



Report 2019-080

Committee Information Report

To: Chair and Members of the Community Development Advisory Committee

From: Richard Allen, Manager of Economic Development

Date of meeting: July 11, 2019

Re: **Community Development Advisory Committee – Law and Local Food in Frontenac County Report**

Recommendation

This report is for information purposes only.

Background

In March of 2018, staff at the County received an unsolicited proposal from Mr. James Stuckey to undertake a research project exploring regulatory barriers to local food in Frontenac County. Mr. Stuckey was a student at Queen's University Faculty of Law at the time, and this work would contribute towards his degree.

After engaging Mr. Stuckey, a survey was generated and sent to local food stakeholders and he also conducted in person interviews with food producers in the Kingston and Frontenac region.

Comment

This report was independently produced by Mr. Stuckey with some minimal support by County staff. As a result, the issues captured cover a wide range of industries and geographies within the local food production industry. In addition, While Frontenac County and its member municipalities can address some of the challenges identified in the report, other red tape and regulatory barriers exist in provincial and federal legislation, which will require lobbying and education to create positive policy adjustments.

Staff will post this report to the www.infrontenac.ca Economic Development web portal for future reference.

Strategic Priorities

Priority 1.2: Refine and invest in efforts to accelerate economic development — to grow businesses, attract more visits and expand the tax base.

Local Food and Beverage is one of the three main pillars in the County Charter for Economic Development (2015). Understanding and addressing barriers to local food and beverage production supports this pillar of Economic Development by identifying systemic changes that can support business growth in the food sector.

Financial Implications

There are no financial implications included with this report.

Organizations, Departments and Individuals Consulted and/or Affected

Community Development Advisory Committee
Local Farms and Food Producers
Frontenac Community Futures Development Corporation
City of Kingston
KFL&A Public Health

Setting the Table: Law and Local Food in Frontenac County

Challenges and Opportunities for Local Food Success



James Stuckey

Queen's University Faculty of Law

Setting the Table: Law and Local Food in Frontenac County

James Stuckey

Preface

In the County of Frontenac, as elsewhere, the opportunities of local food are growing—if key challenges can be overcome. Legal and regulatory factors are among those upon which the success of local food depends. Although operating, in the most part, to the benefit of local food stakeholders, there is room for improvement in terms of law and regulation at the local-food level. Small-scale food stakeholders often face the burdens of a legal and regulatory environment designed around the needs and issues of larger-scale food industry.

In shedding light on these and other issues, this report helps address a need for timely, localized information with respect to issues in the Frontenac food economy and culture.

Acknowledgements

This report was researched and written by James Stuckey. The author would like to thank the Queen's University Faculty of Law for supporting this work through the Public-Interest Internship Funding program. The author would also like to thank the County of Frontenac for assisting with the implementation of the Frontenac Food Law and Regulation Consultation, and for providing input into project direction.

Thanks especially to the many Frontenac food stakeholders—including local farmers, business owners, community leaders, and others—who took time from their busy schedules to engage in in-depth interviews and share their experiences and perspectives on food system issues and priorities. This research could not have been completed without these contributions.

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Introduction

Canada is a country of vast distances and seasonal limitations—consumers will always look to the benefits of national and international food trade to keep them in ready supply of fresh and affordable produce and food products. However, the basic notion that food should, where reasonably possible, be purchased and consumed close to where it is grown—that a food system so constructed is one that offers benefits in terms of food quality, environmental friendliness, and support for local culture and community—has had a strong influence on how many foods are created and sold. Local food is still a relatively minor share of the market: the value of foods consumed in Ontario, as a proportion of foods produced in the province, is only about 24 per cent (and a province-wide unit of measurement is perhaps not the best indicator of “local”). Nevertheless, it is clear that local food has grown in importance, with many more consumers buying local—both to meet their own food-related values and interests, and to support a variety of broader social objectives.

Given rising interest in the benefits of local food, many are asking questions about how to better support the development of local food systems—evidenced by the wide range of academic publications, newspaper think pieces, policy white papers, industry market reports, and other writing that has emerged on the issue over the past decades.

Governments, too, recognize the benefits that strong local food systems can have, and are eager to show their willingness to help these systems overcome challenges and maximize their potential. In 2013, the government of Ontario passed Bill 36, the Local Food Act, “to help foster successful and resilient local food economies and systems in Ontario, help increase awareness of local food in Ontario, including the diversity of local food, and develop new markets for local food.” The Act established a “local food week” as well as tax credits for farmers donating to community food programs (such as food banks)—and, more generally, provided a statutory framework for ongoing Ministerial action with respect to the aspirational “goals and targets” outlined above.

Policy initiatives of this kind may be a positive step, able to help bolster certain aspects of local food system performance. To be sure, however, government’s primary involvement with the food system is in the form of the creator and enforcer of food-related laws and regulations—those which apply to the businesses engaged in food production, processing, distribution and sale. Canadians expect nothing less than well-designed and enforced laws and regulations that help mitigate food-related risks—including those relating to food-borne illness, the introduction of potentially harmful food products or processing methods into the marketplace, the environmental impacts of food production, and workplace health and safety within food industries. On the other hand, as consumers, taxpayers, and potential food-business owners themselves, Canadians also desire approaches to food law and regulation that, all things being equal, do not limit the opportunities for local food systems to contribute to food economy and culture.

There are many factors involved in the success of local food systems, and legal and regulatory issues are obviously only one of them. Market demand for local food products is clearly a driving force. Other factors relating to the competitive environment, including product offerings

and price-points in the non-local food system, also matter. Then there are business-level issues related to planning, strategy, and managerial decision making. Much has been written about these factors and variables.

Nevertheless, the shape of law and regulation, as it applies to local food, remains an integral piece of the puzzle: food, perhaps more so than other industries, is highly regulated. As considered subsequently in the section “Defining Scope”, the legal and regulatory environment shapes our food-related decision making in many concrete ways: it can constrain food businesses and markets, or it can enable them. It can distribute the burdens of regulatory compliance and the benefits of market access relatively evenly, or in ways that have disproportionate effects depending on a firm’s size and business orientation. On the whole, it can help, or hinder food businesses achieve broad social priorities, including those related to food safety and consumer protection—while supporting the inherent benefits of consumer choice and market freedom to a greater or lesser extent.

For this reason, the manner in which the legal and regulatory environment interacts with the local food system warrants study and understanding. Although some reports have dealt with the issue in general terms,¹ there is also a need for applied research that—true to the local nature of local food—captures local-level needs and issues.

About the Project

This report was undertaken to help address this need, for a local-level understanding of legal and regulatory issues with respect to the Frontenac, Ontario, local food system—based on the understanding that efforts to optimize the regulatory environment should be vigorous, ongoing, and informed by sound, up-to-date, and localized input from food system stakeholders.

Specifically, the report identifies legal and regulatory challenges, and possible areas of positive reform and improvement, based on in-depth primary research with a wide range of local food stakeholders—bolstered where possible with reference to underlying legal and regulatory provisions (and relevant secondary source material—see below).

The project does not purport to offer the final word on food law and regulatory issues in Frontenac, nor to offer a comprehensive survey of the legal and regulatory environment. Rather, it seeks to present the views of a number of key local food stakeholders with respect to law and regulation as it pertains to local food. In doing so, the report should be taken as part of an ongoing discourse, to identify local food priorities and hurdles, and to provide a platform for further research and discussion.

¹ See, for example, The Conference Board of Canada, *Seeds for Success: Enhancing Canada’s Farming Enterprises*, and The Conference Board of Canada, *Cultivating Opportunities: Canada’s Growing Appetite for Local Food*, and other publications cited in this report.

Methodology

Quantitative and qualitative data and input for this report was generated through a multi-faceted research methodology including the following elements:

Online Engagement with Key Stakeholders

The Frontenac Food Law and Regulation Consultation was developed and implemented in the summer of 2018. Links to an online questionnaire were distributed to key food stakeholders—representing producer organizations, processors, community groups, restaurants, and retailers—with the assistance of Frontenac food and business associations, the city of Kingston, and the County of Frontenac economic development office. The consultation instrument reached, and was completed by, approximately 40 such individuals. The instrument made considerable use of open-ended questions, to maximize unique qualitative input, with some additional data provided by way of closed-ended and ranked question types.

In-depth Interviews

Research for this report also included 18 in-depth interviews with a range of Frontenac food producers, processors, and those involved in food-related non-profit organizations and charities. Interviewees were identified through the Frontenac Food Law and Regulation Consultation, as well as through publicly-accessible directories of farmers engaged in the local market (i.e., through farmers' market vendors directories), general internet searches, and the connections developed throughout the course of interviews.

Interviews followed a conversational, open-ended format, in which interviewees were asked to describe, among other things (and without leading questions or cues), their view of the legal and regulatory environment with respect to their food-related operations and activities.

Secondary and Legal Research

Other research elements included:

- a focused literature review of articles and reports in relevant topic areas;
- a review of Statistics Canada data on the Frontenac food economy;
- research into relevant statute law and regulation.

