

CFIA Enforcement Powers

Be afraid, be very afraid



A Canadian Food Inspection Agency (CFIA) inspector stopped at a farm and talked with the old farmer: “I’m here to inspect your farm.” The old farmer replied, “You better not go in that field.” The CFIA inspector replied in a solemn tone, “You don’t seem to

understand. I have the authority of the federal government with me. See this CFIA card? I am allowed to go wherever I wish anywhere in Canada if I’m conducting an investigation.” So, the old farmer shrugged and went about his farm chores. Later, the farmer heard loud screams and saw the CFIA inspector running for the fence, and close behind was the farmer’s prize bull. The bull was mad and gaining at every step. The old farmer called out, “Show him your card!”

While the CFIA card may not carry a lot of weight with the prize bull, no one in the food industry should have any illusions about the powers of the CFIA to enforce its 10 statutes and hundreds of pages of regulations.

All along the food chain, the CFIA has extraordinary legal powers. At the input stage, for example, seeds, feeds and fertilizers are heavily regulated with their own federal acts that give sweeping powers to the CFIA. Both the *Plant Protection Act* and the *Health of Animals Act* have hundreds of pages of regulations that are strictly enforced. The main food Acts – *Canada Agricultural Products Act*, *Meat Inspection Act*, *Fish Inspection Act*, *Canadian Food Inspection Agency Act* and the *Food and Drugs Act* – all grant extensive enforcement powers of search, seizure and detention to the CFIA. The exercise of these powers does not require any prior court approval.

Increasingly, and more than it should, the CFIA has been charging people in the criminal courts for what are

often minor infractions. In all cases the offences are strict liability offences, that is, the Crown need only prove that the prohibited acts were committed; there is no need to prove that the company had any guilty intent or, for that matter, was even aware that an offence had been committed. Sentencing can and does include large fines and could involve imprisonment.

In addition to wide search, seizure and detention powers, the power of mandatory recall and the power to lay criminal charges, the CFIA has the power to stop products at the border, order the destruction of products, and summarily withdraw operating licences, HACCP approvals and a host of certifications and registrations, which, if taken away, can effectively close down a business.

Many of these regulations incorporate guidelines, manuals, and directives that are both made by officials and interpreted by them. So the hundreds of pages of formal food law do not even begin to capture the weight of the hand of government, a hand

that is mostly thumbs with few fingers.

There is no administrative appeal of CFIA decisions or other redress mechanisms. Judicial reviews are few, high risk and expensive. To help balance these powers, the *Canadian Food Inspection Agency Act* requires the government to appoint a ministerial advisory board as an accountability mechanism but, inexplicably, the Board hasn’t existed for a decade. Why the food industry tolerates this is a continuing mystery.

The bull may not be afraid of the CFIA. The food industry has no such luxury. ■

No one in the food industry should have any illusions about the powers of the CFIA to enforce its 10 statutes and hundreds of pages of regulations.

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 Gowlings Lafleur Henderson LLP, and can be reached at: Ronald.doering@gowlings.com