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## Chapter 2 - Current Structure of Meat Regulation in Ontario

### 2.1 Introduction

The purpose of this chapter is to address:

- the constitutional division of responsibility for the delivery of safe meat;
- the existing regulatory regime in Ontario; and
- the restructuring of the system through the Ontario Food Safety Strategy and the *Food Safety and Quality Act, 2001 (FSQA)*.<sup>1</sup>

### 2.2 Constitutional Responsibility for Safe Meat

The delivery of safe meat in Ontario is a responsibility that is shared by the federal and provincial governments. There is no specific legislative power allocated to either level of government for meat inspection, however, both have concurrent jurisdiction over agriculture pursuant to section 95 of the *Constitution Act, 1867* and there are several powers listed in sections 91 and 92 that support the roles each government has assumed in the area. Food safety is, of course, a public health issue, and although health is not referred to as a specific head of power in the Constitution, it is an area in which both levels of government have exercised complementary legislative authority.

#### 2.2.1 Federal Jurisdiction

A number of federal powers, including the broad peace, order and good government power and the federal spending powers, authorize federal involvement in this subject matter, but the participation of the federal government in meat inspection specifically, and food safety generally, arises from its jurisdiction over trade and commerce (s. 91(2)) as well as its powers in the area of criminal law (s. 91(27)). Securing foreign markets for Canadian meat was the principal motivation for the enactment of the *Meat and Canned Goods Act*<sup>2</sup> in 1907 which created a system of inspection for all meat traded both interprovincially and internationally. These provisions have been modernized and continued in the *Meat Inspection Act (Canada)*<sup>3</sup>

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<sup>1</sup> *Food Safety and Quality Act, 2001*, S.O. 2001, c. 20, received Royal Assent, December 5, 2001 but not yet proclaimed.

<sup>2</sup> 6-7 Edward VII, c. 27.

<sup>3</sup> *Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.).

which, in sections 7 and 8, specifically prohibit the export and interprovincial sale of any meat product that has not been prepared in accordance with that statute and its regulations. Consequently, any meat produced in Ontario for consumption elsewhere must be processed in a federally regulated plant.

The federal government has also relied on its criminal law powers to enact legislation that prohibits the manufacture and sale of dangerous, adulterated or misbranded products in Canada.<sup>4</sup>

### 2.2.2 Provincial Jurisdiction

The Province of Ontario regulates meat that is processed in Ontario for sale and consumption within its boundaries. The powers in section 92 of the *Constitution Act, 1867* that permit the Legislature to exercise this jurisdiction are local works and undertakings (s. 92(10)), property and civil rights (s. 92(13)) and matters of a local and private nature (s. 92(16)).

Ontario had no legislation regulating meat inspection province-wide until the 1960s when the *Meat Inspection Act (Ontario)*<sup>5</sup> (*MIA*) and *Dead Animal Disposal Act*<sup>6</sup> (*DADA*) were enacted. The apparent impetus for this legislation came from a number of well publicized prosecutions of persons charged with selling meat from dead animals for human consumption. Consumer concerns at the time prompted retail meat markets to abandon the then uninspected provincial abattoirs in favour of federally inspected facilities. The adverse economic impact on Ontario meat producers was substantial. Many chose to protect their markets by becoming federally registered establishments while others closed their doors.<sup>7</sup> Notwithstanding these events, the production of meat in provincial abattoirs has continued and still plays a significant role in the agricultural economy of the province. There are currently 191 provincially licensed abattoirs in Ontario.

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<sup>4</sup> *Food and Drug Act*, R.S.C. 1985, c. F-27.

<sup>5</sup> *Meat Inspection Act (Ontario)*, R.S.O. 1990, c. M.5.

<sup>6</sup> *Dead Animal Disposal Act*, R.S.O. 1990, c. D.3.

<sup>7</sup> I. MacLachlan, *Kill and Chill: Restructuring Canada's Beef Commodity Chain*, (Toronto: University of Toronto Press, 2001).

### 2.2.3 Municipal Jurisdiction

The Legislature of Ontario has also delegated a role in the delivery of safe food to municipalities. Under the provisions of the *Municipal Act, 2001*,<sup>8</sup> municipalities in Ontario are empowered to establish local boards of health, which are required to provide inspection services for food premises pursuant to the *Health Protection and Promotion Act*<sup>9</sup> (HPPA).

