



Reforming our food regulatory system: A conservative approach



Like a bad rash that just won't go away, talk of major legislative change to Canada's food regulatory system is back. Various academics, think tanks and consultants seem to think that improvements require major legislative change. This talk is worse than just a waste of time because it distracts people from focusing on what can and should be done now to reform our food regulatory system. Our legislation is fine — the problem is with our regulations and their implementation and enforcement.

Of course Health Canada has been talking about major legislative change for more than 20 years. Remember *Legislative Renewal*, *Blueprint I*, and then *Blueprint II*?

In the decade following the unfortunate pulling of Bill C-80, several incoherent bills to increase the powers of the Canadian Food Inspection Agency (CFIA) were introduced, but there was never any intention to have them passed. No one today thinks the CFIA needs more powers. Nor has anyone articulated a clear rationale for sweeping legislative changes, but that hasn't stopped this naive obsession with grandly titled food strategies, big plans and half-baked schemes for major legislative change that would create immense legal uncertainty for years to come. We've had enough of that already. What we need is a more modest, incremental reform of our food regulatory system — a more conservative approach, if you will.

To illustrate, here are four reforms that can be done in one year with little or no legislative change:

- **Additive Law Modernization** — There is a clear consensus among regulators and the industry that our sclerotic food regulatory system undermines innovation, investment and competitiveness. Nowhere is this more evident than in how Health Canada regulates food additives. We need to amend the definition of "food additive" in the regulations, and in the meantime apply a less narrow interpretation of the current definition when dealing with beneficial substances such as phages, bacterial cultures and enzymes.

- **Regulatory co-operation with the U.S.** — The recent creation of the Regulatory Co-operation Council creates many opportunities. We can do a lot to enhance efficacy and efficiency without compromising food safety. We could begin by negotiating to end the need for meat re-inspection that currently creates unnecessary delays and expense while achieving no public policy benefit.
- **Expand resources for food export negotiations** — Canadians can't eat more pork, beef or grains. Any growth in these and other sectors requires expanding exports. The state can't do that much more about domestic food safety or imports, but it must do more to facilitate the export of plants, animals and food products. States, not companies, negotiate trade access, and the CFIA should do more with additional resources re-allocated to negotiating technical agreements to facilitate exports.
- **Reduce the role of the state in feed and fertilizer regulation** — Feeds and fertilizers are over-regulated. Modest regulatory and policy changes could reduce the role of government without compromising consumer protection, freeing up resources for areas of higher risk.

Within the first year of this government's mandate it should also implement administrative redress mechanisms at the CFIA, try again to terminate pre-market approval of meat labels, modernize food fortification policy, and reform meat inspection. None of these require major legislative change or involve safety or science risk, but the perception risk will have to be managed carefully.

We urgently need food regulatory reform. Major legislative change is a solution looking for a problem. ■

Ronald L. Doering, BA, LL.B, MA, LL.D, is a past president of the CFIA. He practices food law in the Ottawa offices of Gowling Lafleur Henderson LLP. Contact Doering at Ronald.doering@gowlings.com