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Bill 54

An Act to regulate the labelling and certification of organic products

Mr. J. McDonell

Private Member's Bill

1st Reading November 12, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Organic Products Act, 2018*. The Act prohibits the marketing and labelling of products as “organic” unless they have been certified as organic in accordance with the Act. It also requires that the Minister assigned the administration of the Act create a register of all products that are certified as organic, and that the Minister periodically update the register.

An Act to regulate the labelling and certification of organic products

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

Interpretation

1 (1) In this Act,

“advertisement” means anything that directly or indirectly promotes the sale or other distribution of a product; (“promotion”)

“certification body” means a person or body designated as a certification body under section 3; (“organisme de certification”)

“container” means a receptacle, package, wrapper or confining band used or to be used in connection with a product; (“contenant”)

“inspector” means a person appointed as an inspector under section 5; (“inspecteur”)

“label” means a label, legend, word, mark, symbol, design, imprint, stamp, brand, ticket or tag or any combination of these that is, or is to be, applied or attached to a product or a container, or that accompanies or is to accompany a product or container; (“étiquette”)

“marketing” means the preparation and advertisement of products, and includes the conveyance, purchase and sale of products, and any other act necessary to make products available for consumption or use; (“commercialisation”)

“Minister” means the Minister to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“multi-ingredient product” means a type of product composed of two or more products; (“produit multi-ingrédients”)

“organic product” means a product that has been certified as organic in accordance with this Act; (“produit biologique”)

“person” includes a partnership or an unincorporated association; (“personne”)

“place” includes a vehicle or other conveyance; (“lieu”)

“preparation” includes processing, slaughtering, storing, inspecting, grading, packing, assembling, marking and labelling; (“conditionnement”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“product” means a tangible good for sale, including,

- (a) an animal, a plant, or a thing derived from an animal or plant, including any food, drink, cosmetic or textile derived from an animal or plant, and
- (b) a product prescribed by regulation; (“produit”)

“register” means the Organic Products Register described in section 13; (“registre”)

“regulations” means the regulations made under this Act; (“règlements”)

“sell” includes,

- (a) agreeing to sell, or offering, keeping, exposing, transmitting, conveying or delivering for sale,
- (b) selling by consignment,
- (c) exchanging or agreeing to exchange, and
- (d) disposing of or consenting to dispose of, in any manner, for a consideration. (“vendre”)

No effect on *Farm Products Marketing Act*, *Milk Act*

(2) Nothing in this Act affects the operation of the *Farm Products Marketing Act* or the *Milk Act*.

CERTIFICATION OF ORGANIC PRODUCTS

Marketing and labelling of organic products

2 No person shall market or label a product using the term “organic”, “biologique” or any other prescribed term unless the product has been certified as organic in accordance with this Act.

Regulations respecting organic certification

3 The Minister may make regulations respecting the certification of products as organic products, including, but not limited to, regulations,

- (a) designating as a certification body any person or body the Minister considers to be knowledgeable about the principles and practices of organic certification;
- (b) respecting the making of applications to a certification body by persons who wish to have products certified as organic products;
- (c) respecting procedures, criteria and standards for organic certification, including the certification of multi-ingredient products;
- (d) prescribing the period for which an organic certification remains in effect;
- (e) governing the records to be kept in respect of certified organic products;
- (f) governing the renewal, suspension and cancellation of an organic certification;
- (g) respecting appeals from decisions by a certification body not to certify products as organic products, or to suspend, cancel or not renew an organic certification.

Agreement with certification body

4 The Minister may enter into an agreement with a certification body respecting the certification of products as organic products under this Act.

INSPECTIONS AND ENFORCEMENT

Appointment of inspectors

5 (1) The Minister may appoint inspectors for the purposes of this Act.

Certificate of appointment

(2) The Minister or a person authorized in writing by the Minister shall issue to the inspector a certificate of appointment bearing the Minister's signature or a facsimile of it.

Proof of appointment

(3) Every inspector who exercises powers under this Act shall, on request, produce his or her certificate.

No obstruction

6 No person shall obstruct an inspector who is exercising powers under this Act or provide an inspector with false or misleading information.

