

CANADA



Wendy Reed
Geneviève Marcotte
Heenan Blaikie
wreed@heenan.ca
gmarcotte@heenan.ca
www.heenanblaikie.com

1. Title:	New School Policies Aim To Reduce “Junk Food” in Schools
Topic:	Regulation of Food in Schools
Where:	British Columbia, New Brunswick, Ontario
When:	Fall 2005
What Happened:	<p>British Columbia and New Brunswick recently followed Ontario’s lead in introducing guidelines to reduce “junk food” in schools.</p> <p>In November 2005, the province of British Columbia introduced voluntary guidelines for food and beverage sales in the provinces’ schools to “...help districts eliminate junk food and improve student health and achievement”. The guidelines divide food and beverages into the following four categories: choose most, choose sometimes, choose least and not recommended. Schools are encouraged to discontinue sales of “not recommended” items and to select for sale those items in the “choose most” and “choose sometimes” categories.</p> <p>The province of New Brunswick implemented its “Healthier Foods and Nutrition in Public Schools” policy in October 2005, replacing the previous Food and Nutrition Policy of 1991. This new policy sets standards for healthy food awareness and sets out recommendations for food options available in schools and throughout the public school system.</p> <p>Canada’s first such program was introduced in Ontario in 2004, when the provincial government directed school boards in the province to remove all junk food from vending machines in elementary schools. Guidelines on healthy choices were developed based on expert research to provide guidance on appropriate foods and snacks. School boards have been encouraged to follow these guidelines by offering healthy choices such as milk, yogurt-based drinks, 100% fruit juice, vegetable juice or water for beverages and some types of granola bars, muffins, yogurt, cheese, pretzels or popcorn for snacks.</p> <p>Similar policies are also on the radar in other provinces such as Prince Edward Island, Nova Scotia, Manitoba and Newfoundland.</p>
Comment:	This is consistent with a worldwide trend to encourage healthy eating in schools, in light of the obesity epidemic.

2. Title:	Organic regulations coming to Canada
Topic:	Food & Labelling – Organic Regulations
Where:	Canada
When:	Draft regulations expected late June 2006
What Happened:	<p>Although the Government of Canada recognizes the increasing importance of the organic food market, unlike many other countries, such as Australia, the US, the UK, and the Czech Republic, Canada does not currently have federal regulations on the production or sale of organic foods.</p> <p>Proposed federal regulations are expected in late June 2006, however, with</p>

	<p>an anticipated phase-in period of 2 years. We expect that the Regulations, once finalized, will be in force by the end of 2008.</p> <p>Until federal regulations are passed, the National Standard for Organic Agriculture (the “Standard”) as ratified and published by the Standards Council of Canada (a federal crown corporation that reports to Parliament through the Minister of Industry, referred to herein as the “SCC”), will continue to be the leading guideline to which manufacturers and advertisers refer. This Standard outlines principles for organic agriculture and sets minimum criteria for foods to be referred to as “organic” and covers every aspect of agriculture from seeding to point of sale.</p> <p>According to the Standard, a food must consist of at least 95% organic ingredients before it may make an unqualified “organic” claim.</p> <p>If a product contains at least 70% organic ingredients, a claim may be made provided the percentage (by weight or fluid volume, excluding water and salt, of the total ingredients in the final product) of organic ingredient(s) present in the food is made on the principal display panel - e.g., "contains x% organic ingredients" or "contains x% of organic (name the ingredient(s))".</p> <p>If a product contains less than 70% organic ingredients, only individual ingredients may be labelled as organic within the ingredient list.</p> <p>From a provincial perspective, Quebec is the only province to have established mandatory guidelines for the production and marketing of organic foods.</p> <p>The <i>Agri-Food Choice and Quality Act</i> and the <i>Organic Agricultural Products Certification Regulation</i> in the province of British Columbia governs organic farming in that province but it is a voluntary system.</p>
Comment:	With the rapid growth of the organic industry, there is all the more need to replace our more piecemeal approach by a uniform Federal standard and certification process.