## 2.3 The Current Federal System

At the federal level, meat inspection has been undertaken by the Canadian Food Inspection Agency (CFIA) since 1997.<sup>10</sup> At that time, the government of Canada integrated the delivery of inspection and quarantine services formerly provided by Agriculture and Agri-Food Canada, Health Canada, Industry Canada and Fisheries and Oceans Canada. The CFIA is a legislated, independent body corporate led by a President who reports to the Minister of Agriculture and Agri-Food.

Between 1970 and 1985, a series of reports identified the need for a single agency to better coordinate food inspection. In response, the Interdepartmental Committee on Food Regulation was established in 1986 to attempt to resolve some of the problems with the existing federal system. In 1995, the Office of Food Inspection Systems was established to review organizational options and consult stakeholders. This process resulted in the creation of the CFIA.<sup>11</sup>

In the realm of food safety, the CFIA ensures that manufacturers, importers, distributors and producers comply with federal regulations and standards governing the safety, quality, handling, identification, processing, packaging

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<sup>8</sup> *Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>9</sup> *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

<sup>10</sup> *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6.

<sup>11</sup> *Report of the Auditor General of Canada, Canadian Food Inspection Agency— Food Inspection Programs*, (December 2000) para. 25.15.

and labelling of food.<sup>12</sup> The Minister of Health continues to establish policies and standards for the safety and nutritional quality of food sold in Canada.

About 85 percent by volume of all meat processed in Ontario is produced in 33 facilities that are registered under the *Meat Inspection Act* (Canada) and inspected by CFIA inspectors.<sup>13</sup>

## 2.4 The Current Provincial System

There are several provincial ministries with responsibilities relevant to food safety in Ontario and a substantial body of legislation that delineates those responsibilities.

### 2.4.1 Ministry of Agriculture and Food

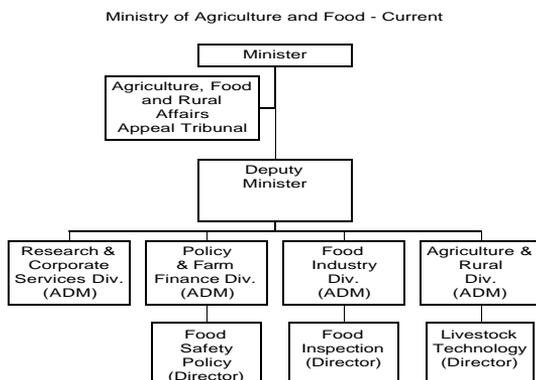
The Ministry of Agriculture and Food (OMAF) is currently the principal participant in the regulation of meat production.

There are three divisions (Policy & Farm Finance, Food Industry and Agricultural & Rural) that play an important role in the delivery of safe food and each division has one branch under the management of a Director that has specific food safety responsibilities, namely, the Food Inspection Branch (meat inspection), the Food Safety Policy Branch (policy development) and the Livestock Technology Branch (on-farm programs).

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<sup>12</sup> The CFIA is responsible for the administration and enforcement of the following federal Acts: *Administrative Monetary Penalties Act, Canada Agricultural Products Act, Canadian Food Inspection Agency Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders' Rights Act, Plant Protection Act, Seeds Act, the Consumer Packaging and Labelling Act* as it relates to food and the enforcement of the *Food and Drugs Act* as it relates to food. CFIA, *Fact Sheet*, available from <http://www.inspection.gc.ca/english/corpaffr/publications/prog/agence.shtml>; [accessed 29 April 2004].

<sup>13</sup> *2001 Annual Report of the Provincial Auditor of Ontario – Food Industry Program*, (Toronto: Queens Printer for Ontario, 2003), s. 3.01.



Although OMAF has responsibility for administering numerous statutes,<sup>14</sup> the *MIA*, *DADA* and *Livestock Community Sales Act*<sup>15</sup> (*LCSA*) are the most significant in the regulation of meat production.

#### 2.4.1.1 Meat Inspection Act (Ontario)

The apparent purpose of the *MIA* is to provide for the production of safe meat for human consumption under proper conditions in appropriately designed and maintained facilities.

