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CANADA

WAGE FIXING IN CANADA: AND FAIRNESS IN THE GROCERY SECTOR

**Report of the Standing Committee on Industry, Science
and Technology**

Sherry Romanado, Chair

**JUNE 2021
43rd PARLIAMENT, 2nd SESSION**

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Chair**

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

has the honour to present its

SIXTH REPORT

Pursuant to its mandate under Standing Order 108(2), the committee has studied Front-Line Grocery Store Workers and has agreed to report the following:

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LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Government of Canada introduce legislation amending section 45 of the *Competition Act* to prohibit cartel-like practices related to the purchase of goods and services, including wage-fixing agreements between competitors. 7

Recommendation 2

That the Government of Canada and the Competition Bureau support provinces and territories in the establishment of codes of conduct to address inequalities in bargaining power between food producers and grocers, including by hosting a first ministers' meeting. 7

Recommendation 3

That the Government of Canada provide the Competition Bureau with the resources necessary to ensure the effective enforcement of the *Competition Act*. 8



WAGE FIXING IN CANADA AND FAIRNESS IN THE GROCERY SECTOR

INTRODUCTION

On 18 June 2020, the House of Commons Standing Committee on Industry, Science and Technology (the Committee) agreed to:

invite senior representatives from Loblaw Companies Ltd., Metro Inc. and Empire Company Ltd. and other witnesses to explain their decisions to cancel, on the same day, the modest increase in wages for front-line grocery store workers during the pandemic, including how those decisions are consistent with competition laws.¹

On 5 November 2020, the Committee also agreed to “invite the Commissioner of Competition to provide a briefing on the work of the ... Competition Bureau.” The Committee held three meetings and heard 11 witnesses.

EVIDENCE

In March 2020, multiple large food retailers in Canada offered a wage increase to their front-line employees. Food retailers who offered the wage premium included Loblaw Companies Limited (Loblaw’s), Metro Inc. (Metro), and Sobeys, owned by Empire Company Limited (Empire). While the increase varied from one grocer or employee to another, many workers saw their pay increase by \$2 per hour. In June 2020, all three food retailers mentioned above terminated their wage premium program.²

Representatives of Loblaw’s, Metro, and Empire testified that they had conceived the wage premium as a temporary measure. They associated its implementation not with the COVID-19 pandemic *per se*, but with the lockdown conditions under which many of their stores and other facilities operated. They thus felt it appropriate to terminate the wage increase after many provincial governments ended or eased lockdowns, and

1 On 10 December 2020, the House of Commons Standing Committee on Industry, Science and Technology (INDU) [agreed](#) to “undertake a study on front-line grocery store workers, and that the evidence and documentation received by the committee during the First Session of the 43rd Parliament on the subject be taken into consideration by the committee in the current session.”

2 INDU, [Evidence](#), 43rd Parliament, 1st session, 10 July 2020, 1400, 1435, 1520 (Michael Medline, Empire Company Limited); INDU, [Evidence](#), 43rd Parliament, 1st session, 10 July 2020, 1415, 1520 (Sarah Davis, Loblaw Companies Limited); INDU, [Evidence](#), 43rd Parliament, 1st session, 10 July 2020, 1420, 1520–1525 (Éric La Flèche, Metro Inc.).



normal shopping behaviour and business volumes resumed.³ Michael Medline, President and Chief Executive Officer of Empire, added that Sobeys would reintroduce a wage increase should provinces reinstate lockdowns,⁴ and in fact did so where lockdowns occurred.

Union representatives expressed disappointment on the termination of the wage premium programs. They testified that the wage increase constituted an important recognition that grocery workers face extraordinary circumstances in providing essential services to Canadians.⁵ They also testified that food retailers implemented these programs to encourage employees to come to work rather than benefiting from the Canada Emergency Response Benefit.⁶ These wage premium programs were terminated when COVID-19 infections decreased in many Canadian regions, but they maintained that grocery workers still face significant risk of contracting COVID-19 even with the application of safety measures.⁷ They added that withdrawing the premium exacerbated already difficult work conditions of food retail jobs, including low salaries and lack of benefits.⁸ They supported government intervention to bring higher wages, better benefits, and more full-time jobs for grocery workers.⁹

Food retailer representatives emphasized measures they took to protect the safety of customers and employees during the pandemic. They testified that the cost of these measures largely offset revenue gains they had so far experienced. For example, Sarah Davis, President of Loblaw's, spoke of tens of millions of dollars invested in new protections and protocols to ensure its facilities were safe.¹⁰ Ms. Davis testified that these measures, though not perfect, made the infection rate of Loblaw's employees

3 INDU, [Evidence](#), 10 July 2020, 1405 (Medline); 1415, 1505-1510 (Davis); 1535 (La Flèche).

4 INDU, [Evidence](#), 10 July 2020, 1405.

5 INDU, [Evidence](#), 43rd Parliament, 1st session, 6 July 2020, 1405 (Stéphane Lacroix, Teamsters Canada); 1245, 1300, 1345 (Paul Meinema, United Food and Commercial Workers Union Canada).

