



FOODLAW

Ronald L. Doering

Food Law Modernization: What's the Significance of Bill C-51?

The Conservative government is to be commended for introducing Bill C-51, as it is the first serious attempt at amending the *Food and Drugs Act* in over 50 years. While half of the Bill deals with therapeutic products, the other half that relates to food introduces dozens of changes to the Act. While it remains to be seen whether the Bill will become law, and many of the reforms still require comprehensive regulatory regimes, what can we say now about the significance of Bill C-51 to the food industry?

A few preliminary caveats. It is important to recognize what the Bill doesn't do. Happily, it doesn't repeal the *Food and Drugs Act*, finally putting to rest the 20 years of useless consultation and talk about legislative renewal, recognizing at last that the Act is basically sound – the many problems are with the regulations, our sclerotic regulatory change system and the administration of the regulations. It was always the regulations, not the Act, that undermined innovation, investment and competitiveness. The Bill also leaves unchanged the other eight federal statutes on food law, so whether the Bill is passed or not, the bulk of Canadian food law will remain unchanged.

Not surprisingly, given all the recent fuss about problems with imported products (especially from China), the most important provisions in the Bill relate to the rules for importing food. The Bill introduces a new crime to Canadian law that tidies up the wording of the old section four, and specifically adds “or import for sale,” so that this section now says:

No person shall sell or import for sale a good that:

- (a) Has a poisonous or harmful substance in or on it;
- (b) Is unfit for human consumption;
- (c) Is injurious to human health;
- (d) Is adulterated; or,
- (e) was manufactured, processed, prepared, preserved, packaged, stored or conveyed under unsanitary conditions.

Considering that another provision also seems aimed at requiring all food importers to be registered, it is going to be significantly more onerous and expensive to import many foods and food products. While many large Canadian manufacturers are already taking steps to ensure the quality and safety of imported products (especially ingredients), many importers (including retailers and processors) have no idea about the quality of the products that they source from over 100 countries. And while supplier warranty contracts, test-

ing and auditing can provide some assurance, they will never catch all the problems.

The Bill also extends the misleading labelling section five to “import for sale,” so that importers will have to be more careful about the labelling of imported food, something that, in my experience, many importers and retailers have not been that careful about. In addition, the Bill now explicitly includes “origin” of a food as a new category of misleading or misbranding. My opinion has been that the old wording was sufficiently broad to prohibit misleading statements as to the origin of the food, but the provision is more explicit. This, of course, touches on the much-misunderstood issue of “Product of Canada,” the subject of next month's article.

Even if the changes are relatively modest, many in the industry see the Bill as an over-reaction. We already have a vast array of rules relating to food imports, and the recent recalls from China deal with toys, supplements, pet food and toothpaste, not food. In recent years, recalls for food are primarily from the United States which, supposedly, represents the gold standard for food safety. Many also see Bill C-51 as a solution looking for a problem. That's not my view, particularly if Health Canada ever moves on several of the proposed regulatory amendments. Moreover, as in many other legislative changes, the recent controversy over imported products allowed officials to move forward a number of reforms that were formerly not politically sexy enough to warrant legislative time. Many of the changes are primarily housekeeping, but some, such as the new crime of actual or threat of food tampering, and the extension of the Act to transportation, are important reforms and are long overdue.

Finally, the Bill also increases the scope of the CFIA's enforcement powers relating to search, seizure and detention, something that should be worrisome to the industry considering that the existing powers are already extensive and are not subject to any real administrative recourse or legal appeal, particularly when CFIA powers are overused in relation to quality issues where there is no real threat to public health.

We'll keep you posted on the progress of Bill C-51.

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