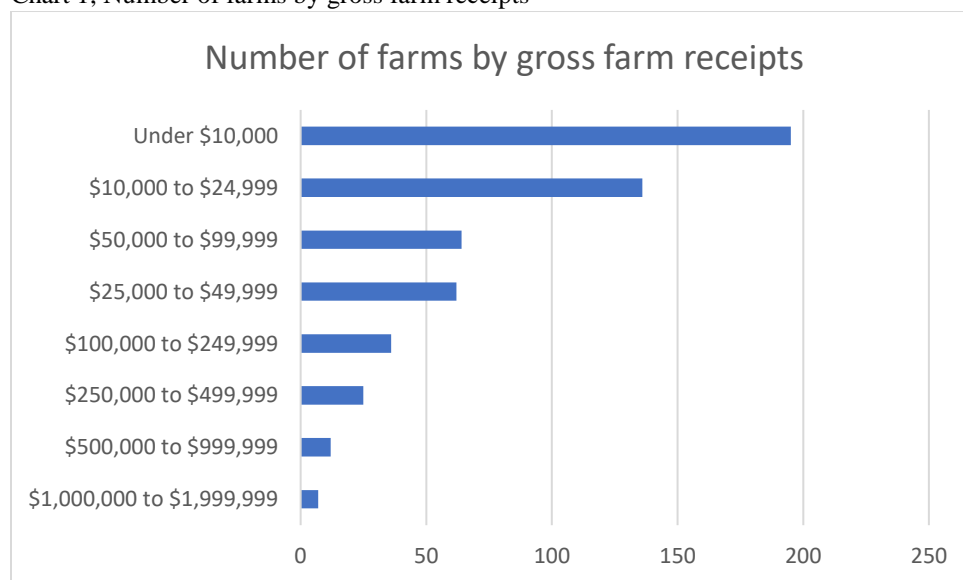
Frontenac Food – The Lay of the Land

This section provides a framework for understanding key concepts in this report, including what defines a small-scale, local producer in the Frontenac context. It also provides an overview of the benefits of local food systems—helping to answer the question of why policymakers are interested in bolstering their success—and outlines the priorities that Frontenac local food stakeholders identify for helping to achieve their objectives.

Defining the Farm

Census data indicates that small-scale farming operations—those with annual revenues are under \$10 thousand—make up the largest share of farms in Frontenac (see Chart 1, Number of farms by gross farm receipts). Typically, household income for farms in this category is supplemented by off-farm income from full- or part-time employment. (Indeed, only farms with revenues over \$250,000 generate, on average, more household income from farming activities than from off-farm activities.²) The part-time nature of many of these smaller operations, constraining time available to spend on farm-business management, is relevant to keep in mind throughout the discussion of legal and regulatory issues in the subsequent chapter. Many small-scale producers in Frontenac, as with larger operations, also have a diverse market orientation—with mixed farms that may include a variety of types of agriculture, horticulture, and livestock operations.³ Census data indicates that greatest share of farms by industry group is within the category “Other crop farming” (see Chart 2, Farms by industry group).

Chart 1, Number of farms by gross farm receipts

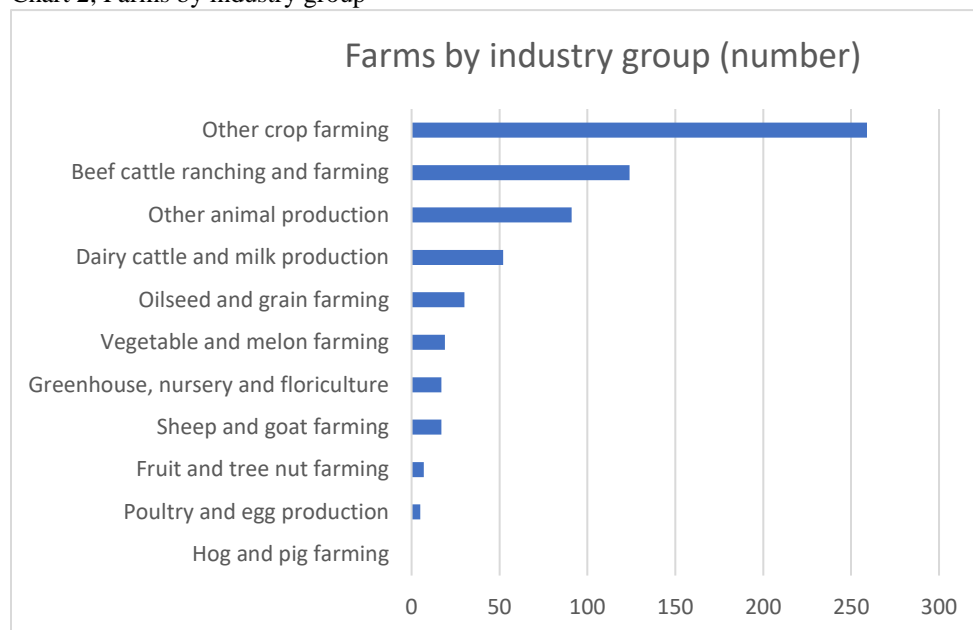


Source: 2016 Census, Frontenac County and Township Agricultural Profile

² The Conference Board of Canada, *Seeds for Success: Enhancing Canada's Farming Enterprises*, 11.

³ The great diversity of many such operations can be gleaned by reading the profiles of many of the vendors to local farmers' markets.

Chart 2, Farms by industry group



Source: 2016 Census, Frontenac County and Township Agricultural Profile

What is the business orientation of farms among the lower revenue classes? The adjectives “hobby” or “lifestyle” are often applied to these operations, in consideration of the fact that non-economic motivations are typically a strong driving force. A passion (or at least strong personal interest) for agricultural work, as one interviewee noted, would seem to be integral, given the amount of labour that may be unpaid—along with the necessity of other personal investments that may yield very little economic returns: indeed, some small-scale operations in Frontenac may generate very little net income and be pursued solely for the love of farming and farm community. Other smaller operations, however, may be defined as “mixed commercial and lifestyle”⁴—a category of operation in which there is profitability and a desire and capacity to expand (for example, by diversifying business lines or seeking new markets), with managerial motivation and skill being a critical factor.

Indeed, given the timeframes that are needed for growth in any industry (farming being no exception), small revenues may only be indication of having recently entered the sector. “Hobby” or “lifestyle” may, therefore, fail to properly characterize the motivations of a new generation of farming operators. This may include new entrants to traditional farming sectors. It may also include operations that seek to position themselves within emerging segments of the “creative food economy”—engaged, for example, in value-added processing of agricultural output in small-batch preparations, targeted towards niche or specialized markets. Certainly, there is indication that small, innovative food businesses of this kind can achieve success in regional, or even national (or international) markets—and that small initial revenues are not always indication of lack of business ambition or entrepreneurial spirit.

⁴ The Conference Board of Canada, *Seeds for Success: Enhancing Canada’s Farming Enterprises*, 11.

The Potential of Local

Small-scale farming operations do not have the direct economic footprint in Frontenac as larger operations, including those engaged in supply-managed commodity groups. According to data from the 2016 Census of Agriculture, in Frontenac, the greatest share of farming receipts is generated by the dairy sector, at 12.8 per cent of receipts, followed by calves and cattle at 4.8 per cent.⁵ In other words, the non-local food system will continue to have an integral role to play in Frontenac, as long as there are buyers for produce and agri-foods in other jurisdictions in Canada and around the world.

However, the economic importance of small-scale farms in Frontenac can be considered in other terms. For one, small-scale agricultural operations have been shown to be significant job creators—more so than their larger counterparts. They often help power other local industries, including farming equipment distributors, transportation and storage⁶, as well as restaurants and food retailers. Producers engaged primarily in the local food system also support the growth of new businesses and community entities such as farmer’s markets and experiential farming activities.⁷ On the whole, research has shown that strong local food systems help keep “food dollars closer to home”, as noted in a report by the Government of Alberta⁸—a key reason for why consumers, wanting to support local economies (as well the perception that local food may be higher in quality or safety), are interested in buying local.⁹

Thriving local food systems may have impacts for economic and social development that are less easy to capture. Using the concepts of industry clusters, some are looking to local food systems to help catalyze new forms of value, through new, synergistic arrangements between elements of the local food economy, culture, and experience. A report authored for the Martin Prosperity Institute, for example, observes that food clusters “involve the forging of synergistic relationships between a primary sector (agriculture) and a tertiary sector (the experience economy) that are linked with and contribute to a vibrant cultural sector (creative economy).”¹⁰ Successful food clusters could amplify the benefits already found to emerge from strong local food systems, including through the creation of new social spaces and channels (such as through farmers’ markets, community-supported agriculture, and direct farmer-to-consumer marketing).¹¹ In the case of Frontenac, it could help generate the benefits of uniquely Frontenac food products, experiences, menus, and jobs.