6 INDU, [Evidence](#), 6 July 2020, 1255, 1355, 1405 (Jerry Dias, Unifor); 1300 (Lacroix); 1345 (Meinema).

7 INDU, [Evidence](#), 6 July 2020, 1240, 1255, 1315, 1330 (Dias); 1315, 1335 (Gord Currie, Unifor); 1340 (Carolyn Wrice, Unifor); 1335, 1350 (Meinema).

8 INDU, [Evidence](#), 6 July 2020, 1235 (Lacroix); 1240 (Dias). But see INDU, [Evidence](#), 10 July 2020, 1405 (Medline); 1445 (La Flèche).

9 INDU, [Evidence](#), 6 July 2020, 1305, 1320-1325, 1335, 1400-1405 (Lacroix); 1240, 1250, 1310, 1400 (Dias); 1245, 1340-1345 (Meinema).

10 INDU, [Evidence](#), 10 July 2020, 1410-1415, 1430, 1500, 1510, 1540 (Davis). See also INDU, [Evidence](#), 10 July 2020, 1400 (Medline); 1420-1425 (La Flèche). But see INDU, [Evidence](#), 6 July 2020, 1240, 1255, 1320 (Dias); 1335 (Meinema).

“considerably lower than the rate in the general Canadian population.”¹¹ While these representatives said they would welcome a discussion on increasing minimum wages, they also argued that they should only be increased progressively, across all sectors, and under government leadership.¹²

Representatives of food retailers acknowledged having communicated with each other regarding the termination of their respective wage premium program. However, they denied having coordinated these terminations and affirmed making their decision independently from their competitors.¹³ Eric La Flèche, President and Chief Executive Officer of Metro, said he asked Mr. Medline and Ms. Davis in May and June, respectively, whether they would end their program on 13 June 2020. Both responded, at the time, that no final decision has been made on the matter.¹⁴ Mr. La Flèche explained he did so not to obtain a tacit agreement on wages, but to gather information that would help him decide whether to terminate Metro’s own program:

We operate in a competitive environment. We want to treat our employees fairly and be seen to treat our employees fairly. ... The more information I have on what others are doing, how they are treating their employees and how much they are paying and for how long, is valid information that I tried to get.¹⁵

Ms. Davis said she sent an email on or around 13 June 2020 to her competitors, including Messrs. Medline and La Flèche, to inform them that Loblaw’s was terminating its wage premium program. She affirmed having sent that email after Loblaw’s management made and communicated the decision internally.¹⁶ Mr. La Flèche testified that learning that his competitors were terminating their program contributed to Metro doing the same, among other factors.¹⁷

Matthew Boswell, Commissioner of Competition, testified that competitors having communications regarding wages at the executive level risks a slippery slope towards

11 INDU, [Evidence](#), 10 July 2020, 1410 (Davis).

12 INDU, [Evidence](#), 10 July 2020, 1435 (Medline); 1415, 1435, 1515, 1550 (Davis); 1435, 1445 (La Flèche).

13 INDU, [Evidence](#), 10 July 2020, 1435, 1450, 1530 (Medline); 1410, 1435, 1525, 1530 (Davis); 1420–1425, 1435–1440 (La Flèche).

14 INDU, [Evidence](#), 10 July 2020, 1440, 1450, 1505-1510, 1525.

15 INDU, [Evidence](#), 10 July 2020, 1535. See also INDU, [Evidence](#), 10 July 2020, 1405 (Medline).

16 INDU, [Evidence](#), 10 July 2020, 1415, 1435, 1450. See also INDU, [Evidence](#), 6 July 2020, 1300, 1350 (Meinema).

17 INDU, [Evidence](#), 10 July 2020, 1535.



cartel-like conduct.¹⁸ However, “agreements between competitors with respect to things such as wage fixing and no-poach agreements are not captured by the Competition Bureau’s (the Bureau) criminal powers, as a result of 2009 amendments to the law that removed the word ‘purchase’ from” the relevant section of the *Competition Act*.¹⁹ Commissioner Boswell noted that Canada’s competition legislation diverges from the United States’ (US), where federal competition authorities can prosecute criminally such agreements.²⁰ The Commissioner added that other jurisdictions have adopted national codes of conduct that address bargaining inequalities in the food sector, though the federal government could face constitutional obstacles should it attempt doing the same in Canada.²¹

