

June 2016

## What's in a Name? Organic Food Labelling in British Columbia

### Background

In a marketplace where health food is increasingly in demand, governments are starting to adopt more stringent regulations to ensure that products do not mislead the public. British Columbia is no exception – beginning in the fall of 2018, all food and beverage products marketed as "organic" in British Columbia will have to be certified by an accredited federal or provincial organization. This transition to a new regulatory regime is largely motivated by a desire to promote and protect consumer confidence in British Columbia grown organic food and beverage products since there is presently no such requirement for food and beverage products sold exclusively within the province. An additional goal is to promote the BC Certified Organic brand, thus providing business support to certified organic farmers.

### Current Regime

As the provincial regulatory scheme currently stands, organic food and beverage producers and processors in British Columbia do not have to become certified if the products are sold exclusively within the province. However, federal certification is required for sales and marketing outside of the province. Extra-provincial marketing of organic food and beverage products is regulated under the Organic Products Regulations, 2009 ("**OPR**"), which notes that unless the product has been certified by an accredited body, that product cannot be marketed or advertised as "organic" in the context of interprovincial trade.

Although certification is not required for intra-provincial trade, producers and processors can still opt for voluntary certification through the government-sanctioned British Columbia Certified Organic Program ("**BCCOP**"). The Certified Organic Associations of British Columbia ("**COABC**") administers the BCCOP certification process under the Organic Agricultural Products Certification Regulation ("**OAPCR**") and the Agri-Food Choice and Quality Act. In order to become certified, producers or processors must: (i) become a member of one of COABC's certification bodies; (ii) submit an application for certification, demonstrating that they are compliant with the BCCOP Operation Policies and Management Standards; and (iii) undergo an inspection. Once certified, producers and processors may use the OAPCR's prescribed phrase "BC Certified Organic", as well as the corresponding "checkmark" symbol.

### Planned Regime – Mandatory Certification

In response to some of the concerns with the current regime, in 2018 the Ministry of Agriculture intends to bring in regulations accompanying the new Food and Agricultural Products Classification Act that will impose restrictions on the use of the word "organic" when marketing food and beverages within British Columbia. This will help to eliminate the potentially misleading practice of non-certified producers marketing their products as "non-certified organic" within the province. Under the new regulation, producers and processors will not be allowed to advertise their food and beverage products as "organic" in British Columbia unless these products have been certified provincially, in accordance with the OAPCR, or federally, in accordance with the OPR. However, in order to market their food and beverage products as organic both within British Columbia and outside of the province, producers and processors will have to continue to certify through the federal process. Being federally certified also allows parties to use the Canada Organic symbol in accordance with the OPR.

Another change that will come with the new regulation is the requirement to maintain current proof of certification, as organic producers and processors will be required to provide proof of such to a Ministry-appointed Enforcement Officer upon request. Failure

to provide proof of certification may lead to penalties, and failure to pay ticket fines may result in legal action.

## Consequences of the Regime Change

### *Certified Producers and Processors*

If already certified, organic producers and processors will not need to make any changes to their operations other than ensuring their certification is up-to-date and being able to produce proof of certification at the request of Enforcement Officers. The main benefit to certified producers and processors is that all of their competitors who market organic food will be subject to the same rules, regulations, and requirements, which will ostensibly level the playing field.

### *Non-certified Producers and Processors*

Producers and processors who are non-certified will have to become certified once the new regulation is in place, or stop using the term "organic" altogether in their marketing. In addition, there will be a transition period for non-certified parties who wish to market organic food and beverage products. This transition period will end in 2018, at which point the regulatory changes will be enforceable. The Ministry recommends that during this period, parties hoping to transition should: (i) review the BCCOP Operation Policies and Management Standards and the federal Organic Production Systems General Principles and Management Standards; (ii) make any applicable changes to align their practices with the relevant certification standards; and (iii) make a submission for either provincial or federal certification.

## Canada – US Organic Equivalency

It bears mentioning that the above will not have an effect on cross-border trade. This is because on June 17, 2009 Canada and the US entered into the US-Canada Organic Equivalence Arrangement, an arrangement recognizing their differing organic certification systems as equivalent as long as they achieve the same results and policy objectives. This allows Canada to export federally certified organic products to be marketed in the U.S. as organic without the need for additional certification in the U.S.,

and vice versa. The arrangement is subject to some caveats. For example, agricultural products derived from animals treated with antibiotics cannot be marketed as organic in the United States, but can be marketed as organic in Canada. Under the equivalency arrangement, use of the Organic Logos of either country can be used so long as the organic content of the product is 95% or greater.

For More Information: see the [Ministry of Agriculture Intentions Paper: Certification for Organic Food & Beverage Products](#)

by Sandra M. Knowler, Rebecca Rock and  
Brandon Deans, Temporary Articled Student

For more information on this topic, please contact:

Vancouver	<a href="#">Sandra M. Knowler</a>	604.893.2334	<a href="mailto:sandra.knowler@mcmillan.ca">sandra.knowler@mcmillan.ca</a>
Vancouver	<a href="#">Rebecca Rock</a>	236.826.3058	<a href="mailto:rebecca.rock@mcmillan.ca">rebecca.rock@mcmillan.ca</a>

#### [a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2016