Although hard to measure, the potential of food cluster development can certainly be seen, for example in the case of nearby Prince Edward County. Here, targeted investments and initiatives helped generate a “rural renaissance”, supporting an influx of tourists, investors, new residents, and others—and the development of a world-class food scene. As one municipal representative

⁵ Statistics Canada, 2016 Census data.

⁶ Kirsén Larsen and Nick Rose, “Local and Creative Food Economies”, Powerpoint presentation (pg. 9 – citing United States Department of Agriculture statistics).

⁷ The Conference Board of Canada, *Cultivating Opportunities: Canada’s Growing Appetite for Local Food*, 11.

⁸ Government of Alberta, *Local Food: A Rural Opportunity*, 8.

⁹ The Conference Board of Canada, *Cultivating Opportunities: Canada’s Growing Appetite for Local Food*, 10.

¹⁰ Martin Prosperity Institute, *Food Clusters: Towards a Creative Rural Economy*, 8.

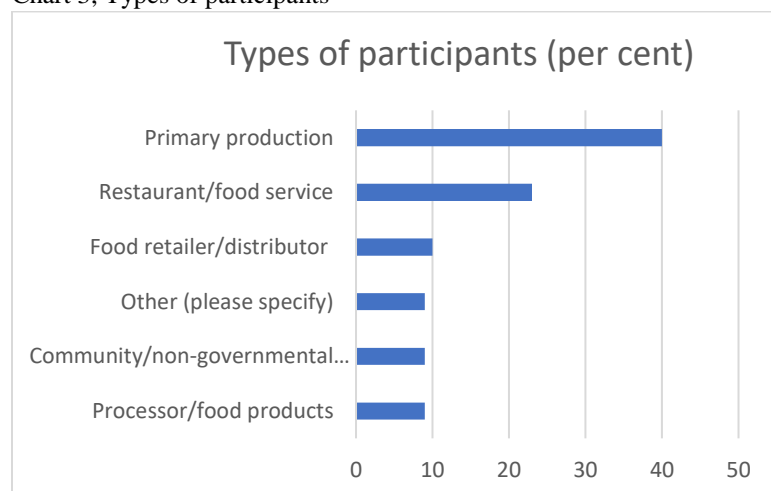
¹¹ Government of Alberta, *Local Food: A Rural Opportunity*, 10.

noted regarding this renaissance, the “ingredients” were already there, including many small-scale and artisanal producers, innovative restaurants and processors, and community organizations serving intermediary functions (many ingredients which Frontenac shares). The efforts of the local economic development office were largely ones of helping to bolster greater levels of connection and visibility (i.e., through food and wine festivals, a “taste trail”, marketing linkages between producers and restaurants, etc.).¹²

Frontenac Food Priorities

Achieving the potential described above begins with helping local food stakeholders succeed and flourish. To shed light on what these stakeholders regard as key priorities, the Frontenac Food Law and Regulation Consultation was undertaken. The majority of participants were primary producers (40 per cent) with the next largest category of participants in the restaurant and food service sectors (see Chart 3, Types of participants).

Chart 3, Types of participants

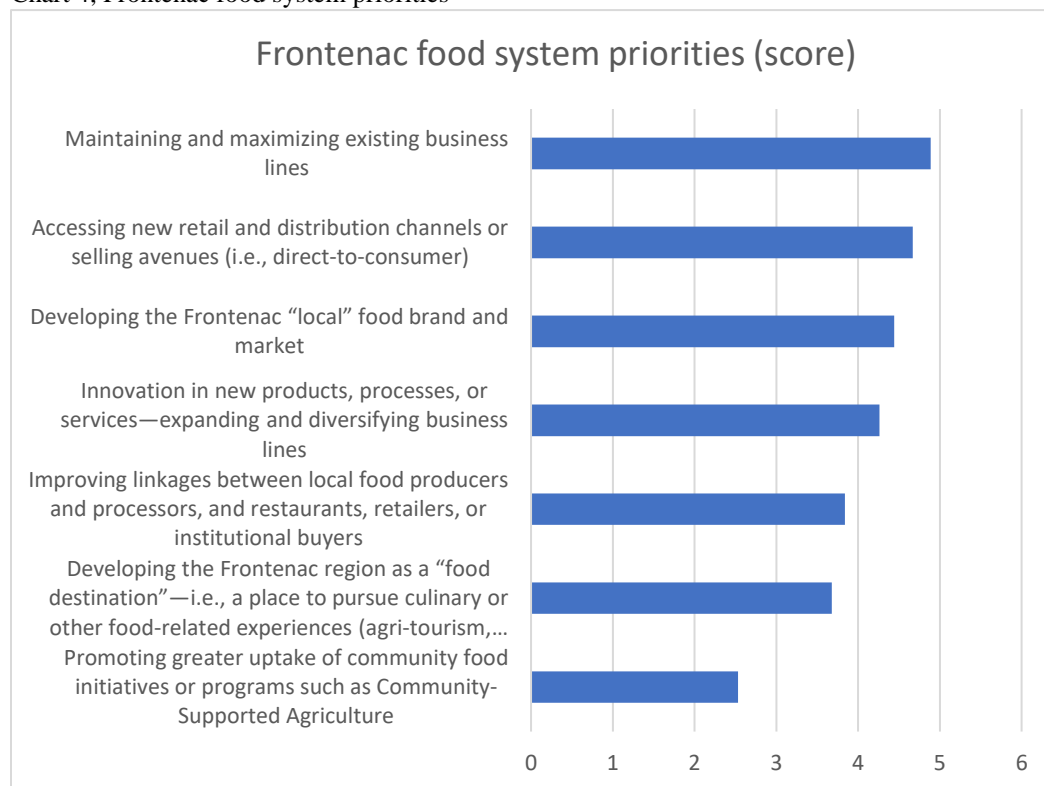


Source: Frontenac Food Law and Regulation Consultation

Chart 4 shows that the top two priorities tend to reflect a focus on immediate business priorities—naturally, the first requirement for any business. Participants view “maintaining and maximizing existing business lines” as the greatest need. Second to this is the need to identify new retail and distribution channels. Close behind this was the need to “develop the Frontenac food brand and market”—a priority that bridges connects immediate business issues with those of the larger Frontenac food community.

¹² Martin Prosperity Institute, *From Kraft to Craft: innovation and creativity in Ontario’s food economy*, 17.

Chart 4, Frontenac food system priorities



Source: Frontenac Food Law and Regulation Consultation

One reading of the findings described above might be “business as usual—but more of it.” On the other hand, “innovation in new products, processes, or services – expanding and diversifying business lines” was ranked a close fourth. It should also be observed that innovation might be a key component of any effort to achieve the other priorities mentioned by participants. As considered in a Conference Board report, innovation—particularly in the sense of undertaking new or improved forms of farm business management (including new approaches to capital management, human resources, marketing, and relationship building)—can be a key ingredient for success among farming operations seeking to tap into the new opportunities of the food economy.¹³

Other priorities identified by participants relate more broadly to food *system* priorities that, as with “developing the Frontenac ‘local’ food brand and market”, transcend, though remain connected to, the immediate issues faced by any single Frontenac food business. Priorities identified include improving linkages within the food system (among producers, processors, restaurants, and other types of distributors), developing Frontenac as a food destination (i.e., as a place to pursue “culinary or other food-related experience” including agri-tourism), and promoting greater uptake of community initiatives and programs such as Community Supported Agriculture.

¹³ The Conference Board of Canada, *Seeds for Success: Enhancing Canada’s Farming Enterprises*, 11.

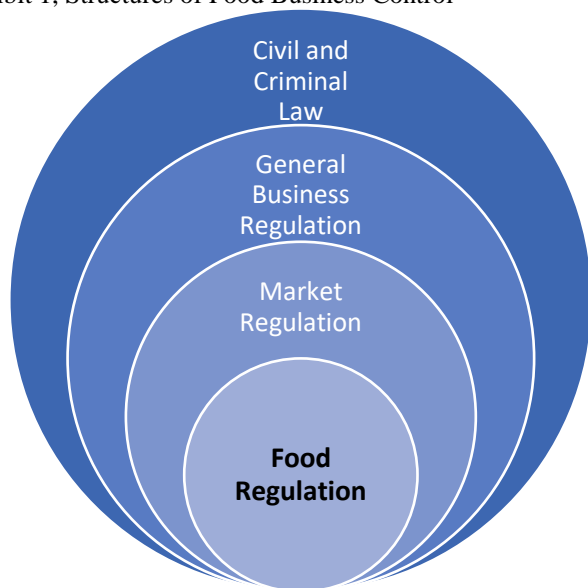
Law and Regulatory Challenges and Issues

What challenges do local food stakeholders face as they seek to achieve the benefits and priorities described in the previous section? To be sure, a variety of factors help shape business performance in the food sector, just as in other industries—including, but not limited to, the quality of business operations and management, as well as the state of the competitive environment and market (including trends in consumer demand and the status of competitors). However, as outlined below, legal and regulatory factors—the focus of this report—play an important role.