Powers of inspectors

7 (1) An inspector may, subject to section 8, enter and inspect any place, or stop any vehicle, in which the inspector believes on reasonable grounds there is any product that is labelled, is being marketed or is intended to be marketed as an organic product.

Same

(2) The inspector may,

- (a) open any container that the inspector believes on reasonable grounds contains a product;
- (b) inspect any product or other thing and take samples of it free of charge;
- (c) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Act;
- (d) use or cause to be used any computer or data processing system to examine any data contained in or available to it;
- (e) obtain data in the form of a printout or other intelligible output and take the printout or other output for examination or copying; and
- (f) use or cause to be used any copying equipment to make copies of any record or other document.

Driver of vehicle must stop

(3) When an inspector signals or requests a person driving a vehicle to stop, the person shall immediately bring the vehicle to a stop and shall not proceed until the inspector permits the person to do so.

Records

(4) An inspector may remove any records or documents that he or she is entitled to examine or copy, but shall give a receipt to the person from whom they were taken and promptly return them when the examination is completed.

Assistance to inspectors

(5) The owner or the person in charge of a place or vehicle inspected and any person found in the place or vehicle must,

- (a) give the inspector all reasonable assistance to enable the inspector to carry out his or her duties under this Act; and
- (b) provide the inspector with any information relevant to the administration of this Act that the inspector reasonably requests.

Warrant required to enter dwelling

8 (1) An inspector shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under section 158 of the *Provincial Offences Act* or a warrant issued under subsection (2).

Authority to issue warrant

(2) A justice may issue a warrant authorizing an inspector named in the warrant to enter the dwelling, subject to any conditions that may be specified in the warrant, if the justice is satisfied on information under oath that there are reasonable grounds to believe that,

- (a) the conditions for entry described in subsection 7 (1) exist in relation to a dwelling;
- (b) entry to the dwelling is necessary for a purpose relating to the administration of this Act; and
- (c) entry to the dwelling has been refused or that there are reasonable grounds for believing that entry will be refused.

Warrant to search and seize

9 (1) A justice may issue a warrant authorizing an inspector and any other person named in the warrant to enter and search the place for a product or other thing, and to seize and detain it, if the justice is satisfied on information under oath that there are reasonable grounds to believe that,

- (a) an offence under this Act has been committed; and
- (b) there is to be found, in any place, a product or other thing that will afford evidence in respect of the commission of an offence.

Additional seizure powers

(2) An inspector who executes a warrant issued under subsection (1) may exercise the powers described in section 7 and may seize, in addition to anything mentioned in the warrant, any product or other thing,

- (a) by means of which, or in relation to which, the inspector believes on reasonable grounds that this Act has been contravened; or
- (b) that the inspector believes on reasonable grounds will afford evidence in respect of a contravention of this Act.

Where warrant not necessary

(3) An inspector may exercise any of the powers referred to in this section without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practical to obtain a warrant.

Expiry of warrant

10 (1) A warrant issued under this Act shall name a date on which it expires, which date shall not be later than 30 days after its issue.

Extension of time

(2) A justice may extend the date on which the warrant expires for an additional period of no more than 30 days on application without notice by the inspector named in the warrant.

Police assistance

(3) The warrant authorizes the inspector named in the warrant to call on police officers as necessary to execute the warrant.

Duty to assist

(4) It is the duty of every member of a police force called to render assistance under subsection (3) to render the assistance.

Use of force

(5) A justice who issues a warrant under this Act may authorize the inspector named in the warrant to use as much force as is reasonably necessary to execute the warrant or to exercise any authority specified in the warrant.

Time of execution

(6) Unless otherwise ordered, the warrant shall be executed only during normal business hours for the place named in the warrant.

Storage and removal of things seized

11 (1) A thing seized and detained under this Act may be stored by an inspector, or by any person designated by an inspector, in the place where it was seized or may, at the inspector's discretion, be removed to any other place for storage.

Sale of perishable products

(2) An inspector who seizes a perishable product under this Act may dispose of or destroy it, and any proceeds realized from its disposition, with interest to be paid at the prescribed rate, shall be held pending the outcome of the proceedings.

