



The Legalization of Margarine (Part II)

Readers from last month will recall that by the late '40s Canada is the only country in the world that still hasn't legalized margarine. By then the issue is preventing Newfoundland from joining Canada and the whole matter has been appealed to the Judicial Committee of the Privy Council in England.

Readers will be relieved to know that a deal is worked out with Newfoundland. By Article 46 of the Terms of Union, Newfoundlanders can continue to eat margarine but they are not allowed to ship the stuff to the rest of Canada, a provision that is clearly unconstitutional as it is contrary to Section 121 of the Canadian Constitution, but this minor detail is overlooked.

Intense lobbying continues. The president of the Canadian Federation of Agriculture, H.H. Hannam, is particularly effective. His pamphlet entitled *The Margarine Question* provides a compelling case for the importance of butter to the Canadian economy. The Dairy Farmers of Canada and the National Dairy Council make the legalization of margarine an election issue.

On October 16, 1950, the English law lords bring down their historic decision declaring Canadian margarine laws as *ultra vires* the federal government. As a result, only the provinces can ban the sale of margarine, which many of them immediately proceed to do by imposing a variety of administrative restrictions so that within months Canada has a patchwork of regulatory barriers. All provinces that don't ban it, forbid margarine to be yellow. This leads to considerable creativity, legal and otherwise. Readers of a certain age will remember pushing a little button that would squirt out colouring into a plastic bag so that the margarine is a little less white. When enterprising entrepreneurs try to sneak in yellow margarine from the U.S., there is so much bootlegging that several provinces have to set up special Marge Squads that carry out raids reminiscent of the prohibition era. In Quebec, (still the most farm friendly government in Canada) the Duplessis government rams an act through the legislature (by 78 to two) banning all manufacture, sale and possession of margarine. British Columbia brings in colour restrictions, curtails advertising and "for humanitarian reasons" no butter substitute can be used in any provincial institution.

Even though eight of the provinces still have colour restrictions into the late '70s, by then the power of the but-

ter lobby is waning. Intense lobbying by the Institute of Edible Oil Foods is making progress. The economic clout of canola and soybean growers begins to have political effects. Both sides spend millions of dollars in advertising.

Which brings us to the present day. Only Ontario and Quebec still have restrictions. While Ontario finally repealed the *Oleomargarine Act* in 1995 getting rid of colour restrictions, the *Edible Oil Products Act* is still on the books and prevents any blending of vegetable oils with milk products or the sale of any foods variously called dairy analogs, dairy blends or imitation dairy products. The Vegetable Oil Industry of Canada (VOIC) has been lobbying hard against these restrictions and the new Ontario government is expected to make a decision by the end of this June.

As we have seen, Quebec maintains anti-margarine legislation on colour and bans all dairy blends or imitation dairy products. Unilever Canada's application for leave to appeal to the Supreme Court of Canada challenging the Quebec law will be heard in the coming months. In the meantime, VOIC has succeeded in encouraging the Province of Alberta to challenge the Quebec regulations under the Federal/Provincial Agreement on Internal Trade and a Dispute Resolution Panel is pending.

So the struggle goes on. Litigation and lobbying are combined to try to influence the regulatory system because regulations dramatically affect commercial advantage. While the butter/margarine wars have been going on now for more than 118 years, this bitter contest is not that unique. Most Canadians have little appreciation for how often regulators find themselves caught in the middle of titanic commercial struggles within or across industry sectors. Consumer protection laws are often more about having a level playing field and competitive advantage. Regulators deal more with competitor complaints than consumer complaints. As someone who spent many years in the trenches in the regulatory no-man's-land catching flak from both sides on many complex issues, I've often been surprised by how little understanding there is by consumers and industry about this daily reality for those who practice the regulatory craft.

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