



Ottawa Update

The end of the second session of the 39th Parliament is a good opportunity to reflect on the past year.

Unlike the calendar year, Ottawa works on a September to June cycle. Parliament recessed until Sept. 15, and now the government and its public service take a breather and get ready for the next year. This is a good time to provide a status report on a number of federal initiatives.

Bill C-51 – This Bill to amend the *Food and Drugs Act* would provide some useful modernization. It has been caught up in a write-in campaign regarding its purported impact on Natural Health Products (NHPs), and as a sop to this the government announced shortly before the House recessed that NHPs would no longer be a sub-category of drugs. The Bill is still in second reading and has yet to be referred to Committee. If there is an election in the fall, this Bill is dead. If not, it will still have a rocky ride because of the NHP provisions.

The New Lobbying Act (Replacing the Lobbyists Registration Act) – This Act came into force on July 2, 2008. There are now strict new monthly reporting obligations when lobbying Designated Public Office Holders (DPOH), generally ADM and above. Fines are doubled and enforcement is likely to be more aggressive – don't get caught by the new *Lobbying Act*.

Product of Canada – The rules are now essentially law but there will be no enforcement for a while. Now "Product of Canada" will be limited to use by producers and processors where "all or virtually all" of the components, ingredients, processing and labour used to make the product are Canadian. "Made in Canada" will be for processed products and would carry one of two qualifications: either "Made in Canada from domestic and imported ingredients" or "Made in Canada from imported ingredients."

Additive Law Modernization – Compliments to the Bureau of Chemical Safety for its release of a guidance document on processing aids, but there is still no progress on the promised modernization that would finally eliminate the completely unacceptable delays. Another year has gone by (six and counting) without any politician or public servant explaining to me why you can add calcium lactate to a can of peas but if you want to add it to a can of beans, the cumbersome process of full regulatory change is required, including reference to Cabinet twice, legal drafting delays and at least two years of cost, paperwork and frustration. Until I get an answer, I repeat: the Health Canada minister and senior offi-

cials do not care that our food regulatory system undermines investment, innovation and competitiveness. Apparently Health Canada senior management is hiding behind "legal problems." This is only a convenient excuse – lawyers, even government lawyers, take instructions. Just do it.

Health Claims – More workshops, more dithering; no changes for the foreseeable future.

Mandatory Pre-market Registration of Meat Product Labels – This perennial problem persists. The meat industry continues to complain vehemently about delays and rigidity, and yet for no apparent reason it is unwilling to agree to accept the Canadian Food Inspection Agency's (CFIA) kind offer to have the government get out of the business. The industry should either accept the CFIA's offer or stop whining.

CFIA Ministerial Advisory Board – Another year has gone by and still no Board appointments. By Section 10 of the *CFIA Act*, the minister "shall appoint an advisory board" to advise him on "any matter within the responsibilities of the Agency." The Board was specifically created to provide stakeholder input into CFIA policies and to enhance accountability considering the broad legal and enforcement powers granted to the Agency. Moreover, there is virtually no effective administrative recourse available to a company that has been adversely affected by a CFIA decision. The Board played an important role in the early days of the Agency. The complacency of the food industry is remarkable.

New Compositional Standards for Cheese – These will require dairy processors to use more raw full-fat milk to produce cheese by limiting or prohibiting the use of ingredients made from milk such as whey protein and whey protein concentrate. The government has calculated that this represents a transfer of over \$100 million of value from processors, and their consumers, to farmers. Cheese importers will have to register. Processors were seriously out-lobbied by the dairy farmers, again. Regulations come into force on Dec. 13, 2008.

Have a good summer!

Ronald L. Doering, BA, LL.B, MA, LL.D, is a past president of the Canadian Food Inspection Agency. He practices food law in the Ottawa offices of Gowling Lafleur Henderson LLP, and can be reached at: Ronald.doering@gowlings.com