3. Title:	Direct to Consumer Advertising of Prescription Drugs In Canada – Is It Really Time For Change?
Topic:	Direct to Consumer Advertising of Prescription Drugs
Where:	Canada
When:	Paper Published: January 30, 2006
What Happened:	<p>On January 30, 2006, the Health Council of Canada issued a paper considering the public health implications of direct to consumer advertising of prescription drugs (“DTC advertising”).</p> <p>The paper was issued shortly after CanWest Global (“CanWest”) applied to the Ontario Superior Court asking it to strike down the provisions of the federal <i>Food and Drugs Act and Regulations</i> that restrict DTC advertising. CanWest claimed that the restrictions violate the <i>Canadian Charter of Rights and Freedoms</i> (namely the right to freedom of expression) and are “unfair, ineffective and discriminatory”, especially given the broadcast of ads on U.S. television channels and the publications found in U.S. magazines and newspapers widely available to Canadians.</p> <p>Both the paper and the CanWest application come at a time when the federal government is already reviewing the issue.</p> <p>The Canadian <i>Food and Drugs Act</i> does contain a broad prohibition against advertising prescription-only drugs to the public. Yet, it has been applied somewhat generously of late, to allow “reminder ads” that refer to brand names only, without any health claims (Viagra being the most obvious</p>

	<p>example), as well as help-seeking ads (discussing patient conditions without referring to any particular product). Also, in view of the general prohibition, Canadian law does not specify requirements to provide information on health risks, product costs or comparative performance with similar drugs in DTC ads.</p> <p>The Health Council of Canada favours the strengthening of Canadian legislation to ban <u>all forms of DTC advertising</u>, based on research which, it submits, shows that DTC advertising increases patients' requirements for drugs without necessarily leading to better, healthier or more appropriate prescribing.</p>
Comment:	<p>The debate between advertisers and Health Council of Canada over DCTA is not over and the federal government's reaction to same will be one to watch for over the course of the upcoming months. If the Health Council's recommendations are upheld, Canadian manufacturers will remain at a significant disadvantage in marketing their products compared to their U.S. counterparts.</p>

4. Title:	Reins Pulled Back Somewhat on Quebec Class Actions
Topic:	Litigation - Class Actions
Where:	Canada (Quebec)
When:	Quebec Superior Decision rendered in February 2006
What Happened:	<p>All hope is not lost for Respondents facing class actions in Québec.</p> <p>The changes to the Québec <i>Civil Code of Procedure</i> in January 2003 have lightened the Petitioners' burden of proof at the authorization stage ("certification" in other jurisdictions) in two main ways: a) by removing their need to file an affidavit in support of the Motion; and b) by eliminating the Respondent's right to file a written defence. (Also, there will <u>only</u> be a right to file evidence and to examine the Petitioner with the Court's permission and at its discretion)</p> <p>Despite this, the Québec Superior Court has recently reminded Petitioners that they still have to provide sufficient facts to show the seriousness of the proposed class action. If they don't, their Motion will fail.</p> <p>In <i>Option Consommateurs vs. Novopharm et al</i>, a decision rendered in February 2006, the Québec Superior Court dismissed what was to become the most important class action instituted in Québec. The Motion for authorization stemmed from a newspaper article that appeared in <i>La Presse</i> in 2003. According to the article, generic drug manufacturers had paid out illegal rebates and bonuses to pharmacists in Québec and other provinces and failed to take into account the value of the rebates and other benefits when establishing the cost of medication. The Petitioner proposed a class action seeking \$3.9 billion in damages, claiming that nine generic drug manufacturers had caused both public and private drug insurance plans to pay excessive costs for generic drugs, excessive premiums and excessive contributions in the case of the public drug insurance plan.</p> <p>The decision is important in that it clearly states that the Courts will not entertain unsubstantiated claims made at the whim of the parties. Pure speculation and nebulous allegations will not be permitted to give rise to a class action, nor will an inference based on facts that have not been substantiated. Also, the Court reminds Petitioners that they need to assert the representative character of the consumer association seeking to act as Petitioner for the class action. They can't simply rely on the fact that the consumer association has been a representative in other class actions.</p> <p>In short, the Superior Court has held that despite the simplified procedure for class actions, vague and general statements and a newspaper article alone</p>

	are insufficient to establish an apparent right. Although the fate of this decision is now in the hands of the Québec Court of Appeal, it is hoped that this landmark case will help slow down the massive flow of class actions that have penetrated Québec in the last couple of years, especially in consumer-related matters.
Comment:	The outcome of the Québec Court of Appeal will influence, one way or another, the ease of filing a class action law suit in Québec which has become in the last few years, a very appealing jurisdiction for class action Petitioners.