The *MIA* and O. Reg. 632/92, as amended by O. Reg. 319/99, require that the slaughter of any animal for the production of meat be undertaken in a prescribed, humane manner at a facility licensed for that purpose where an inspector is present unless the animal is being slaughtered by a livestock producer for consumption by that producer and his or her immediate family.

The regulations specify the facilities and equipment required in a slaughter plant and prescribe rules for the operation and maintenance of such plants to ensure that safe production standards are met.

<sup>14</sup> These include: *Edible Oil Products Act*, R.S.O. 1990, c. E.1; *Milk Act*, R.S.O. 1990, c. M.12; *Livestock Medicines Act*, R.S.O. 1990, c. L.23; *Beef Cattle Marketing Act*, R.S.O. 1990, c. B.5; *Farm Products Grades and Sales Act*, R.S.O. 1990, c. F.8; *Farm Products Marketing Act*, R.S.O. 1990, c. F.9; and *Livestock and Livestock Products Act*, R.S.O. 1990, c. L.20

<sup>15</sup> *Livestock Community Sales Act*, R.S.O. 1990, c. L.22.

#### 2.4.1.2 Dead Animal Disposal Act

The *DADA* and O. Reg. 525/96 deal with the disposition of dead and fallen animals. The statute is designed to ensure that all dead animals are segregated from healthy livestock and meat intended for human consumption. Collectors of deadstock and operators of receiving and rendering plants, who are all licensed under the *DADA*, are prohibited from operating an abattoir and the processing of any dead animal for sale as meat for human consumption is prohibited.

#### 2.4.1.3 Livestock Community Sales Act

The *LCSA* and O. Reg. 729 provide for the licensing of community sales of consigned livestock in Ontario. The *LCSA* and its regulations establish an inspection system whereby appointed veterinarians and inspectors examine livestock, facilities and handling techniques to ensure that livestock is marketed in a safe and humane manner. Diseased and disabled animals are identified and processed in accordance with a prescribed protocol.

### 2.4.2 Ministry of Health and Long-Term Care

The Ministry of Health and Long-Term Care administers the *HPPA*. The purpose of this statute is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.

There are 37 health units in Ontario. A health unit is a geographic area over which a board of health has jurisdiction. Under the *HPPA*,<sup>16</sup> the Minister may publish guidelines for the provision of mandatory health programs and services and every board of health is required to comply with those guidelines. Each health unit has a Medical Officer of Health (MOH) who has a statutory duty to inspect or cause the inspection of food premises and any food or equipment found on those premises. In the normal course, the inspection of food premises is undertaken by public health inspectors under the direction of a MOH. Food premises are defined in the *HPPA* as premises where food is manufactured, processed, prepared, stored, or offered for sale, but does not include a private residence. The facilities currently subject to such inspections include traditional butcher shops,

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<sup>16</sup> *HPPA*, *supra* note 9, ss. 1 & 16.

restaurants, supermarkets, variety stores and premises where ready to eat meats are cured, smoked and fermented.

### 2.4.3 Ministry of Natural Resources

The Ministry of Natural Resources (MNR) has responsibility under the *Fish Inspection Act*<sup>17</sup> (*FIA*) to regulate the commercial sale and processing of fish intended for human consumption. The *FIA* prohibits the sale of any fish intended for human consumption that is tainted, decomposed or unwholesome and provides for the inspection of premises where fish are handled, graded, processed or stored. Regulations made pursuant to the *FIA* set out operating requirements for premises that process fish and provide general construction and equipment requirements for such establishments. There is currently no inspection program in place for the processing facilities apart from that administered by the local health units for food premises.

The MNR also administers the *Freshwater Fish Marketing Act*<sup>18</sup> under which the Freshwater Fish Marketing Corporation is constituted as the body that controls the selling and buying of fish in designated parts of Ontario.

The MNR plays an important role in the enforcement of the *MIA* and *DADA* through a broad Cooperative Agreement and more specifically a Service Level Agreement it has entered into with OMAF. Under the terms of that Agreement, the MNR provides investigative services and resources for the prosecution of offenders who contravene the provisions of those statutes. This arrangement is reviewed and considered in more detail in Chapter 11.

