Journal of Food Law & Policy

Volume 5 | Number 2 Article 8

2009

Canadian Food Law Update

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INTRODUCTION

Provided below is an overview of developments in Canadian food law and policy in 2009.[2] This update primarily analyzes the regulatory and policy developments and litigation activities by the federal government. This focus reflects the significance of federal activities in the food policy realm. In 2009, regulatory and policy developments continue to be dominated by the 2008 Listeriosis outbreak in ready-to-eat, deli meats. Other noted activities include Canada's ongoing efforts to minimize the effects of infectious diseases related to meat production, Canada's request for a WTO panel to consider the effects of American Country of Origin Labelling, and an initiative to clarify the application of food labelling regulations to probiotics. The federal government, however, has yet to reinitiate legislative action to overhaul the Food and Drugs Act (FDA)[3] despite repeated signals that it would do so after the death of Bill C-51 in 2008.[4]

REACTIONS AND RESPONSES TO LISTERIOSIS

Canada experienced its most acute food safety crisis in recent time during the summer of 2008. *Listeria monocytogenes* was found in ready-to-eat meat products distributed nationally. By the time the listeriosis outbreak was contained, fifty-seven people became seri-

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2. This update is current to November 21, 2009.

3. R.S.C., ch. F-27 (1985) [hereinafter FDA].

4. A detailed description of proposals contained in Bill C-51 and the reason for its death can be found in Patricia L. Farnese, Canadian Food Law Update, 4 J. Food L. & Pol'y 313, 319-22 (2008).

ously ill of which twenty-two people were confirmed to have died as a result of consuming contaminated food.[5] In the aftermath of this crisis, the effectiveness of regulations and policies shaping the government's response to the outbreak as well as those designed to prevent and detect food borne illness have faced significant scrutiny. As a result, regulations and policies aimed at preventing, detecting, and responding to food borne illnesses have dominated regulatory and policy reform in 2009.

THE INDEPENDENT INVESTIGATOR'S REPORT

In January 2009, an independent investigation of the events contributing to the Listeriosis outbreak was ordered by Prime Minister Harper.[6] The investigator was tasked with determining the cause of the outbreak and evaluating the efficiency and effectiveness of the government's response. The investigator was also asked to make recommendations on how to prevent a similar outbreak in the future and to better facilitate product recall. The investigator, however, was specifically precluded from commenting on potential criminal or civil liability stemming from the outbreak.[7] The investigator issued her Final Report in July 2009, which contained fifty-seven recommendations.[8] These recommendations targeted both the federal departments and agencies engaged in establishing, implementing, and enforcing food safety policies and regulations as well as the private meat processors.[9]

Of the fifty-seven recommendations, the majority addressed four critical weakness of the Canadian Food Safety Regime. The first weakness was described as a lack of focus on food safety by senior management in government and at Maple Leafs Food (MLF).[10] This lack of focus resulted in the adoption and implementation of food safety procedures that did not require employees to notify ei-

5. Sheila Weatherill, REPORT OF THE INDEPENDENT INVESTIGATOR INTO THE 2008 LISTERIOSIS OUTBREAK, July 2009, *available at* http://www.listeriosis-listeriose.investigation-enquete.gc.ca/lirs_rpt_e.pdf [hereinafter Final Report].

6. Press release, Office of the Prime Minister, Prime Minister Harper announces appointment of independent investigator into the listeriosis outbreak (Jan. 20, 2009) *available at* http://www.pm.gc.ca/eng/media.asp?category= 1&id=2392.

7. Press release, Office of the Prime Minister, Prime Minister announces terms of reference for an independent investigation of the listeriosis outbreak (Sept. 6, 2008) *available at* http://www.pm.gc.ca/eng/media.asp?category= 1&id=2268.

