6. In your view, do restrictive covenants affect consumers' consumption habits (especially nutrition) due to rising costs of food?

Legal and Regulatory Issues

7. What legal and/or regulatory intervention would be most effective to address the use of anti-competitive property controls, such as restrictive covenants, in the grocery sector? What consumer protections should apply?
8. Please provide your opinion on the following:
 - (a) Existing federal regulatory efforts to address the use of anti-competitive property controls in the grocery sector.
 - (b) Existing local, municipal and/or provincial efforts to address the use of anti-competitive property controls in the grocery sector.

9. Are you aware of measures in other jurisdictions to address this issue in the grocery sector? If so, what lessons can we learn to improve competition?
10. Manitoba recently passed the *Property Controls for Grocery Stores and Supermarkets Act* (Bill 31) that bans restrictive covenants and exclusivity clauses in the grocery sector. Should other provinces and territories adopt something similar? Why or why not?

Consumer Awareness

11. How can consumers be made aware of these anti-competitive property controls? What benefits would arise from increased consumer awareness?

Questions: Academics/Researchers/Policy Experts

Consumer Impact and Related Research

1. What are your views on the use of anti-competitive property controls, particularly restrictive covenants, in the grocery sector in Canada? How do they impact consumers?
2. Have you conducted any research on the use of restrictive covenants in the grocery sector in Canada that you could share?
3. Do you have any observations regarding food insecurity and rising food costs in Canada?
4. Can you share any other academic articles, papers and/or reports on this topic that you think should be reviewed as a part of this study?
5. Do restrictive covenants play a role in reducing the choice of food retailers available to consumers at a local geographic market level? Please elaborate.
6. Do you think there is any connection between restrictive covenants and rising food prices? Please elaborate.
7. In your view, do restrictive covenants affect consumers' consumption habits (especially nutrition) due to rising costs of food?

Legal and Regulatory Issues

8. Two types of competitor property controls are common in Canada - restrictive covenants and exclusivity clauses. Which ones do you think are more common in the grocery sector and why is it important to address them?
9. What property law challenges may be an impediment to dealing with anti-competitive property controls, particularly restrictive covenants in the grocery sector in Canada?

10. What are your views on the Competition Bureau's efforts to address anti-competitive property controls in the grocery sector? Can you point to any gaps that should be considered?
11. What jurisdictional challenges would arise if Canada were to have uniform protections to deal with restrictive covenants in the grocery sector?
12. What kind of regulatory or legal intervention would most effectively address this issue in Canada?
13. Manitoba recently passed the *Property Controls for Grocery Stores and Supermarkets Act* (Bill 31) that bans restrictive covenants and exclusivity clauses in the grocery sector. Should other provinces and territories adopt something similar? Why or why not?

Questions: Lawyers

Consumer Impact

1. What are your views on the use of anti-competitive property controls, particularly restrictive covenants in the grocery sector in Canada? How do they impact consumers?
2. Do restrictive covenants play a role in reducing the choice of food retailers available to consumers at a local geographic market level? Please elaborate.

Legal and Regulatory Issues

3. What is your perspective on recent legislative amendments to the *Competition Act* that enables the Competition Bureau to limit the use of restrictive covenants in a retail context?
4. What are your views on the Competition Bureau's efforts to address anti-competitive property controls in the grocery sector? Can you point to any gaps or issues that should be considered.
5. What are the property law challenges that may be an impediment to dealing with anti-competitive property controls, particularly restrictive covenants in the grocery sector in Canada?
6. Are there any jurisdictional challenges to having uniform protections to deal with restrictive covenants in the grocery sector? If so, please discuss.
7. What kind of regulatory or legal intervention would most effectively address this issue in Canada?

Questions: Competition Bureau

1. Please elaborate on the Bureau's 2023 findings concerning the implications of property controls on grocery competition.
2. How have restrictive covenants and exclusivity clauses in your view affected competition and consumer choice in the grocery sector? How do these property controls differ and/or overlap?
3. How have the recent changes to the *Competition Act* affected the Bureau's approach to dealing with restrictive covenants in the grocery sector?
4. What are some roadblocks to enforcement (if any)? How could those be addressed?
5. Has the state of competition and consumer choice in this sector changed or expected to change since the changes introduced to the *Competition Act*?
6. Is a more targeted enforcement approach required for dealing with anti-competitive restrictive covenants in the grocery sector, specifically in rural, and remote areas? Please elaborate.
7. The CB's Retail Grocery Market Study (2023) noted that lower-income Canadians (those earning less than \$40,000 a year) are more likely than others to have fewer stores in proximity to their home. Can you please elaborate on these findings?
8. Besides the law, what kind of regulatory and policy changes are required to better address the anti-competitive effects of restrictive covenants in the grocery sector?
9. What changes need to be introduced on the federal, provincial and territorial level? What would be the best method for achieving this?
10. Has the Bureau worked or considered working with the provinces and territories to address this issue?
11. Loblaws and some other stores have committed to limit and/or end property controls. How does the Bureau plan to monitor compliance, and what public resources, if any, would be provided to ensure that these grocery stores remain committed.
12. Manitoba recently passed the Property Controls for Grocery Stores and Supermarkets Act (Bill 31) that bans restrictive covenants and exclusivity clauses in the grocery sector. Should other provinces and territories adopt something similar? Why or why not?
13. What can we learn from international practices?