Defining Scope

Exhibit 1, Structures of Food Business Control, provides a framework for considering the scope of legal and regulatory control over food. The broadest concentric sphere refers to the Canadian system of law, which not only delineates legislative authority at the provincial and federal levels but also establishes the most general limits on human conduct through prescribed criminal law, and through a common law tradition that makes civil litigation possible. Although “the law” in this sense is not often a point of direct contact for many food businesses (as compared to the immediate demands of regulation) it is worth conceptualizing this as among the public structures of food business control: not only because food businesses are, of course, subject to liability (civil or criminal) in the case of malfeasance, but also in that the more specific realms of regulation may themselves be driven by the development of case law—by litigation—expanding the bounds of liability risk.

Exhibit 1, Structures of Food Business Control



One step below the level of civil and criminal law are the general business regulations that apply to all businesses, involving matters such as tax and workplace health and standards. Below this are the market regulations that have a considerable role shaping the Canadian food system, in terms of the supply management (or “orderly marketing”) of many commodity groups.

Lastly, there is the realm of food-specific law and regulation, that of provincial and federal statute and regulation—and municipal, township, and city bylaw—with prohibitions and prescriptions that relate to the production, processing, distribution, or sale of food. Examples of food law and regulation include an array of federal statutes,¹⁴ enforced in the main by the Canadian Food Inspection Agency (CFIA), and provincial food statutes enforced by the Ontario Ministry of Agriculture and Rural Affairs.¹⁵ These statutes, in turn, are given further articulation by way of associated regulations that “define the application and enforcement of legislation,”¹⁶ and further articulated by guidelines which support the interpretation of law and regulation.

For the most part, the challenges considered in the remainder of this section relate mostly to realm of food-specific law and regulation—with some consideration, also, of market-regulatory law and regulation. This may reflect the fact that it is often these laws and regulations, and the nature of their compliance requirements (i.e., the licensing form awaiting completion, the upcoming KFL&A Public Health unit inspection, the zoning bylaw prohibiting expansion) which may be top of mind for food business owners when asked about regulatory impact.

Law and Regulation – Benefits and Burdens

Most local food stakeholders interviewed for this research recognize that laws and regulations can both constrain and enable food businesses. A strong regulatory system serves many necessary functions: for example, by establishing predictable “rules of the game”, bolstering consumer and investor confidence, and addressing collective action problems relating to environmental management or workplace standards. Moreover, a strong regulatory system is expected by consumers: no one should wish to live in a jurisdiction not knowing whether the food they purchase has been subject to the most basic of consumer protection controls—and businesses are operated by individuals that are also consumers.

Far from endorsing a general skepticism about the value of law and regulation in the public interest, local food stakeholders highlight ways in which the legal and regulatory environment, with respect to certain aspects of the value creation process, can be improved. In general, they point to instances in which food law and regulation may be:

- unfair, distributing advantages unequally among firms of different sizes within the food sector (i.e., with benefits accruing to large-scale food industry, able to lobby governments for regulatory advantage), or among different food sub-sectors, or;
- not rationally connected to the objectives the laws and regulations purport to achieve, in terms of either their prohibitive content (stating what a business *cannot* do) or prescriptive content (what a business *must* do, and how they must do it), or;

¹⁴ See, for example, Canadian Food Inspection Agency, “List of Acts and Regulations”, <http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/list-of-acts-and-regulations/eng/1419029096537/1419029097256>.

¹⁵ Ontario Ministry of Agriculture and Rural Affairs, “All OMAFRA Legislation”, <http://www.omafra.gov.on.ca/english/food/foodsafety/compliance/allleg.htm>.

¹⁶ Government of Canada, “Legislation and Guidelines”, <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines.html>

- too onerous, in terms of the sheer “weight” of regulation among different levels of government—the sense that the costs of regulatory interventions, exceed the benefits.

Key Producer Challenges

Egg Grading

Small-scale producers face a variety of legal and regulatory challenges—but among the most cited relate to egg policy.

Dianne Dowling, former President of the National Farmer’s Union Local 316, observes that egg law and regulation have long been a major “bone of contention” for Frontenac producers—specifically, restrictions on the sale of ungraded eggs. Interviews with producers indicate that this still remains a frustrating obstacle for many small-scale producers in Frontenac food system. The Ontario Food Safety and Quality Act, 2001, and associated Regulation 171/10, controls the sale and distribution of eggs and processed eggs in Ontario. Section 4 (1) of the regulation provides that: “no person shall sell or distribute eggs or offer eggs for sale within Ontario unless the eggs have been graded, packed, marked and labelled at an egg-grading station in accordance with the Federal Egg Regulation.”¹⁷

Given that Frontenac lacks an egg-grading station, the terms of this provision poses difficulties for small-scale farmers. Many of these producers seek the ability to sell eggs at one of the area’s many farmer’s markets as a way of helping to sustain or expand their operations by way of the additional income it would generate, or simply to enable deeper engagement with local food community and culture. Despite an interest in scaling up their operations, however, the cost of transporting their eggs to and from the nearest egg station makes this unfeasible: as one producer notes, “it’s not economical to try to have eggs graded—we would have to charge more per egg that customers would be willing to pay.” Producers are also not optimistic about the idea of developing an egg grading station in Frontenac, with one noting: “smaller farmers with only small quantities and occasional needs can’t support sustaining a grading station nearby here.”

This leaves small-scale producers with few options for the sale of eggs into the local food system, with the exception of the sale of eggs on the producer’s premises (“farm gate” sales)—subject to the provision that eggs may not be put towards any further commercial use. This, too, involves, some challenges: according to one producer engaged in farm gate sales, it requires an awkward process of having to inquire with every potential buyer as to the purpose of the eggs. If a local baker wishes to use the eggs in baked goods for sale at a farmer’s market or elsewhere, the sale of eggs is prohibited.

Similarly, the representative of a local food charity organization states that the current regulations prevent their organization from making use of ungraded eggs in their food donation and distribution programs, even though such eggs would be a welcome addition to the food offerings made available to the group’s intended beneficiaries. “They are perfectly good eggs,”

¹⁷ Government of Ontario, Regulation 171/10, Eggs and Processed Egg, s. 4.
<https://www.ontario.ca/laws/regulation/100171>

said the interviewee, lamenting the inability to help address local food insecurity challenges while also supporting local, small-scale agriculture. She denied that ungraded eggs suffer any real quality detriments.

Indeed, many producers questioned whether the provisions of the Food Safety and Quality Act with respect to egg sales ultimately support the objectives of food safety and quality. Egg grading involves a process of egg examination, washing, candling, weighing, packaging, and storing to assess “safety, wholesomeness and quality” (according to the CFIA).¹⁸ But some note that washing eggs can remove protective coating relating to egg bloom—a natural quality-control feature of an egg, defending against bacteria and defects. They observe that egg safety and quality regulations are only necessary, in the first place, where large-scale, industrial egg production has, itself, create unique conditions for risk.

In this case, regulations—made ostensibly with the interests of consumer protection in mind—are not tailored to the differing risk profiles of agricultural production among very different types of operations (and contributing to a sense that the regulatory system is oriented around large operations’ needs).

These producers point to the increasing popularity of egg sales in the “farm fresh” niche—for reasons that include egg quality and taste as well as animal welfare¹⁹—as evidence that consumers want the ability to purchase ungraded eggs, and that informed consumer choice should prevail. All agree that a system in which the sale of ungraded eggs constitutes a sort of black market, with transactions occurring “under the radar” (or through the use of loopholes, such as selling customers the egg cartons, and giving the eggs away for free²⁰), represents a non-optimal state in the food system: one that results in needless transaction costs for producers and consumers, the suppression of a potentially viable market for locally-branded eggs—and, of course, the risks of legal and regulatory sanction for those producers so engaged in these transactions.

What would an optimal approach to egg sales in the local food system look like? Some interviewees had suggestions. One possibility would be to follow the example of Vancouver Island and instruct KFL&A Public Health officers to make no distinction between ungraded and graded eggs—allowing free-range eggs to be sold in any commercial location, including farmer’s markets and grocery stores. For producers interested in the services of egg grading stations but without the means to acquire them, it was suggested that governments be encouraged to support the up-front costs of developing a Frontenac egg grading station. Doing so could help achieve other nominal food-related policy priorities, including those outlined in the Ontario Local Food Act, which aims to help develop local food systems.

¹⁸ Canadian Food Inspection Agency, “Egg Grading”, <http://www.inspection.gc.ca/food/information-for-consumers/fact-sheets-and-infographics/products-and-risks/dairy-eggs-and-honey/egg-grading/eng/1332271593213/1332271655324>.

¹⁹ The Globe and Mail, “The Egg Police Crack Down on Local Grey Market Eggs”, <https://www.theglobeandmail.com/life/the-egg-police-crack-down-on-local-grey-market-eggs/article1357431/>

²⁰ Island Press Limited, “Small, rural producers still walking on eggshells,” http://www.peicanada.com/eastern_graphic/news/article_b7671f7f-0508-5d62-8cf4-501149d9e480.html

Egg Market Regulation

Most of the producers interviewed were neither engaged, nor interested in pursuing licensing and quota to participate in the supply-managed part of the egg economy. In some cases, however, a lack of interest related not to an unwillingness to expand their operations, but to the high barriers of entry into the system.