8. Final Report, *supra* note 5.

9. *See id.*

10. *See id* at xi.

ther senior management of MLF or the Canadian Food Inspection Agency (CFIA) inspectors, despite positive Listeria tests.[11] Likewise, existing policies, procedures, and controls failed to clearly define expected outcomes or distinguish between foods that were at high risk of becoming contaminated and those that were at a lower risk.[12] This "one-size-fits-all approach" left much open to interpretation by industry and specifically did not require increased scrutiny of riskier products.[13] Last, a lack of focus on food safety was blamed for the CFIA's decision to under staff inspector positions at the MLF and for not ensuring that the inspectors that were employed at MLF had the training and capacity to be effective.[14]

The second weakness identified in the Final Report concerned the failure of governments and agencies to be prepared to respond to this crisis. In particular, the level of coordination and communication between key agencies and departments within the federal government and with their provincial counterparts was repeatedly criticized.[15] Many in authority were unaware of the Foodborne Illness Outbreak Response Protocol (FIORP), an intergovernmental, inter-agency policy in place to coordinate a unified response to such a crisis.[16] As a result, a leadership void existed in the first few weeks of the outbreak that delayed and undermined the effectiveness of the emergency response.[17] Likewise, key agencies, including laboratories required to identify the source of the outbreak, lacked the necessary pre-planned, surge capacity to immediately deal with the crisis.[18] Finally, the report repeated calls for increased coordination between the various laboratories throughout Canada that track and confirm illness and disease.[19]

The government and industry's initial failures to treat this outbreak as an urgent concern was the third weakness identified in the Final Report. The outbreak was not originally viewed as a public health emergency primarily because this crisis involved a food borne illness rather than an infectious disease.[20] As a result, there was a delay by the Public Health Agency of Canada (PHAC) in assuming a

11. *See id.*
12. *Id.* at xii.
13. *See* Final Report, *supra* note 5 at xii.
14. *See id.* at xi.
15. *Id.* at xii.
16. *Id.* at 63.
17. *Id.*
18. Final Report, *supra* note 5, at 72-73.
19. *Id.* at 73.
20. *Id.* at 67.

leadership role.[21] The PHAC's reluctance to view listeriosis contamination as a public health emergency occurred within the context of a larger debate between the public health and food safety sectors concerning the appropriate approach to responding to food borne illness. In particular, the debate is focused on the timing of product recall.[22] Characterizing food borne illness as a public health emergency supports the adoption of a precautionary approach to product recall. Many argue, however, that the significant and lasting economic consequences of product recalls warrants laboratory confirmation of the source of contamination. Laboratory confirmation would ensure that only the source of the contamination is identified as causing illness thereby preventing the mistaken recall of 'innocent' products.[23]

Finally, the Final Report identified weaknesses in the timing, method, and content of the government's communication with the public. There were specific concerns about the Minister of Agriculture and Agri-food acting as the lead spokesperson during the outbreak rather than the Minister of Health.[24] The Minister of Agriculture and Agri-food was perceived to be in a conflict of interest as he is tasked with supporting the food industry.[25] Therefore, the health information provided to the public was viewed as suspect. In addition, the Final Report criticized the fact that early communications with the public did not explain that certain populations were more vulnerable to becoming sick.[26] The Final Report also called for an advance communication strategy that has material ready for use prior to an outbreak that will accurately inform the public on how best to minimize risks associated with that specific, food borne illness.[27] Likewise, the Final Report recommended consideration of the use of precautionary labeling, in the advance of an outbreak, on food products that pose particular risks for vulnerable populations.[28]

THE REGULATORY AND POLICY RESPONSE

Upon release of the independent investigator's Final Report, the Canadian government committed to take action on all of the

21. *Id.*
22. *Id.* at xiii.
23. Final Report, *supra* note 5, at xiii.
24. *Id.* at xiv.
25. *Id.*
26. *Id.* at xiii.
27. *Id.* at xiv.
28. Final Report, *supra* note 5, at xiii.