Disposal of products after proceedings

(3) When proceedings in respect of a seized product or thing have been finally resolved,

- (a) on conviction, the court may order the product or other thing, or the proceeds of sale and accumulated interest referred to in subsection (2), forfeited to the Crown; or
- (b) if the court does not order forfeiture, the product or other thing, or the proceeds of sale and accumulated interest referred to in subsection (2), shall be turned over or paid to the person who is lawfully entitled to possess it or them.

Disposal of forfeited products

(4) A product or other thing that has been ordered to be forfeited under clause (3) (a) must be disposed of as directed by the Minister.

SHARING INFORMATION

Sharing information

12 (1) For the purpose of administering and enforcing this Act, and to generate information, in non-identifying form, for statistical purposes, the Minister or a person authorized by the Minister may,

- (a) require a certification body to provide information collected under this Act, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*; and
- (b) disclose this information to a certification body, the Canadian Food Inspection Agency or other prescribed persons or government agencies.

Information must be provided

(2) The certification body shall provide the information in the form and at the time set by the Minister or the person authorized by the Minister.

ORGANIC PRODUCTS REGISTER

Organic Products Register

13 (1) The Minister or, if the Minister has entered into an agreement with a certification body, the certification body shall establish an Organic Products Register listing,

- (a) all products that have been certified as organic; and
- (b) any other information required by the regulations.

Publication of register

(2) The Minister shall maintain the register and publish it on a Government of Ontario website.

OFFENCES

Offence

14 (1) A person who contravenes this Act is guilty of an offence.

Limitation period

(2) A prosecution under this Act may not be commenced later than two years after the day the alleged offence was committed.

Penalty, individual

(3) An individual convicted of an offence under this Act is liable to,

- (a) a fine of not more than \$20,000 for a first offence and not more than \$30,000 for a subsequent offence;
- (b) imprisonment for a term of not more than six months; or
- (c) both (a) and (b).

Penalty, corporation

(4) A corporation convicted of an offence under this Act is liable to a fine of not more than \$50,000 for a first offence and not more than \$75,000 for a subsequent offence.

Directors and officers of corporations

(5) If a corporation is guilty of an offence, a director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of the offence and is liable to the penalty for the offence provided for in subsection (3).

Presumption about product

15 In a prosecution for an offence under this Act, a person found in possession of a product in a quantity greater than is ordinarily necessary for a household's consumption is deemed, in the absence of evidence to the contrary, to have been in possession of the product for the purpose of marketing it.

Evidence of identification

16 In a prosecution for an offence under this Act, proof that a product or its container bore a name and address purporting to be that of the person who prepared it is proof, in the absence of evidence to the contrary, that the product was prepared by the person or at the establishment whose name and address appeared on the product or container.

Certificate of analyst admissible

17 (1) A certificate appearing to be signed by an analyst involved in the investigation, or a copy or extract of the certificate certified by the analyst as a true copy or extract, stating that the analyst has analysed a sample of a product and giving the results is admissible in evidence in any proceeding as proof of the facts stated unless the contrary is shown.

No proof of appointment or signature required

(2) Proof of the analyst's appointment or signature is not required.

ADMINISTRATIVE PENALTIES**Administrative penalties**

18 (1) An administrative penalty may be imposed under this section for one or more of the following purposes:

1. To ensure compliance with this Act and the regulations.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or of the regulations.

Appointment of Registrar

(2) The Minister shall appoint a Registrar to administer administrative penalties.

Order by Registrar

(3) The Registrar may, subject to the regulations, issue an order requiring a person to pay an administrative penalty if the Registrar is of the opinion that the person has contravened this Act.

Limitation

(4) An order under subsection (3) shall be served not later than one year after the day on which evidence of the contravention first came to an inspector's attention.

Orders not to be issued to directors, officers, employees or agents

(5) If a person who is required to comply with a provision of this Act or of the regulations is a corporation, an order under subsection (3) shall be issued to the corporation and not to a director, officer, employee or agent of the corporation.

Amount of penalty

(6) The amount of the administrative penalty for each day or part of a day on which a contravention occurred or continues to occur shall be determined by the Registrar in accordance with the regulations.