The Ontario Farm Products Marketing Act, R.S.O. 1990, Chapter F.9²¹, provides the authority for marketing boards to determine production quotas, and otherwise achieve the “orderly marketing” objectives of supply management. In the eggs and processed eggs sector, Ontario Egg Producers is the marketing board empowered by this legislation. 99 birds are the exemption limit for non-quota holders: beyond this, producers must enter the supply-managed system, if they can meet the substantial financial commitments and requirements necessary even to begin their operations: as quota for egg production has become capitalized (since freely distributed in the mid-twentieth century) its cost has risen considerably. Although per-unit quota prices are hard to come by, in 2013, the average flock was 25,000 and represented a quota value of approximately \$7.5 million—certainly a price far exceeding the means of most small-scale farming operations.²²

Even though the small-scale producers in Frontenac interviewed for this report are not, generally speaking, poised to enter the supply-managed system, the system nevertheless casts a shadow over the local, non-quota sub-sector, which affects business strategy and operations. In particular, there is a sense among producers that the regulatory apparatus is designed with large, quota-holding operations in mind: that small-scale producers cannot get a “fair shake” (in the words of one interviewee). For example, one interviewee—the operator of a small, mixed farm, with a market orientation towards animal welfare and “free-run” egg production—notes that the regulations cannot capture the unique aspects of her operation as a “no kill” farm: one in which laying hens are kept as pets after they can no longer produce eggs. In this case, the interviewee wonders if these hens count towards the threshold limit of 99 birds.

Beyond the issues of regulatory vagueness or imprecision, many producers wonder what the rationale is for the 99-bird limit: they observe that threshold limit in Ontario is substantially less than in other provinces, such as Alberta, where a producer may have 300 birds before needing to purchase quota.²³ Many believe that there is a “sweet spot”, somewhere above 99 birds, but below the level at which purchasing quota would be economical—a number of birds that would allow for a greater level of contribution of eggs to the local food economy, but while still maintaining the small-scale egg production that many consumers desire.

Zoning

“Zoning bylaws are way too rigid!” according to one participant to the Frontenac Food Law and Regulation Consultation operating a small, mixed farm.

²¹ The Act can be viewed here: <https://www.ontario.ca/laws/statute/90f09#BK21>

²² The Toronto Star, “Egg fight: Quotas holding back organic farmers,” October 7, 2013.

²³ Egg Farmers of Alberta, “How to Become an Egg Farmer,” <http://eggs.ab.ca/industry/becoming-an-egg-farmer/>

Zoning regulation determines much of how a farm business is able to make use of their land for the purposes of producing, processing, and selling a food product. Challenges relating to zoning are not new and have long been known to pose special difficulties for food businesses and the development of robust local food systems or regional “foodsheds”.²⁴ For example, a report by Deloitte on local food notes that “municipalities’ planning policies and zoning by-laws can restrict farm size to prevent fragmentation, but this can discourage small-scale farm operations.”²⁵ This is particularly true for those smaller operations attempting to diversify or expand business operations on their premises in ways that challenge conventional distinctions between agriculture, commercial, and residential land uses. This could include many small-scale farm operations (including several such operations interviewed for this research) seeking to realize new value-added opportunities, or to leverage the power of vertical integration (i.e., combining restaurant or retailing operations with agricultural production).

One example of the challenges of zoning regulation such as this was provided by the operator of a small, mixed farm, who noted that restrictions that prohibit livestock from residential property work against entrepreneurialism (his attempt to gradually build a goat herd for milk and meat) and even enhanced environmental outcomes. The farm is technically located within the geographical boundaries of the City of Kingston but in a rural area that could easily support the presence of livestock on residential premises without disturbing local neighbours.²⁶ To help support start-up operations similar to his, the interviewee suggested a provision to allow a farmer to “run” livestock on a part of a residential property. Such a provision could help provide an added measure to help rejuvenate the land, give the landowner a bit of extra revenue, and provide a low-cost way for new farmers to enter the sector.

In considering other zoning exemptions that might be offered to producers, another interviewee mentioned the ability to add accessory buildings close to the road—thereby making farm-gate sales easier. This, it was contended, could be achieved without substantially undermining the purpose of the zoning bylaws—i.e., to safeguard agricultural land from commercial development.

Deloitte identifies several best-practice approaches for how to engage in effective land-use planning that supports local food-system performance. These could include expanding permitted land uses to include “agriculture-related uses and value-added operations that would benefit the farmers and the local food industry.”²⁷ In many cases, the solution to zoning issues will involve a coordinated response among different jurisdictions and levels of government.

²⁴ For an in-depth discussion of these issues, see, for example, Patricia E. Salkin; Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy*, 22 *Fordham Envtl. L. Rev.* 599 (2011).

²⁵ Deloitte, *Best practices in local food: A guide for municipalities*, pg. 21.

²⁶ To see how much of the “City of Kingston” is actually rural- or semi-rural, consider the following map: City of Kingston, “District Map – City of Kingston”, <https://www.cityofkingston.ca/city-hall/city-council/district-map>.

²⁷ Deloitte, *Best practices in local food: A guide for municipalities*, pg. 21.

Other Challenges for Frontenac Producers

The issues considered above were the most significant priorities according to interviews and participants to the Frontenac Food Law and Regulation Consultation. Consultation participants also identified a number of other issues which are presented below in participants' own words:

- A “one-sized fits all” approach to regulation. Small-scale producers and processors and food artisans do not have the economies of scale that make complying with these regulations feasible for sustaining a business.
- Regulations introduced in a non-streamlined manner.
- The Canada Revenue Agency definition of farm income does not account for agri-tourism, negatively affecting small farmers for whom marketing their farm as a “food destination” in the region is an additional revenue stream.
- Agri-tourism is an important aspect of modern day farming as it brings people to the place where their food is grown and increases the connection between farmer and consumer. Zoning regulations are additional challenge with this.
- Need better ways to create turn lanes into and out of farms for transport trucks. Although expensive to put in place, transports will not deliver or pick up from rural properties unless there is such access (this issue led to one processor moving from Frontenac County into Kingston where the space and the turn lane were both already available).
- Each township has differing requirements for operation.
- Municipal rules limiting number of non-residing employees for home-based businesses in rural areas.
- Need for a holistic/integrated approach to policies affecting farms and agriculture. For example, the Ontario Green Energy Act and Fair Jobs Act do not consider agriculture as a unique entity with different needs and thereby limit competitiveness and new investment.
- General need for more resources on matters relating to farm business management: record keeping, hiring employees, human resources issues and standards including workers' compensation, vacations, etc.
- Organic listings within the US are often different from Canada and should be harmonized.²⁸

A final word on the last issue: some small-scale producers interviewed feel that there is some confusion surrounding the use of the organic label. These producers, often engaged in farming methods that also place a high emphasis on environmental friendliness and animal welfare (involving some aspects of compliance with the regulatory requirements for organic

²⁸ The federal Organic Products Regulations, 2009 (to be replaced in January 2019 with the Safe Food for Canadians Act) provides that the CFIA regulates the organic sector through the assistance of third-party certifiers, which may be either non-profit or for-profit organizations. For a list of these certification bodies, see Canadian Food Inspection Agency, “Certification Bodies accredited by the CFIA – in Canada”, <http://www.inspection.gc.ca/food/organic-products/certification-and-verification/certification-bodies/in-canada/eng/1327861534754/1327861629954>

certification) would like consumers to be made aware about differences among these various types of food marketing—i.e., between “local”, “organic”, and other niche areas (“grass-fed”, “free-run”, etc.).

Here is an instance in which a greater level of government involvement, to help clarify the meaning of these terms, might be very well received among small-scale producers in the local food system.

Key Processor Challenges

Among interviewees, a lack of local processing capacity was the most oft-cited challenge and hurdle. Although not a regulatory issue in and of itself, legal and regulatory factors play a role—including as to whether the sector is able to attract new entrants to the industry amidst looming retirements.

Licensed processing facilities in the region are few and far between: The Two Rivers Food Hub in Smith’s Falls, for example, is over an hour drive from Kingston—a substantial distance, particularly for part-time food business operators, lacking the time to undergo frequent transportation to meet their processing needs. According to one interviewee, recent talk about having a small food-processing facility in Kingston—able to “feed into”, but not compete with, Smith’s Falls—would be a much-needed boon to local food entrepreneurs, and small-scale (including craft and artisanal) food businesses seeking to expand their operations, and contributions to the Frontenac food system.