## 2.5 Ontario Food Safety Strategy and the Food Safety and Quality Act, 2001

The Ontario Food Safety Strategy (OFSS) was launched in October 2000<sup>19</sup> following a review of Ontario's food safety system that commenced in 1998. At that time, it was acknowledged that food safety hazards and risks

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<sup>17</sup> *Fish Inspection Act*, R.S.O. 1990, c. F.18 and R.R.O. 1990, Reg. 456.

<sup>18</sup> *Freshwater Fish Marketing Act (Ontario)*, R.S.O. 1990, c. F.33.

<sup>19</sup> The development and implementation of the Ontario Food Safety Strategy was led by OMAF in partnership with MOHLTC, MOE, MNR, local boards of health, CFIA, Health Canada and Agriculture and Agri-Food Canada.

were increasing for a variety of reasons<sup>20</sup> and while food science was responding to meet these challenges, there were elements of Ontario's system for assessing food safety that were not keeping pace with national and international inspection standards where science-based risk management programs were being introduced to promote the safe delivery of food from production through consumption.

The advantages in pursuing this strategy were manifest. The consumer would be afforded greater protection, industry would benefit from enhanced consumer confidence and government would benefit from the restoration of public confidence as well as the potential reduction of health costs associated with foodborne illnesses.

Under OFSS, improvements have been made in a number of areas:

- scientific support of inspection programs has been strengthened with risk assessments being conducted to determine the ranking of food safety risks and microbial and chemical baseline studies being conducted to assess the levels of food safety hazards;
- food safety programs for farmers and meat processors have been developed;
- a data management system (Food Safety Decisions Support System) has been introduced to manage risks and improve response time;
- cooperative agreements with other government authorities have been entered into that focus and coordinate inter-jurisdictional food safety responsibilities; and
- reorganization of the compliance and enforcement programs has been undertaken.

However, the backbone of the OFSS initiative, the *FSQA*, while enacted on December 5, 2001, has yet to be proclaimed. This legislation was the product of an extensive consultative process undertaken as part of the OFSS. The purpose was to consolidate and modernize the food safety and quality

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<sup>20</sup> Changing food consumption patterns, such as ready to eat foods; a larger at-risk population; and increased pathogen virulence and drug resistance.

features of several existing statutes<sup>21</sup> to provide the framework for regulations that would require adherence to science-based production and inspection standards.

The statute is designed to implement food safety inspection programs that will complement and support the food safety programs provided by the CFIA and local health units. The goals of the *FSQA* as identified by OMAF are:

- to prevent the distribution and sale of foods that are contaminated, unfit for human consumption or pose a human health risk;
- to prevent fraud or misrepresentation in the production and sale of food products;
- to engage industry in the process of ensuring that the food it produces, distributes and sells is safe;
- to give government the necessary enforcement tools to ensure industry meets its obligations under the legislation; and
- to provide government with the appropriate authority to investigate and control food safety threats or outbreaks of foodborne illness.

The National Meat and Poultry Regulations and Code (NMPRC) are model regulations that have been developed nationally by federal, provincial and territorial health and agriculture representatives in consultation with industry to guide all jurisdictions in developing consistent food safety standards across the country. OMAF has proposed that the meat inspection regulations under the *FSQA* should be consistent with the NMPRC. Once implemented, these regulations would govern the slaughter of livestock, the processing, packaging and labelling of meat and the disposal of inedible and condemned material from abattoirs and meat processors. They would also expand inspection to an additional 700 free standing meat processors, provide for microbial performance standards, food handler training, the implementation of risk management plans and other food safety measures.

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<sup>21</sup> *Milk Act; Meat Inspection Act; Farm Products Grades and Sales Act; Livestock and Livestock Products Act; Edible Oil Products Act; Fish Inspection Act; and Dead Animal Disposal Act.*

However, there is, as of now, no policy approval for OMAF to proceed with the implementation of such regulations.

In subsequent chapters, I will propose certain amendments or additions to the *FSQA* that I believe will enhance its effectiveness. Nonetheless, I am satisfied for reasons that will emerge in the balance of this Report that it, together with regulations that are equivalent to the NMPRC, will provide a sound and comprehensive foundation for a reliable meat safety system in Ontario.

**I recommend that the *Food Safety and Quality Act, 2001* be proclaimed without further delay with the promulgation of regulations that are equivalent to the National Meat and Poultry Regulations and Code.**