July 23, 2026

Grocery Exclusives – The Saga Continues

In October 2022, the federal Competition Bureau (the "**Bureau**") launched a market study of grocery store competition in Canada in response to cries from the Canadian public for lower prices. In December 2024, the federal government passed legislation that brought any agreement which "lessens competition" within the purview of the Competition Tribunal's authority, including exclusive use covenants and restrictive covenants that curtail competition. Since then, the Bureau has published multiple guidelines outlining its enforcement approach to the new legislation. We tracked these developments in prior News ReLeases, which you can access here:

- Are Exclusive Covenants About to Become Extinct?
- Exclusives Under Attack!
- Is Your Exclusive Justified? The Competition Bureau's Concern with Property Controls

As the saga surrounding the enforceability of exclusive use covenants and restrictive covenants (collectively dubbed "property controls" by the Bureau) for all types of commercial tenancies continues to unfold, the major Canadian grocers remain squarely in the Bureau's crosshairs. The Bureau has obtained court orders to advance its investigations into the use of property controls by Empire Company Limited ("**Empire**", the parent company of Sobeys) and Loblaws.

<u>Loblaws' Announcements:</u>

In 2024, Loblaws announced that it would eliminate all existing property controls if other grocers agreed to do the same. In 2025, Loblaws expanded its commitment by announcing that it was:

(a) no longer placing restrictive covenants on properties it sells;

(b) in the process of releasing any interest it has in restrictive covenants on previously sold properties;

(c) eliminating exclusives from grocery stores in Halifax (the focus of some of the Bureau's investigation); and

(d) reviewing leases in communities across Canada where Loblaws was the only grocery store, with the aim of removing the exclusive to allow for increased competition.

According to the Bureau, Loblaws also committed to waiving its rights under exclusive use clauses that prohibit other tenants from selling a subset of the products typically sold by a grocery store (e.g., a butcher, bakery, or green grocer), and not including restrictions on the sale of food products in new leases for Shoppers Drug Mart (or Pharmaprix in Quebec).

<u>Empire's Announcement:</u>

In more recent news, on July 21, 2026, nearly a month after the Bureau expanded its investigation into Empire's use of property controls, Empire made a similar announcement, stating that its long-term commitments related to property controls now include:

(a) not registering any new grocery-related restrictive covenants;

(b) not enforcing any existing grocery-related restrictive covenants;

(c) not enforcing exclusive use clauses on the properties specifically identified in the June 2026 court order obtained by the Bureau; and

(d) not enforcing or entering into exclusive use clauses restricting specialty food retailers that sell only a subset of the products typically sold by a grocery store (such as butchers and bakeries).

These developments also follow Walmart's 2024 announcement that it would "unilaterally waive any competitive retail restrictions". Walmart subsequently sent letters to many of its landlords to that effect.

So Grocery Exclusives Can be Ignored, Right?... Not So Fast

Many landlords, tenants, and brokers are eager to interpret these developments as rendering grocery property controls meaningless. However, while these announcements, as well as the guidelines published by the Bureau, suggest a trend in that direction, grocery-related property controls are not yet entirely out of the picture.

There appears to be recognition that grocery-related exclusive use covenants (as opposed to restrictive covenants) will, in some form, survive this governmental probing and legislative response. For example, the guidelines published by the Bureau state that exclusive use clauses are justified where they create a "credible pro-competitive rationale", such as where the exclusive use clause is needed to incentivize a retailer to enter a particular market. Similarly, the public commitments from Loblaws and Empire don't go so far as to state that they will not seek or enforce exclusive use clauses. For example, Loblaws has said that going forward it plans to "limit the scope and duration" of grocery store exclusive use clauses in all new leases across Canada. Empire's announcement only went so far as stating that it recognized the importance of ensuring that exclusives are "used appropriately".

Of the major industry players that have released public comments in response to the governmental probing and new legislation, only Walmart announced a blanket approach that it will "unilaterally waive any competitive retail restrictions".

As such, while restrictions preventing the use of large swaths of land for the sale of food seems to be diminishing, one cannot say that all grocery exclusives can be ignored (let alone exclusives on other things). The aperture for leasing to grocers and other food retailers is certainly widening, but it is not unrestrained. For now, the Bureau is recognizing that exclusives (including grocery exclusives) may have a role in the Canadian retail marketplace (except in Manitoba, where grocery exclusives and restrictive covenants have been invalidated by legislation). Loblaws and Empire are yet to announce that they will abandon the practice of using exclusives on grocery sales altogether.

We are pleased to announce that **Stefan Georgiou** has joined Daoust Vukovich as an associate in the Commercial Leasing department.

Stefan completed his JD at Osgoode Hall Law School and was called to the Bar of Ontario in 2026.

Please join us in welcoming Stefan to the firm!

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