In the meat sector, specifically, the situation is also difficult for small Frontenac producers. Rural Ontario has seen a gradual erosion of meat processing capacity over the past several decades, and the County of Frontenac region has been no exception. The importance of meat processors for livestock farmers is clear—if you cannot slaughter and prepare your animals for sale, and on an appropriate and predictable schedule, then you cannot sell to the public. With the closest abattoirs for Frontenac meat producers in the Prince Edward County and Leeds and Grenville United Counties areas, Frontenac producers face a variety of challenges that can be difficult to overcome. Some of the challenges cited by producers include:

- Given that many of the small producers of the Frontenac food system have other jobs and pursue their agricultural operations amidst other work and social schedules, time spent for transportation can be a considerable challenge.
- The additional costs that are involved in long transportations, similarly, filter down to consumers, diminishing their competitiveness.
- Related to the above, long transportation distances are also a problem for the animals—creating stress for the animals and reducing the quality of the meat.
- A lack of capacity can hurt businesses that are seasonably-dependent, given challenges in timing. Some businesses, for example, are geared towards selling meat at farmer’s markets. But long wait periods, and associated scheduling difficulties, can mean that important selling windows might be missed.

- Scheduling challenges may be particularly acute where certain processors can only process certain kinds of animals at certain times of the month or are limited in the manner of preparations they can undertake: for example, one processing facility, relied upon by many Frontenac livestock producers, no longer does freezer packs (i.e., steaks), only ground beef.
- For certain types of animals, other limits may exist; the closest processing facility for turkeys is Belleville. One farmer with a mixed livestock operation notes that, this being the case, the more diverse the livestock operation, the costlier and more difficult it becomes to meet processing needs.

The demographics of the abattoir industry put the future of the sector in doubt: as one abattoir owner notes, most in the industry are approaching retirement with no succession plans in sight. If meat processing capacity for the local (or even regional) food system is to be maintained in the years to come a new generation of entrepreneurial operators will need to take the reins. It is relevant, then, to consider the sorts of legal and regulatory challenges that will pose barriers for new entrants to the industry.

Meat processing is subject to considerable regulation (see Textbox 1, Snapshot of a Start-up Abattoir). Among producers interviewed—as well as the owner and operator of an abattoir serving Frontenac producers—there is a view that regulations are written with large-scale, industrial facilities in mind. One interviewee noted that many of the regulations do not seem designed with an understanding of small-scale processing operations, with inflexible provisions requiring, for example, two bathrooms (male and female)—even if there is a very small, single-sex staff. “The feeling is there is an intention to drive out the little guys,” noted this interviewee, who added that smaller operators lack the power to lobby for regulatory change in the same way that large operations do—which typically serve export markets, have large economic footprints, and thus wield more power.

Textbox 1, Snapshot of a Start-up Abattoir

Operating an abattoir is not easy business. The owner of one such operation in the region—one of only a handful, thus serving an important role meeting regional meat processing demand—described the many ways in which the legal and regulatory environment have impacted her operations:

- Regulations can have huge, sometimes unintended compliance costs—the owner of a different abattoir (which has since ceased operations) had to get rid of a wood stove for heating (although it was not near the slaughter area) and replace it with baseboard heating, and was subsequently “killed” by the rising electricity costs in Ontario (the woman estimated her own electricity costs were approximately \$2000-2500 a month).
- The operator had to spend \$10,000 on upgrades for lighting to ensure particular lux values for particular areas of her facility—even though one area, already well-lit from window light, had no need for additional lighting. There was a government subsidy available to help with these upgrades in the value of \$400—an amount which the operator considers almost “not worth the time”, given the time required to write the application.

- The operator notes that a cutting table that had just been installed was found to have a “tiny bit” of rust on the underside—it was determined that the entire table had to be replaced, including the new cutting boards installed on top that had just been sterilized.
- The process of establishing the facility was very time consuming and expensive, requiring a minimum of six months to put the application together for OMAFRA, to license the facility. This involved working 80 hours a week, sometimes, on large amounts of paper work—for instance, the operator was required to provide twenty-four different maps of the facility, including air flows, and detailing how staff would walk during cutting days and non-cutting days.
- The application to license the facility could not be completed until funding for the operation was secured, which itself involved many hurdles (the challenge here being that banks were only willing to provide a loan against the value of the building, not worth much at that time, and not the many operational costs involved in establishing and developing the business). Overcoming this challenge involved the investment of substantial personal resources.
- The operator noted that the inspector comes in once a week on slaughter day and “demands fixes”—there is much variability in terms of the quality of professionalism, according to the interviewee. One “personality difference” with an inspector required making a formal complaint to OMAFRA to request that a different inspector be posted to the operation going forward.

Interviewees expressed a worry that new CFIA regulations might involve greater harmonization of the federal meat regulatory regime—responsible, primarily, for the regulation of large, industrial-scale meat exporters—with the Ontario provincial regime. This could involve the introduction, at the provincial level, of a requirement that beef carcasses be sprayed with either hot water or acid mixture—a rule designed for large facilities where carcasses may “hang around” for a long time before going into the drip cooler (a rule that would have less rationale for a smaller facility where carcasses may go into cooler very quickly). Since spraying affects the quality of the outer meat, according to this interviewee, it is a process that should be avoided unless necessary.

A common sentiment among interviewees was that regulations should be designed with “scale appropriateness” in mind—that it is unfair to specify *processes* for operations (as opposed to a focus on outcomes—allowable risk tolerances for pathogens, etc.) if key differences between facilities of different types are not considered. Given the demographic challenges faced by the small-scale meat processing industry in the years to come, interviewees questioned whether a new cohort of operators will rise to meet the service needs of local livestock producers—unless steps are taken to ease the burdens of entry, and of maintaining a profitable business, in this challenging sector of the food system.

Many interviewees expressed interest in mobile abattoirs. This could be an innovative approach to enhancing processing capacity in the Frontenac food system—an approach that would better enable small-scale producers, and food entrepreneurs, to build diverse, small-scale livestock

operations. Such an initiative could have many positive outcomes: for example, it could enhance the ability of producers and other food businesses to meet increasing consumer demand for locally-derived meat products—an interest driven, in part, by benefits related to animal welfare, food quality, and the environment, of smaller-scale meat production. This, in turn, could promote greater success for Frontenac food businesses and the food economy and culture, more generally.

However, although there has been some talk of a mobile abattoir, as of yet there are no plans to allow for this in Frontenac.

Key Community Challenges

Previous sections have considered legal and regulatory issues for producers and processors—“inputs” into the food system, or the development of a Frontenac food cluster, to borrow the conceptual model employed by Lee et al.²⁹ No research into the local food system would be complete without also considering some of the needs and issues of other entities, typically non-profit organizations, which play important intermediary roles—including in the form of charitable, food-related outreach and extension, support for food markets and other distribution channels, and the promotion of local food culture and community, generally speaking. Sometimes dubbed “facilitators”, these organizations are playing valuable roles in Frontenac’s food system.

As the following section reveals, the challenges faced by community organizations related to legal and regulatory hurdles can be even more onerous than those faced by food businesses: as non-profit organizations, they often have even fewer resources available to meet requirements of regulatory compliance.

Among interviewees, a common sentiment expressed was that regulatory control pertaining to charities and non-profit organizations should be exercised differently than in the private sphere, where incentives may exist to compromise the public interest for the sake of profits. As one interviewee noted, “Charity is at the essence of what [we’re] pursuing”—the “precautionary principle” of regulatory control (leaving no potential adverse risks to chance) should be replaced by an informed and case-sensitive approach that respects the considerable incentives among food community organizations to attend to the well-being of the public that they (similar to the regulators themselves) are tasked with serving.

Community Kitchens

Community representatives interviewed for this research cited the greatest hurdles related to Ontario Regulation 562/90, Food Premises, which provides for regulatory oversight of any food service provided to the public. S.1 (1) defines a “food service premise” as “any food premise where meals or meal portions are prepared for immediate consumption or sold or served in a form that will permit immediate consumption on the premises or elsewhere”.³⁰

²⁹ Martin Prosperity Institute, *Food Clusters: Towards a Creative Rural Economy*, 4.

³⁰ Ontario R.R.O. 1990, Reg. 562: FOOD PREMISES, <https://www.ontario.ca/laws/regulation/900562>

Interviewees put forward a number of criticisms related to provisions contained in this regulation, which they state have negatively impacted the ability of community organizations to support church suppers, school pot-lucks, and bake sales, among other community food-related functions and events. According to one interviewee, the Director of a food-related non-profit and charitable organization, this has had the effect of limiting fundraising activities for long-term care facilities, schools, and community projects—and, ultimately, curbing otherwise desirable efforts towards the building of community engagement. The interviewee expressed doubt that rates of food-borne illness stemming from church suppers or bake sales exceed those of licensed catering firms and restaurants (although, to be sure, tragic cases of food-borne illness outbreak have occurred from church dinners³¹) and also described a sometimes-inconsistent approach to regulatory interpretation and enforcement by KFL&A Public Health unit inspectors (with some health inspectors more “gung ho” than others).