14. Considering the recent developments, how can our research project best contribute towards addressing the anti-competitive effects of restrictive covenants in this sector?

Questions: Canadian Regulators (Except the Competition Bureau)

1. Has your organization dealt with anti-competitive property controls in Canada, particularly restrictive covenants in the grocery sector?
2. What can regulators do to improve competition in the grocery sector?
3. What challenges arise in relation to imposing anti-competitor property controls on Canadian grocery chains?
4. What can be learned from international measures taken to limit or remove anti-competitive property controls?
5. Do you have any specific objectives to improve competition in the grocery sector in Canada? Please elaborate.
6. How are regulators responding to the specific needs of rural and remote Canadians in seeking to improve access to high quality and affordable food?
7. Manitoba recently passed the *Property Controls for Grocery Stores and Supermarkets Act* (Bill 31) that bans restrictive covenants and exclusivity clauses in the grocery sector. Should other provinces and territories adopt something similar? Why or why not?

Questions: Attorney General Offices

1. Has your office engaged with the issue of anti-competitive property controls in Canada, particularly restrictive covenants in the grocery sector?
2. Are you aware of any problems and/or issues related to restrictive covenants affecting competition in this sector?
3. How can provinces and territories address this issue? Are there any jurisdictional challenges to having uniform laws across Canada to address this issue in the grocery sector? If so, please elaborate.
4. Manitoba recently passed the *Property Controls for Grocery Stores and Supermarkets Act* (Bill 31) that bans restrictive covenants and exclusivity clauses in the grocery sector. Should other provinces and territories adopt something similar? Why or why not?
5. What other policy and/or regulatory measures can be taken to address restrictive covenants in this sector?

6. What are your views on the Competition Bureau's efforts to address anti-competitive property controls in the grocery sector? Can you point to any gaps that should be considered?

Questions: Manitoba Premier and the Minister Involved in the passing of Bill 31

[These questions just pertained to Bill 31]

1. Can you please elaborate on what led to the introduction of Bill 31 that bans restrictive covenants and exclusivity clauses in the grocery sector? If possible, please share any consumer issues and/or complaints raised.
2. What were the challenges in getting this bill passed? How were they addressed?
3. What challenges are there in implementing Bill 31 across Manitoba?
4. Should other provinces and territories adopt something similar to Bill 31? Why or why not?
5. What are the key barriers to harmonizing laws across Canada limiting anti-competitive property controls in this sector?

Questions: Minister of Agriculture and Agri-Food Canada (AAFC)

1. Has Agriculture and Agri-Food Canada (AAFC) dealt with anti-competitive property controls in Canada, particularly restrictive covenants in the grocery sector? If so, please elaborate.
2. Do restrictive covenants in the grocery sector have implications for Canada's agricultural sector? If so, what types of impacts have been observed?
3. Does AAFC support legal and policy reforms that would limit anti-competitive property controls? Please elaborate.
4. Has AAFC collaborated or considered collaborating with other federal agencies as well as provincial and/or territorial regulators to deal with anti-competitive property controls?
5. What challenges arise in relation to limiting anti-competitor property controls in the grocery sector?
6. What can regulators do to improve competition in the grocery sector, both on a federal, provincial and territorial level?
7. What can be learned from international measures taken to limit or remove anti-competitive property controls in the grocery sector?

Questions: International Regulators

1. Can you please elaborate on measures taken to limit and/or eliminate the use of anti-competitive property controls, particularly restrictive covenants in the grocery sector?
2. What were the outcomes of these measures? How were or are these outcomes tracked?
3. What challenges still exist with respect to limiting the use of restrictive covenants in the grocery sector?
4. What can regulators in Canada do to improve competition in the grocery sector?
5. Going forward, do you have any specific objectives to improve competition in the grocery sector in your jurisdiction? Please elaborate.

Questions: Industry Members/other representatives [Including Grocery stores]

1. Are restrictive covenants, in your view, a barrier to a competitive grocery sector? If so, what can be done to address these barriers? Please elaborate.
2. Loblaws has recently committed to eliminating competitor property controls in the name of improving competition in the grocery sector. Is your organization planning to implement similar measures? Please elaborate, if applicable.
3. Is it enough for individual grocery stores to eliminate property controls on their own? Are other legislative or regulatory measures warranted in addition to voluntary action?
4. What can be done to ensure a uniform policy across Canada to mitigate the use of restrictive covenants in the grocery sector?
5. Is your organization collaborating with regulators to ensure the removal of anti-competitive property controls? Please elaborate, if applicable.

Questions: Local food organizations/non-profits

1. Has your organization conducted research on food deserts in your community? If so, have you observed any notable trends?
2. Has your organization encountered the issue of anti-competitive property controls in the grocery industry? Are local members of your community aware of property controls that limit competition among food retailers?

3. In your opinion, what can local grassroots organizations do to combat this issue? What would you like to see from governments and regulators to tackle the use of restrictive covenants in the grocery setting?
4. Is there a link between food policy and access to nutritious food? How does this issue impact rural and remote communities?

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