



Advancing food law and policy research

Ron Doering

One of my reasons for starting this column 16 years ago (can it really be 16 years?), was to have food law be more widely recognized as a distinct, important and growing body of law in its own right. While we've seen some progress over the years, we still have a long way to go. We still don't have a comprehensive text on Canadian food law. No provincial law society recognizes it as a distinct area of law practice. Unlike many countries, we still don't have a regular reporting service. Most law schools don't teach it.

So I was happy last year to highlight in this column the inaugural Canadian Food Law and Policy Conference, sponsored by the Schulich School of Law at Dalhousie University. The second annual Conference in November 2017, hosted by the Faculty of Law at the University of Ottawa, had a large attendance and an impressive range of presentations from both academics and practitioners. That conference also saw the awarding of the first Gowling WLG — Joel Taller Prize for Emerging Voices in Food Law to McGill law student Vanita Sachdeva. The prize is awarded in memory of my former partner Joel Taller, who passed away last May. Joel was a true pioneer in the area of food law, highly respected by both industry and government for his deep legal expertise and sound judgement. A founding member of the Gowling WLG Food and Beverage Group, he practised in our Ottawa office for 34 years representing many leading food, beverage and natural health product companies.



Vanita Sachdeva's paper on "Legal Barriers in the Adoption of Waste-derived Fertilizers" is the kind of innovative analysis that the Taller prize is intended to encourage. Sachdeva demonstrates that there is a looming shortage of rock phosphates, the current primary source for today's commercial fertilizers, and that the most sustainable response to this crisis is a transition to the use of human and animal waste. While the federal *Fertilizer Act and Regulations* allows "products made from sewage," its scope is too limited, and a serious transition to greater use of biosolids is fundamentally undermined by the multiplicity of conflicting provincial and municipal regulations. She demonstrates that the vast differences in standards regarding biosolids application have no scientific basis: as in so many policy areas, our inability to overcome regulatory fragmentation is the major barrier to innovation. Sachdeva concludes that without legal changes, "the use of biosolids will remain uncommon and hidden...the phosphorous crisis that the world faces will have to be dealt with in another way if our waste cannot be recycled back into our ecosystem." Sachdeva has done an excellent job of integrating science, law and policy to reveal the policy barriers to the greater use of waste-derived fertilizers for crop production.

Scientific progress must be the main driver for the innovation we so desperately need if we are going to feed the growing world population in a sustainable way. It is not widely enough understood that the promise of this innovation cannot be fully realized if our sclerotic regulatory systems can't keep up. For example, analytical chemistry has created havoc for food and agriculture regulatory systems. Many adulteration standards that provide for zero tolerance came from a time when we could only detect parts per million. Now that we can readily detect parts per trillion, zero keeps getting smaller and smaller and yet, even if we have no evidence of harm to health at that minute level, in the absence of regulatory change we still take regulatory enforcement. In recent years many of our largest food recalls were for technical non-compliance that posed no human health hazard. We need research and analysis in food law and policy to keep up with rapid advances in food science. With a background in both science and law, Joel understood this better than most. He would be pleased to see Sachdeva's research recognized.

The third annual Canadian Food Law and Policy Conference will be held Sept 26 and 27, 2018 at the University of Laval.

Ronald L. Doering, BA, LL.B. MA, LL.D., is a past president of the CFIA. He is counsel in the Ottawa offices of Gowling WLG. Contact him at Ronald.doering@gowlings.com