One interviewee representing a non-profit group went so far as to state that food safety regulations are killing the “community function” of the local church. The group was unable to use church kitchen facilities for an event they were hosting on the premises—the interviewee noted that not only was it necessary to bring in catered food, but even the cutlery had to be brought in (Ontario Regulation 562/90 includes detailed provisions for the acceptable standards and use of utensils,³² which the group was apparently unable to meet). The interviewee acknowledged that with an inspection, done several months in advance, they could have had the kitchen approved for public use—but that this is an impractical requirement for community organizations or individuals that only want to use a kitchen for a short amount of time (i.e., “a couple hours”). In the case of their events, said the interviewee, the regulation has meant figuring out how to budget catering at approximately \$200 an event—even though they have employees able to perform the cooking themselves. The added cost has meant a reduction in the number of events that they are able to put on every year.

The same regulation curtails the potential of cooking groups and collectives, according to this interviewee. She noted that approximately forty small-scale Frontenac bakers wanted to participate in a shared kitchen project, but that even with this number of people it was not cost-effective to upgrade church kitchen facilities to a standard that would make it fit for commercial use, according to the regulations. The interviewee noted that the effect of this—and of the ongoing “creep” of food-safety regulation into greater reaches of community life in general—has been an erosion of local food culture and the community attachments it fosters: as, for example, when community events must make use of store-bought food rather than the contributions of willing community members. Another interviewee asked: “Why are we wasting money on inspectors investigating church bake groups and community markets—it’s not a rational use of social resources.”

It was suggested that the Ontario Food Donation Act, which absolves charities from potential liability when donating food under certain conditions, might be a model that could be applied more broadly to charitable and non-profit activities related to food service in general—i.e., by providing some degree of regulatory “relaxation”, and mitigating against the risk of private

³¹ CTV News, “1 dead, dozens ill after church potluck dinner in N.B. town”, December 11, 2014. <https://www.ctvnews.ca/canada/1-dead-dozens-ill-after-church-potluck-dinner-in-n-b-town-1.2144093>

³² See sections 71-82 of Ontario R.R.O. 1990, Reg. 562: FOOD PREMISES.

lawsuit, where it can be established that an organization pursues food-related activities in genuine pursuit of the public good.

Community Gardens

Community gardens are another component of local food culture and are regulated by the City of Kingston.³³ The most onerous challenges cited by interviewees relate to those of initial start-up and development. In Kingston, a new community garden project requires the permission of every potential neighbour. Site-specific soil testing is required (even though, as noted previously, much of the City of Kingston geography is actually rural, or semi-rural, with no history of industrial zoning and corresponding risks of soil contamination), and other regulations determine where, and how, a community garden can operate. This includes the requirement that gardens be planted in raised beds (potentially impeding one of the objectives of community gardens, according to one interviewee: to promote real farming experiences in urban settings). Where applications for community gardens are turned down greater transparency is desired, with respect to City decision-making processes.

Regulations such as the ones described above, together with a very high level of insurance requirements (\$5 million, in the case of one community garden) represent a particular challenge to community organizations lacking substantial resources—and foster a sense among some that the real driver behind such regulations is protection of the city against liability, rather than genuine public safety concerns.

Farmers' Markets

Farmers' markets have traditionally been regarded as extensions of the farm gate. As such, they are regulated differently than other food premises—exempt from the general provisions of Ontario Regulation 562/90, Food Premises. Farmers' markets are, however, subject to local regulation that governs their provision of the sale of food—in addition to other aspects of their operation that intersect with other municipal bylaws. For example, the owner of one farmers' market noted a challenge around signage, stating that there are issues getting signs for the farmers' market approved for placement around nearby roads. These signs, says the interviewee, are integral to the market's ability to advertise—especially during those times of the year, at the peak of their business, when cottagers are making frequent use of the nearby roads, and thus in a position to learn about the market and its offerings.

Farmers' market proprietors and other interviewees described a considerable challenge with respect to the prohibitions on the sale of beer at farmers' markets (regulation provided at the provincial level)—a prohibition that seems inconsistent with allowances for wine and cider sales.

This is a sticking point among several brewers in the region, who observe that when wineries were first permitted to sell at farmers' markets, they faced little competition from small-scale breweries which were relatively few at the time. Now that small-scale breweries are enjoying increasingly popularity, these interviewees state, they face an uneven playing field when it

³³ See City of Kingston, "Community Gardens – City of Kingston", <https://www.cityofkingston.ca/residents/recreation/facilities/community/community-gardens>

comes to accessing retail channels (including farmers' markets), where established players have secured their interests in the shape of law and regulation.

Growing consumer interest in local food purchased from farmers' markets has led to some high-profile scams in which produce purchased wholesale—sometimes from major food terminals, with labels changed—is sold at a farmers' market, passed off as local. In an attempt to remedy this, regulations exist that require that the operator of a stall at a farmers' market sell their own produce. Although a natural precaution, it may have the unintended consequence, says one small-scale Frontenac producer, of preventing some desired flexibility among farmers, to be able to help market each others' produce (for example, if one farmer is unable to attend a market one week). In this case, steps might be considered on how regulatory inspectors could be appraised regarding arrangements such as this—for example, by attaining confirmation from the absent farmers that the produce being sold on their behalf is in fact their own.

Temporary Markets and Events

One interviewee engaged in community food programs, including temporary markets for produce (as well as other local products and crafts), described the considerable red-tape burdens involved in attempting to pursue their charitable efforts.

A food market operated on a temporary basis—for example, as part of a community event of limited duration—is still a food premise, for the purposes of regulatory control and oversight. This means that a community group hosting such a market or event must comply with a range of regulatory prescriptions, including City of Kingston codes for business premises. A set of inspections are required by the city as part of the license application, requiring sign-offs from the Planning Department, Building Enforcement, KFL&A Public Health Unit, and Kingston Fire and Rescue. Related license fees—which go up every year and now amount to approximately \$200—can be difficult to manage for organizations, such as that of the interviewee, which operate on a “shoe string” budget. The steady increase in licensing fees has caused this interviewee to question whether the organization will continue to be able to support this event in the years to come.

Alcohol-related Events

A host of complications exist for breweries that are looking to diversify revenue and build brand recognition through the promotion and hosting of on-site events. For example, one brewery in the area, wanting to make use of a barn as an events space, describes the challenge of acquiring a license to operate a bar inside—with the Alcohol and Gaming Commission of Ontario agreeing to provide the license, but the local municipality citing agricultural zoning rules for objecting to the proposal. The owners of the brewery had to seek to have the barn zoned for “special agricultural zoning” from the Ontario Ministry of Food, Agriculture, and Rural Affairs (OMAFRA), following unsuccessful engagements with the municipality, which, according to the business interviewee, was unaware of the special zoning exemption.

In this case, as in others where small businesses must expend substantial time identifying and complying with regulatory requirements for new initiatives, the result can be the imposition of

many additional costs and burdens: in this case, the brewery had to put on hold the retrofitting of the barn. Pending the results of the application process, the initial costs, including an analysis of the barn by an engineer for structural soundness, may be at risk of being lost—in addition to the opportunity costs of missed potential business, as they wait.

Connections between Producers and Restaurants

Previously, the importance of fostering strong linkages between different elements of the Frontenac food system was noted, as a means of enhancing positive synergies and the potential development of a robust Frontenac food cluster.³⁴ One linkage of particular importance is between local producers and restaurants. Connections of this kind can have unique value in helping to establish local food identity and pride—putting the names and brands of local producers on the “map” and giving restaurants the benefits of premium branding opportunities, in addition to the benefits of fresh, local ingredients.

Interviewees noted several difficulties in improving these connections—and while not all of the challenges relate to the legal and regulatory environment in a direct way, they nonetheless introduce issues to be considered by local policymakers. They include:

- Using produce in a restaurant for public consumption requires complying with the Ontario Farm Products Sales Act, providing that inspectors have the ability to check records regarding purchases. Meeting this requirement will often require that producers have in place a certain set of business processes sometimes lacking among small-scale farms.
- One producer—also a restaurateur—noted an apparent challenge with the KFL&A Public Health unit in their interpretation of the rules regarding this: according to the interviewee, they were told that they are unable to use their own produce in their own restaurant. The interviewee expressed an interest in greater clarity or guidance surrounding these regulations.
- Related to the above, one interviewee noted an apparent discrepancy in that a restaurateur can purchase produce at a farmer’s market with cash and no receipt and then sell at a restaurant, but not buy directly from producers and use it in his restaurant if there is no receipt.
- “Greenwashing”: one pork producer notes a possible issue of “greenwashing” in which local butchers sell pork under her brand which did not, in fact, emerge from her farm, in order to benefit from local branding.
- Another interviewee wondered if restaurants and butchers might be taking advantage of local brands to benefit from marketing even though it’s not their meat—a state of affairs which, if believed by producers, could begin to erode trust and good-faith dealing.
- Affordability and access: local produce is regarded by some local restaurateurs as too expensive, thus demanding a price premium that they cannot recoup in their menu pricing, despite local branding.