On multiple occasions throughout his testimony, Commissioner Boswell stressed that the Bureau faces significant resource constraints, being “one of the least-funded competition enforcement agencies”²² among its peers. He testified that, in real dollars, the Bureau’s budget fell by 10% in the last ten years and now has less enforcement personnel than it did 15 years ago.²³ More resources would especially help enforcing competition rules in the digital economy:

I've spoken publicly multiple times about some of the challenges the bureau faces with respect to administering and enforcing the *Competition Act* in the digital economy. We've had a veritable explosion of data in the world and, of course, law enforcement agencies have to deal with the data we receive on cases. The amount of data we've received has gone up six times. The cost of cases has increased dramatically.²⁴

He added:

The world is very complex for these types of digital investigations. You need special skill sets; you need data scientists, data analysts. You need to really understand what’s going on under the covers, the opacity of the visual economy, with algorithms and those things.²⁵

18 INDU, *Evidence*, 43rd Parliament, 2nd session, 3 December 2020, 1145 (Matthew Boswell, Competition Bureau).

19 *Ibid.*, 1145, 1205.

20 *Ibid.*, 1145, 1155, 1205.

21 *Ibid.*, 1110–1115, 1240.

22 *Ibid.*, 1240.

23 *Ibid.*, 1135.

24 *Ibid.*

25 *Ibid.*, 1230.

Despite these constraints, the Commissioner remains proud of the Bureau's work. He testified that the Bureau implements a wide enforcement mandate as best as it can with the resources it has and "routinely punches above its weight."²⁶

OBSERVATIONS AND RECOMMENDATIONS

The lack of provisions prohibiting purchase-side agreements between competitors that amount to cartel like practices, such as wage-fixing agreements, is a significant gap in the *Competition Act*. As suggested by the Commissioner of Competition, Parliament should align Canadian competition legislation with American legislation to criminally prosecute such agreements. Doing so would clarify competition-related obligations for businesses active in Canadian and American markets, and facilitate cooperation between competition authorities in Canada and the US.

Recommendation 1

That the Government of Canada introduce legislation amending section 45 of the *Competition Act* to prohibit cartel-like practices related to the purchase of goods and services, including wage-fixing agreements between competitors.

The Committee finds that the Canadian agri-food sector would benefit from a code of conduct to address inequalities in bargaining power between food producers and grocers. Parliament has legislative power to regulate relationships between these actors, but only within specific areas of jurisdiction. However, the federal government can still play an important leadership and support role to address bargaining inequalities in this sector.

Recommendation 2

That the Government of Canada and the Competition Bureau support provinces and territories in the establishment of codes of conduct to address inequalities in bargaining power between food producers and grocers, including by hosting a first ministers' meeting.

Healthy and robust competition in every sector of the economy benefits all Canadians. However, even the most sophisticated competition legislation will come to nought without proper enforcement. This Committee has long been preoccupied with the

26 *Ibid.*, 1245.



Bureau having enough resources to effectively enforce the *Competition Act*.²⁷ As its investigations become increasingly complex, it is crucial that the federal government adequately support the Bureau.

Recommendation 3

That the Government of Canada provide the Competition Bureau with the resources necessary to ensure the effective enforcement of the *Competition Act*.

27 INDU, [*A Plan to Modernize Canada's Competition Regime*](#), 37th Parliament, 1st session, April 2002 ([*recommending*](#) that “the Government of Canada provide the Competition Bureau with the resources necessary to ensure the effective enforcement of the *Competition Act*”).

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [webpage for this study](#).

43rd Parliament—1st Session

Organizations and Individuals	Date	Meeting
Teamsters Canada Stéphane Lacroix, Director of Communications and Public Affairs (Quebec)	2020/07/06	27
Unifor Gord Currie, President Local 414 Jerry Dias, National President Carolyn Wrice, President Local 597	2020/07/06	27
United Food and Commercial Workers Union Canada Paul Meinema, National President	2020/07/06	27
Empire Company Limited Michael Medline, President and Chief Executive Officer	2020/07/10	28
Loblaw Companies Limited Sarah Davis, President	2020/07/10	28
Metro inc. Eric La Flèche, President and Chief Executive Officer	2020/07/10	28

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meeting No. 44) from the 43rd Parliament, 2nd Session and (Meetings Nos. 27 and 28) from the 43rd Parliament, 1st Session is tabled.

Respectfully submitted,

Sherry Romanado
Chair