recommendations.[29] However, prior to the release of the report, the CFIA, Health Canada (HC), and the PHAC conducted internal investigations and had begun considering and implementing changes to policies and regulations.[30] Although the consequences of the listeriosis outbreak may suggest to some that significant flaws exist in Canada's food safety regime, a comprehensive overhaul of this regulatory regime has not been recommended. Instead, the resulting regulatory and policy changes have been primarily characterized by minor adjustments aimed at clarifying governmental roles and responsibilities and improving the system for monitoring of disease incidents. By streamlining response procedures, these changes have been designed to increase the efficiency of the government's response to a crisis.[31] The burden for preventing, monitoring, and reporting food contamination remains with the meat processing industry.

The most concrete outcomes from the various reviews and investigations into government and industry responses to the Listeriosis outbreak have targeted the section concerning Listeria contained in the *Meat Hygiene Manual of Procedures* (MOP). The MOP outlines the mandatory food handling, testing, and safety reporting practices that must be followed at registered meat processing facilities in Canada.[32] Changes to the MOP following the Listeriosis crisis include mandatory testing of surface areas that come in contact with food, the performance of trend analysis on regular test results, and the immediate reporting, to senior industry management and the CFIA, of all food contact surface listeria tests that test positive for Listeria.[33]

The majority of the government action in response to the report has targeted internal processes. Various government departments and agencies have reported hiring more staff and facilitating more training of existing staff to improve food borne illness detection and response capacity.[34] Likewise, inter-agency discussions have

29. Press Release, Can. Food Inspection Agency (CFIA), Government of Canada Takes Action to Improve Food Safety (Sep. 11, 2009) *available at* http://www.inspection.gc.ca/english/corpaffr/newcom/2009/20090911e.shtml.

30. CFIA, MOVING FORWARD ON FOOD SAFETY ACTION ON LISTERIA, *available at* http://www.inspection.gc.ca/ english/fssa/movava/movavae.shtml.

31. See Murdoch and Bellemare, *supra* note 29.

32. CFIA, MEAT HYGIENE MANUAL OF PROCEDURES, *available at* http://www.inspection.gc.ca/english/fssa/meavia/ man/mane.shtml#intro [hereinafter *MOP*].

33. *Id.*

34. Final Report, *supra* note 5, at Appendix C.

occurred to clarify responsibilities of the CFIA, HC, and the PHAC in the event of a similar crisis in the future.[35] Commitments for improved cooperation have also been made between federal agencies and their provincial and territorial counterparts.[36] In the absence of a significant food borne illness outbreak, however, it is difficult to assess the impact of these initiatives.

ON-FARM BIOSECURITY

In addition to initiatives directed at minimizing incidents of food borne illness, the Canadian government has continued to focus on improving on-farm biosecurity practices to limit infectious diseases related to meat production. Prior to the detection of an infectious disease of concern, the government had mandated few biosecurity practices. For the most part, Canada's approach to on-farm biosecurity continues to utilize voluntary programs. This approach reflects the government's confidence that infectious diseases can be controlled through biosecurity practices by ensuring "what is inside stays in and what is outside stays out."[37] In 2009, the government continued to fund and endorse voluntary, industry-led standards.

The National Avian On-Farm Biosecurity Standard is the latest voluntary biosecurity standard targeting livestock and poultry producers that has been endorsed by the Canadian government.[38] The standard was developed in consultation with producers, processors, the poultry science industries, veterinarians and academia.[39] In practice, producers are participating in a variety of programs created by provincial industry associations, the national On-Farm Food Safety Program, and by processors. The Avian Standard attempts to identify and address any of the shortcomings of other programs without imposing one universal standard.[40]

Recommended practices are said to reflect an "objective, impartial science-based approach" and a cost/benefit analysis.[41] Restrict-

35. *Id.*

36. *Id.*

37. CFIA, NATIONAL AVIAN ON-FARM BIOSECURITY STANDARD (2009), *available at* http://www.inspection.gc.ca/english/anima/biosec/aviafrme.shtml. [hereinafter Avian Standard].

