



Caffeine Fix

Why the law surrounding caffeine needs to be reformed

Human beings have been getting their caffeine buzz for thousands of years. Tea, the most consumed beverage on the planet after water, was being used by the Chinese over 5,000 years ago. Coffee was introduced to Europeans by the Turks in 1637. And cacao, another main source of caffeine, had been used in Mesoamerica for centuries before it was finally introduced to Europeans by Columbus. Today, Canadian adults get an estimated 60 per cent of their caffeine from coffee, and about 30 per cent from tea. The remaining 10 per cent comes from cola beverages, chocolate products and medicines.

Caffeine is strictly regulated under the *Food and Drug Regulations*. It is approved as a miscellaneous food additive under Table VIII, Division 16, and it is only permitted to be added to “cola-type beverages” up to 200 ppm in the final product. Caffeine may not be added to any other food. On the other hand, in the U.S. caffeine is “Generally Regarded as Safe” (GRAS) and is, therefore, essentially unregulated. In the EU and under CODEX, caffeine is merely treated as a flavouring agent.

Interpretation issues have forced Canadian regulators to “clarify” the caffeine law over the years. Dr. Pepper was grandfathered. Health Canada agreed that caffeine could be added to root beer because it “considers” it a cola-type beverage “because traditionally root beer used natural sources of caffeine such as the kola nut.” The Canadian Food Inspection Agency (CFIA) has recently stated that for a drink to be a cola-type it has to be brown. In addition, the CFIA has stated that a drink containing caffeine does not have to be labelled as a cola-type beverage. The legal basis of these opinions is not entirely clear. And, it is now well settled that if any drink contains more than 100 mg of caffeine per six-ounce serving, Health Canada will insist that it be regulated as a drug, meaning that the manufacturer will have to apply to have it approved as a natural health product.

The caffeine law and its various confusing interpretations became even sillier with the recent advent of energy drinks and their phenomenal growth among the 18- to 34-year-old demographic. These drinks provide a caffeine injection together with some other “natural health products.” While such drinks have been popular for many years in other countries, it was only with the introduction of Jolt Cola in

North America in 1986 that they became the rage on college campuses. In Canada, Red Bull is now the industry leader, with growing competition from Frank’s Energy Drink, Red Rain and the other 30 different brands of energy drinks now on the Canadian market. Most of these have obtained or sought status as a natural health product and use sugar and caffeine as their main energy source.

Health Canada has recognized the many problems with the current law. Energy drinks are sold as natural products on the shelf beside other beverages that are regulated as foods and therefore can’t make any claims. Many countries don’t regulate caffeine or require it to be labelled, so many imported products contain it. Guarana is an ingredient, not an additive, and although guaranine chemically resembles caffeine, it can be added without restriction. Health Canada has made recommendations on the maximum levels for caffeine consumption, but labelling is not required. If the food clearly states that it contains caffeine, how is the consumer misled?

Recognizing the need to reform the caffeine law, last year Health Canada advised that it was developing a regulatory package that would position caffeine as a flavouring agent like the EU, enabling the addition of caffeine to other foods. Unfortunately, like so many other Health Canada proposals, this important initiative seems to have disappeared. The Bureau of Chemical Safety is busy as it is trying to reform the whole cumbersome area of food additive approvals, but caffeine law reform should not be allowed to wither away.

Food regulators continue to complain that they do not have adequate resources to carry out their responsibilities and they must allocate resources according to risk. Clearly, caffeine is a low risk issue. This is yet another area where the solution is to do less. Set out some maximum level guidelines for foods that are likely to be consumed by children and re-allocate resources to other areas where there is a real food safety risk. Having CFIA inspectors running around checking whether soft drinks are brown enough to be colas is a waste of taxpayer money and achieves no public policy objective.

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