Contents

- (7) An order under subsection (3) shall be served on the person who is required to pay the administrative penalty and shall,
- (a) contain a description of the contravention to which the order relates, including, if appropriate, the date of the contravention;
 - (b) specify the amount of the penalty; and
 - (c) give particulars respecting the time for paying the penalty and the manner of payment.

Absolute liability

- (8) A requirement that a person pay an administrative penalty applies even if,
- (a) the person took all reasonable steps to prevent the contravention; or
 - (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

Same

(9) For greater certainty, nothing in subsection (8) affects the prosecution of an offence.

Payment prevents conviction

(10) A person who pays an administrative penalty in respect of a contravention and has remedied the contravention shall not be convicted of an offence under this Act in respect of the same contravention.

Failure to pay administrative penalty when required

19 (1) If a person who is required to pay an administrative penalty fails to comply with the requirement, the Registrar may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.

Same

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed under subsection (1) and, for that purpose, the date on which the order is filed is deemed to be the date of the order that is referred to in that section.

REGULATIONS

Fees

20 (1) The Minister may make regulations governing fees under this Act, including,

- (a) requiring the payment of fees by a person referred to in subsection (2) in relation to any matter under this Act, including,
 - (i) the inspection, sampling, testing or analysis of a place, product or other thing, or the storage, removal, disposal or return of a product or other thing, required or authorized under this Act, and
 - (ii) the forfeiture, disposal, seizure or detention of a product or other thing under this Act;
- (b) prescribing the amount of fees or the manner of determining fees;
- (c) prescribing the manner in which and the period within which fees must be paid.

Same

(2) The regulations may provide that fees are recoverable jointly and severally from,

- (a) the owner or occupier of the place referred to in clause (1) (a) or the owner of the product or other thing referred to in clause (1) (a); and
- (b) the person having the possession, care or control of the place, product or other thing referred to in clause (1) (a) immediately before its inspection, detention, forfeiture, sampling, testing, analysis, storage, removal, return or disposal or, in the case of a product or other thing seized under this Act, immediately before its seizure.

Regulations

21 The Minister may make regulations,

- (a) prescribing a product for the purpose of the definition of “product” in subsection 1 (1);
- (b) prescribing a term or terms for the purpose of section 2;
- (c) regulating or prohibiting the marketing of any organic product, and establishing terms and conditions governing that marketing;
- (d) prescribing labels for organic products, including multi-ingredient products that contain organic products;
- (e) providing for the inspection of establishments and the inspection, analysis, testing, grading and sampling of organic products;
- (f) governing the design, construction, hygiene, sanitation and maintenance of establishments where organic products are grown or produced;
- (g) governing the procedures to be followed and the standards to be maintained in establishments for the preparation of organic products;
- (h) governing analyses related to pesticides and any other substance that is found on, in or near organic products;
- (i) establishing grades and standards for organic products and establishing standards for containers;
- (j) prescribing the rate of interest to be paid for the purpose of subsection 11 (2);
- (k) providing for measures to be taken respecting organic products or other things that do not meet, or are suspected on reasonable grounds of not meeting, the requirements under this Act;
- (l) prescribing any fees or charges required for carrying out the purpose and provisions of this Act, and the interest that shall accrue on unpaid fees or charges;
- (m) prescribing persons and government agencies for the purpose of clause 12 (1) (b);
- (n) regulating or prohibiting the preparation of any organic product;
- (o) providing for systems to ascertain the places of origin or destination of organic products;
- (p) providing for the collection of market information and statistics, the publication of studies dealing with the marketing of organic products, the collection and publication of statistics on enforcement and the conduct of surveys on any matter related to this Act;
- (q) exempting or excluding a person or product from the application of this Act or any part of it;

- (r) establishing special processes for inspection and prescribing categories of persons to whom those processes apply;
- (s) governing the register;
- (t) governing administrative penalties that may be imposed under section 18;
- (u) respecting any matter necessary or advisable to carry out the purpose of this Act.

COMMENCEMENT AND SHORT TITLE

Commencement

22 This Act comes into force six months after the day it receives Royal Assent.

Short title

23 The short title of this Act is the *Organic Products Act, 2018*.