38. *Id.*

39. Press Release, CFIA, Protect Poultry, Prevent Disease: National Standard is Launched (Oct. 6, 2009), http://www.inspection.gc.ca/english/corpaffr/newcom/2009/20091006e.shtml (last visited January 14, 2010).

40. AVIAN STANDARD, *supra* note 37, at i.

41. *Id.*at ii.

ing access by humans, animals, and equipment in and out of production is a key component of the Avian Standard.[42] Similarly, the Avian Standard recommends disinfection as people, equipment, and animals move between production areas as well as daily sweeps of flocks to monitor health status of the animals.[43]

COUNTRY OF ORIGIN LABELING

The Canadian government has long been concerned with the imposition of mandatory country of origin labeling (COOL) in the United States.[44] As Canada's largest agricultural trading partner, any perceived barrier to market access in the United States is alarming.[45] Consequently, Canada has requested that the WTO establish a panel to consider its complaint that the American COOL requirements unfairly discriminate against Canadian hog and cattle producers.[46] The panel was requested after two official WTO consultations with the United States failed to alleviate Canada's concerns.[47] Canada is joined by Mexico in alleging that American COOL regulations violate WTO trading rules.[48] On November 19, 2009, the WTO's Dispute Settlement Body established a panel to consider these complaints pursuant to Article 9.1 of the WTO's Dispute Settlement Understanding.[49]

The American COOL regulations require retailers to inform consumers of the origin of products listed as "covered commodi-

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42. *See id.* at Section 1.

43. *See id.* at Sections 2 and 3.

44. *See,e.g.,* LORIE SRIVASTAVA, LIBRARY OF PARLIAMENT, PARLIAMENTARY RESEARCH BRANCH, COUNTRY OF ORIGIN LABELING, PRB 03-02E (2003).

45. AGRICANDAGRI-FOODCAN, AGRI-FOOD TRADE POLICY: CANADA-UNITED STATES AGRICULTURAL TRADE (2003) *available at* http://www.agr.gc.ca/itpd-dpci/amr/4858-eng.htm.

46. Request for the Establishment of a Panel by Canada on United States - Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/8 (Oct. 9, 2009), *available at* http://www.wto.org/english/tratop_e/dispu_e/ /cases_e/ds384_e.htm. [hereinafter Canada Complaint].

47. Press Release, Dep't of Foreign Aff. and Int'l Trade of Can.Canada Requests WTO Panel on U.S. Mandatory Country-of-Origin Labelling (Oct. 7, 2009) *available at* http://www.international.gc.ca/media_commerce/comm/news-communiques/2009/296.aspx?lang=eng [hereinafter DFAIT].

48. Request for the Establishment of a Panel by Mexico on United States - Certain Country of Origin Labelling (COOL) Requirements, WT/DS386/7 (Oct. 13, 2009), *available at* http://www.worldtradelaw.net/pr/ds386-7(pr).pdf.

49. Press release, WTO, DSB authorizes Brazil countermeasures in "cotton" case, establishes "COOL" and poultry panels (Nov. 19, 2009), *available at* http://www.wto.org/english/news_e/news09_e/dsb_19nov09_e.htm.

ties."[50] The inclusion of pork and beef as covered commodities is of particular concern to Canada.[51] Canada alleges that these regulations violate Article 2.1 of the WTO Agreement on Technical Barriers to Trade dealing with favourable treatment, Article 2.2 requiring trade restrictions to have a legitimate objective, and Article 2.4 requiring regulations be based on relevant international standards.[52] Moreover, if the United States claims that the COOL regulations are sanitary or phytosanitary measures, Canada asserts that the regulations do not conform to requirements outlined in the WTO Agreement on Sanitary and Phytosanitary Measures.[53]

