



Annual Ottawa Update

Parliament is now recessed until Sept. 14, 2009. The end of the second session of the 40th Parliament is a good time to provide a status report on a number of federal initiatives.

New Food Fortification Regulations

More than 10 years in the making and they almost made it. The long awaited new regime to allow for discretionary fortification got through the bureaucratic regulatory process at last but was blocked on the one yard line in the Health minister's office.

The food industry has long argued that the current rules are seriously out of date, overly restrictive and deny Canadians a range of products that are readily available in most other countries. The Dietitians of Canada and other nutritionists lobbied hard against the changes arguing that they would allow the food industry to fortify "junk foods." Details of the proposal were leaked and pressure on the minister intensified with an early release of a harshly critical *Canadian Medical Association Journal* editorial that received considerable coverage in the popular press.

Explanations for this model of bad bureaucratic policy-making differ depending on whom you talk to. Some serious work on a definition of "junk food" and defining a system exempting those foods is not impossible but, unfortunately, this is probably not forthcoming as there are divisions even within Health Canada on how to deal with this issue. Secondly, this was an unfortunate waste of a lot of people's time when there are so many other regulatory reforms so urgently required.

Food-Like NHP

Health Canada laboured long and hard and delivered a mouse. With its "case by case" policy, there is still complete regulatory confusion. The failure to resolve the food fortification issue and

waffling on health claims further complicate the effort to improve regulatory certainty.

Parliamentary Sub-Committee on Food Safety

The Committee released its final report on June 18. Predictably, the Opposition parties called for a full public inquiry. They won't get it. The process was overly partisan and much of the report is lacking in intellectual rigour. There are some good suggestions and some silly ones, such as recommending the federal government "implement a system to recognize the equivalence of existing provincial inspection systems." There are no equivalent systems so it is not clear what this means. It was interpreted in the media as meaning that the federal meat inspection system should be imposed on the provinces for one national standard. This is neither possible nor desirable.

Report of the Independent Investigation into the 2008 Listeriosis Outbreak

A very thorough piece of public policy analysis that provides a number of excellent recommendations. Future columns will return to this useful report.

Mandatory Pre-market Registration of Meat Product Labels

The Canadian Food Inspection Agency (CFIA) announced its intention to get out of this business, but there are divisions within the industry and it now looks like the CFIA has been scared off the proposal. Too bad.

Health Claims

Except for some emerging flexibility on "structure" claims, same as last year: more workshops, more dithering; no changes for the foreseeable future.

CFIA Ministerial Advisory Board

Another year has gone by and still no

Board appointments in spite of the legislative requirement and clear need. Hopefully the strong recommendation of the Listeria Investigator on exactly this point will finally have some effect.

Additive Law Modernization

Still no progress on the promised modernization that would begin to eliminate the completely unacceptable delays that daily undermine innovation, competitiveness and investment. The current situation is unsustainable but there is still no process to fix it.

Two Interesting Court Cases

The *Gerber* case raises interesting questions about the constitutional validity of our hundreds of "standards of identity" under the *Canada Agricultural Products Act*. The Federal Court judge was very critical of the CFIA lawyer. The scope of the decision is not clear nor do we know yet whether it will be appealed.

Last year's Ottawa update reported on the introduction of new regulations relating to compositional standards for cheese. The three largest dairy processors, Kraft, Saputo and Parmalat, responded by bringing an application to have the new regulations declared unconstitutional as being outside the scope of federal jurisdiction. The hearings are complete but the decision not yet rendered. Like the *Gerber* case, this case could result in a decision that could clarify the federal government's power to set non-food safety standards for food. Both cases are worth watching. We'll track them and provide analysis in a future column. It hasn't been a good year for food law modernization.

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