Furthermore, Canada alleges that the American COOL provisions result in Canadian beef and pork being treated less favourably in the marketplace than American beef and pork.[54] Both the 1994 General Agreement on Tariffs and Trade, and the WTO Agreement on Rules of Origin require the uniform, impartial and reasonable application of trade restrictions among member countries.[55] Thus, any measure that purports to assign a benefit to local products over foreign products is suspect. By requesting a Dispute Settlement Panel, Canada seeks relief for Canadian producers from these alleged trade barriers.[56]

PROBIOTICS GUIDANCE

In April 2009, HC released a guidance document to clarify the acceptable use of health claims related to probiotic microorganisms (probiotics) on food labels.[57] For many, the Probiotics Guidance is long overdue as many foods in the marketplace have been labeled as containing probiotics for some time now.[58] These labels have been

50. *Final Rule on Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts*, published on 15 January 2009 as 7 CFR Part 65.

51. DFAIT, *supra* note 47.

52. Canada Complaint, *supra* note 46.

53. *See id.*

54. *Id.*

55. *See* General Agreement on Tariffs and Trade Art. X:3(a) (1994); The Agreement on the Rules of Origin, Art. 2(e)(1994).

56. Canada Complaint, *supra* note 46.

57. FOOD DIRECTORATE, Heath Canada, GUIDANCE DOCUMENT - THE USE OF PROBIOTIC MICROORGANISMS IN FOOD at 2, (April, 2009) *available at* http://www.hc-sc.gc.ca/fn-an/legislation/guide-ld/probiotics_guidance-orientation_ probiotiques-eng.php. [hereinafter PROBIOTICS GUIDANCE].

58. Gary Gnirss, *Regulatory Affairs: Understanding Probiotics*, FOOD IN CANADA, October 2009.

accompanied with specific claims of the health benefits associated with the probiotic contained within the food. The Probiotics Guidance will be used by the CFIA to assess whether any product that is labeled as containing probiotics complies with provisions of the *Food and Drugs Act* that prohibit labelling food "in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety."[59]

Interestingly, the guidance does not define which microorganisms qualify as probiotics. Rather, the guidance refers to Expert Consultation for the meaning of probiotics undertaken by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO).[60] In food, the FAO/WHO consultation defined a probiotics as "live microorganisms which when consumed in adequate amounts as part of food confer a health benefit to the host."[61] Therefore, to label a food as containing a probiotic, the probiotic microorganism must be present in sufficient quantity to confer a health benefit.

LITIGATION

In addition to regulatory and policy activity, the federal government was involved in three court cases that warrant mentioning. The first involves the legality of regulations prescribing compositional standards for certain cheeses. The second case challenged the federal government's rejection of an application to test market baby food in non-standardized containers. Finally, a poultry processor received a significant fine for violating animal transport regulations.

SAPUTO INC. V. CANADA (ATTORNEY GENERAL)

New compositional standards for cheese took effect in December 2008. Unlike many food products, cheese is subjected to two sets of regulations.[62] Compositional standards for cheese are found in both the *Dairy Products Regulations* of the *Canada Agricultural*

59. R.S. 1985, c F-27, §5(1) [hereinafter *FDA*].

60. PROBIOTICS GUIDANCE, *supra* note 57, at 3.

61. *Id.*

62. MATHIEU FRIGON, "COMPOSITIONAL STANDARDS FOR CHEESE" OTTAWA, LIBRARY OF PARLIAMENT 26 December 2007at 1.

Products Act[63] and the *Food and Drug Regulations* of the *FDA*.[64] Before the amendments were made, there appeared to be an inconsistency between the two standards as only the DPR permitted cheese to be made from "other milk solids." Domestic dairy processors argued that the inclusion of "other milk solids" in the DPR permitted cheese to be made from a broader range of milk solids than those specifically listed in the FDR.[65] In the alternative, Canadian dairy farmers argued for restricting the meaning of "other milk solids" to those milk products listed in the FDR because a broader definition permitted the import of less expansive milk products that could be used in place of fresh milk for cheese production.[66] With the corresponding loss in the domestic cheese production market, dairy farmers must sell their fresh milk at a lower cost to alternative markets such as the animal feed market.[67]

The three largest dairy processors in Canada, Kraft Canada Inc., Parmalat Canada Inc., and Saputo Inc., initiated an action in Federal Court for judicial review of the new regulations.[68] The processors challenged the constitutionality of the new regulations and alleged that the regulations were invalid as they were beyond the scope of the regulation-making authority granted under the CAPA and the FDA.

The federal government relied on s.91(2) of the *Constitution Act, 1867*,[69] known as the federal trade and commerce power, to assert that the cheese compositional standards were validly enacted. Because marketing legislation directed at extra-provincial trade has been found to be a valid exercise of the authority granted to the government in s.91(2),[70] Martineau J. considered whether the cheese compositional standards targeted either inter-provincial or foreign trade of cheese. After reviewing the content of the regulations, the court concluded that the legislative intent and purpose of the regulations were to establish compositional standards for cheese des-

63. Dairy Products Regulations, SOR/79-804 at §2 [hereinafter DPR]; Canada Agricultural Products Act, R.S.C. 1985, c.20 (4th Supp.) [hereinafter CAPA].

64. Food and Drugs Act,C.R.C., c.870 at §B.08.001.1 [hereinafter FDR].

65. Frigon, *supra* note 62 at 2.

66. *Id.*

67. *Id.*

68. *Saputo Inc. and Others v. The Attorney General of Canada* [2009] FCJ No. 1016(Can.) [hereinafter *Saputo*].

69. Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.), *reprinted in* R.S.C., No.5 (Appendix II 1985).

70. *Labatt Brewing Co. v. Canada*, [1980] 1 SCR 914, 915 (Can.).

tined for interprovincial, import, and export trade.[71] As a result, the provisions were found to be a valid exercise of the federal government's constitutional authority.

Likewise, Martineau J. rejected the processor's claims that the regulations exceeded the regulation-making authority granted by the FDA and the CAPA. Instead, Martineau J. described the enabling statutes as providing the Governor in Council with broad authority and concluded that the "new Regulations fit squarely within the objectives and powers outlined in the provisions."[72] Moreover, Martineau J. expressly rejected the processors' claim that the purpose of the regulations was to transfer economic benefit from the processors to the dairy producers after finding the processors' evidence unpersuasive.[73] The application was, therefore, dismissed in its entirety.[74]

Saputo Inc. and Kraft Canada Inc. have recently filed an application to appeal the trial decision with the Federal Court of Appeal.[75] Parmalat Canada Inc., however, is not listed as an appellant on the appeal.[76]

SELECT BRAND DISTRIBUTORS INC. V. CANADA (ATTORNEY GENERAL)

The plaintiffs brought an application to the Federal Court for judicial review of the CFIA's refusals to allow non-standardized size jars of Gerber brand baby food to be test marketed in Canada.[77] Although the *Processed Products Regulations* of the CAPA only permit baby food to be sold in two sizes, [78] §9.1 creates a process wherein one can apply for approval to sell a product in a non-standardized size for the purpose of testing the market. The applicants' requests were refused on the grounds that applicants had failed to establish that non-standardized sizes would not disrupt normal trading patterns as required by §9.1(5)(a).[79]

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71. *Saputo,*[2009] F.C. at ¶22.
72. *Id.* at ¶30.
73. *See id.* at ¶42.
74. *Id.* at ¶89.
75. *Cheese Producers Appeal New Rules On Milk Content,* CBC, Nov. 20, 2009, *available at* http://www.cbc.ca/money/story/2009/11/20/kraft-saputo-cheese-regulation.html.
76. *Id.*
77. Select Brand Distributors Inc. v. Canada, [2009] F.C.547(Can.).
78. Processed Product Regulations, SOR/82-701(Can,) at Schedule III, Table III, Container, Section (2) [hereinafter PPR].
79. *Select Brand Distributors, supra* note 77 at ¶8.

Similar to the discussion in *Saputo*, the court considered whether the regulations exceeded the scope of regulation-making authority outlined in the CAPA.[80] Hughes found the legislative intent of CAPA was "the provision of food to the Canadian marketplace for its consumption."[81] As such, Hughes took issue with the attempt to direct patterns of the marketplace contained in §9.1(5)(a). The court found that regulating the marketplace fell within activities prescribed pursuant to the *Competition Act*,[82] thus its inclusion in the PPR was *ultra vires*.[83] §9.1(5)(a) was struck down and the CFIA was ordered to allow the applicants to test market baby food for up to 24 months.[84]

Perhaps more interesting than the ultimate outcome of this decision, however, is Hughes evidentiary conclusions regarding the CFIA's handling of the applicants' requests and the nature of the market for baby food in Canada. In *obiter*, Hughes indicated that even if §9.1(5)(a) had not been found *ultra vires*, the CFIA's refusals to allow the applicants to test market baby food would have been set aside for being unreasonable.[85] The court concluded that the CFIA had no evidence before it from which to draw any conclusions about the impact of the test market on normal or usual trading patterns.[86] As such, CFIA's decisions to refuse the applicants' requests were described as "..flawed, lacking transparency and, unreasonable."[87] In addition, Hughes J. expressed distress about the monopolistic nature of the baby food market in Canada and suggested that the Competition Bureau should be concerned.[88]

R V. PRAIRIE PRIDE NATURAL FOODS LTD. AND MR. BRUCE ARABSKY

In July, Prairie Pride, a poultry processor, and Mr. Arabsky pled guilty and were fined $440,000 for contravening provisions of the *Health of Animals Regulations*[89] mandating the conditions for the hu-

80. *Id.* at ¶20.
81. *Id.* at ¶28.
82. Competition Act, R.S.C., c. C-34 (1985).
83. *Select Brand Distributors, supra* note 77 at ¶30.
84. *See id.* at ¶35.
85. *Id.* at ¶32.
86. *Id.*. at ¶18.
87. *Id.* at ¶33.
88. *Select Brand Distributors, supra note 77, at ¶18.*
89. C.R.C., c. 296(2009) [hereinafter *HAR*].

mane transport of animals.[90] According to the Prosecution Bulletin released by the CFIA after sentencing, the accused, after being warned, continued to violate HAR regulations limiting the amount of time an animal can be in transport and the conditions of that transport.[91] §140(2) prohibits the transportation of animals in crowded conditions that are likely to cause the animals injury or undue suffering. Likewise, §148(1) provides that poultry cannot be in transport for over 36 hours. On a number of occasions, despite the warning, the defendants shipped large quantities of live birds from Saskatchewan to British Columbia.[92] Many of the birds were dead when they arrived at the processors in British Columbia.[93]

Because the defendants pled guilty, there is no published decision from the Provincial Court outlining the finding of facts. Thus, little information about the circumstances leading to the conviction is known. The penalty, however, is of a magnitude rarely seen in Canada resulting from CFIA prosecutions. Unfortunately, it is difficult to assess the significance of this case as CFIA prosecutors rarely face not guilty pleas. As a result, there is no body of reported court decisions from which to analyze comprehensively trends or patterns in CFIA prosecutions.

90. CFIA, Prosecution Bulletin, Prairie Pride Natural Foods Ltd. and Bruce Arabsky Fined $440,000 For Humane Transport Violations (Sept. 14, 2009) *available at* http://www.inspection.gc.ca/english/corpaffr/projud/2009/20090914e.shtml.

91. *Id.*

92. *Id.*

93. *Id.*