³⁴ Martin Prosperity Institute, *Food Clusters: Towards a Creative Rural Economy*, 7.

- Relatedly, not all restaurateurs have the capacity to have their menus adapt to the product offerings of local producers, given the seasonality of much local agriculture.

In some cases, overcoming the issues considered above may involve a positive, enabling regulatory role—helping to improve communication and information flows, clarify regulatory uncertainty, or address other potential market failures that limit the potential for effective linkages.

Street Food Culture

Over the course of research for this project, the voices of street food vendors were also heard. Proprietors of these operations occupy a difficult operating environment at the intersection of many different levels and types of regulatory control.

Across North America, controversies over vendors’ use of public space, and perceived disparities in market access available to street food vendors as compared to traditional “bricks and mortar” food businesses, has led to social and community disputes (i.e., the Los Angeles “taco truck wars”³⁵) and even litigation.³⁶ As the case of the “taco truck war” suggests, controversies around street food vending often come down to different social attitudes and philosophies with respect to public food consumption and the shape of community life—however, it would seem that there is growing consumer interest in mobile food trucks, perhaps as part of a lively street food culture, able to cater to a variety of preferences in terms of cuisine as well as convenience and access (i.e., with street food vendors often open late into the night, and in non-traditional food locations).

Kingston is home to several mobile food carts and hot dog carts. However, as one long-time representative of the cart business noted, the business typically faces “insurmountable” hurdles: in particular, hot dog carts are “at the lowest level of the social scale—they’re regulated to the point of no future possibility”, noted the interviewee. Indeed, carts in Ontario encounter regulatory burdens and outright constraints from all levels of government (municipal, provincial, and federal). These include:

- General food-safety regulations as provided by R.R.O. 1990, Reg. 562: Food Premises that determine what carts are allowed to sell and how they are to sell it.
- City regulations specify a limited number of locations where a cart is allowed to be stationed—for the most part, within public parks—with license applications that must be approved. Currently, monthly fees to operate in a City of Kingston park are \$353.81 a month.³⁷

³⁵ Time, “The Great Taco Truck War”, Friday 25, 2008.

<http://content.time.com/time/nation/article/0,8599,1735104,00.html>

³⁶ See, for example, “Baltimore’s food trucks notch another win in fight over ‘300-foot rule’”, *Baltimore Sun*, March 20, 2018. <http://www.baltimoresun.com/entertainment/dining/bs-md-ci-food-truck-win-20180319-story.html>

³⁷ See document, City of Kingston, “City of Kingston – Food Cart Application Form”.

- In return for these, and other fees that cart operators must pay, they typically do not receive the same services as bricks and mortar operations, such as water, electricity, sewer, or garbage removal.
- Carts must undertake multiple safety inspections, complying with standards set by the Technical Standards & Safety Authority.³⁸ These inspections occur both at the manufacturer level and must then be undertaken by operators on an annual basis.
- Carts may also be subject to inspections by the KFL&A Public Health unit (which may not occur as frequently as those by the Technical Standards & Safety Authority). As one interviewee noted, “Why the need for this? A hot dog cart is just a big BBQ on wheels.”

The City of Kingston has introduced a policy on street food vending that emphasizes healthy food options as well as “sustainable business practices and environmental contributions”.³⁹ Approval criteria for a new operation involves specifying how the operator will meet a wide range of requirements in terms of the types of food offerings as well as preparation methods (i.e., no deep frying), based on principles derived from Canada’s Food Guide and adapted from the Eat Smart! Workplace Program Nutrition Standard for Cafés. Among other requirements, menu choices must include offerings from all major food groups (“Do you offer vegetables and fruit choices that are prepared and served in a healthier way”) and applications must detail the types of fats and oils used in the cooking process.⁴⁰ Operators have no ability to select where they will situate their business but can select three choices—among eight city parks—in ranked preference.

To be sure, some will laud the Kingston food cart policy as a progressive policy solution that gives consumers new food and refreshment options for when they are engaging in recreational activities at one of the city’s parks. For others, however, the policy will be seen as a form of excessive regulatory control that limits freedom of choice, along with the potential of would-be cart entrepreneurs to innovate and respond to consumer interest and demand elsewhere in the city (it would seem that no taco truck would meet the rigorous health-related criteria set out by the City of Kingston.) Moreover, although the prescribed location availabilities, in city parks, may have been chosen with a view to meeting market demand, in the view of some interviewees, such restrictions are a needless detriment to free enterprise and the support of community life: where, for example, a hot dog cart cannot be setup temporarily at the site of a local baseball tournament, even if they are still operating within the relevant food-safety parameters (such as Ontario Regulation 562).

The interviewee also noted that excessive restrictions in this sector can work at cross-purposes to other nominal social and policy priorities, around job creation and employment, by making it difficult for new entrants to enter the industry: “a lot of people looking to get into a cart business are one step from welfare. Trucks create jobs. Why make it harder for them? In many cases a person can turn a cart into a good business.”

³⁸ This is an agency of the Ministry of Government and Consumer Services Safety and Standards Association, empowered by Director’s Order FS-056-06, *Technical Standards and Safety Act, 2000 S.O. 2000, c. 16, s. 3.6*.

³⁹ See document, City of Kingston, “City of Kingston – Food Cart Application Form”.

⁴⁰ See document, City of Kingston, “City of Kingston – Food Cart Application Form”.

In the case of street food vendors, then, and street food economy and culture generally speaking, policymakers might be well-advised to consider the full range of social issues involved in determining what and where consumers are allowed to purchase, from food carts that are otherwise licensed and regulated: and to remember that innovation, and the development of authentic food culture and experience, seldom arise from bureaucratic dictate.

General Challenges

Interviewees, as well as participants to the Frontenac Food System Law and Regulation Consultation, identified a number of issues of general importance with respect to the Frontenac food system.

Producer, Marketing, and Industry Associations

The production and sale of agricultural products in Ontario often requires license or membership with a governing body such as a marketing association, as provided by provincial and federal statute. The Ontario Farm Products Marketing Act (FPMA), like its counterparts in other provinces, provides legislative authority for the creation of marketing boards in a wide range of farm products sectors. These marketing boards, in turn, have broad-based powers: including those relating to “the control and regulation in any or all aspects of the producing and marketing within Ontario of farm products including the prohibition of such producing or marketing in whole or in part.”⁴¹

These legal and policy frameworks might be considered as a kind of market regulation, exerting considerable influence over the shape of agricultural supply and the competitive environment: their impacts, like those of regulations generally, often fall hardest on small operations—those with fewer resources (including dedicated managerial roles and functions)⁴² to devote to the tasks of regulatory compliance

For some farmers, licensing with the Ontario Federation of Agriculture (OFA) (not itself a marketing organization) will be an initial regulatory and “red-tape” hurdle. To be sure, many, if not most producers pursue and achieve licensing without undo difficulty—regarding it as a necessary, if sometimes onerous step, towards the development of their business. But the effects of this process may have a differential impact depending on the business—“producer's licensing, and associated permits take an inordinate amount of time”, noted one small-scale operator, responding to the Frontenac Food System Law and Regulation Consultation. Another interviewee noted: “with OFA, you need a certain income to get a membership. A membership is needed to get a business premise number, and this is needed to get tags [for hogs] which is needed to sell pork. So, there are a lot of little hoops and red-tape.”

The interviewee added that there is little assistance available to help small operators with navigating these administrative hurdles, despite the approximately \$225 a year that goes into

⁴¹ Ontario Ministry of Agriculture, Food, and Rural Affairs, “Overview of the Farm Products Marketing Act,” <http://www.omafra.gov.on.ca/english/farmproducts/factsheets/2overview.htm>

⁴² See, for example, The Conference Board of Canada, *Seeds for Success: Enhancing Canada's Farming Enterprises*.

membership fees.⁴³ Others had a similar point to make, regarding the value of membership: with one participant stating, “[there are] too many organizations that take license fees with zero benefits to our business”.

As noted by another interviewee, the operator of a small, mixed farm, a sheep processing fee of about \$1.85 is assessed at the time of slaughter (functioning “like another tax”). Although the cost is nominal, the interviewee observed, there are related costs that filter through the industry, contributing to inflation and inefficiency—and a general sense that the system as a whole contains too much regulation and administration. As the interviewee put it: “you have to figure that the abattoir manager must charge something [to the producer] for processing this transaction—a service fee for remitting these funds and keeping records and whatnot. So, a lot of money is going towards the administration of this bureaucracy and it isn’t clear what value we’re getting from it.”

For many food businesses, a more challenging situation exists where production and processing occur as part of the same operation, requiring multiple (and often uncoordinated) levels of licensing and compliance. Businesses in the alcoholic beverages sector—for example, producers of grapes, apples, or barley and hops, and processors of wine, cider, and beer—seem to encounter special difficulties. For example, a cider producer described how the Ontario Tender Fruit Growers association have a mandatory processing fee to be paid, even if the farmer and producer are one and the same person. (OMAFRA anticipates that such situations can arise, stating in its policy language around the regulation that “any person who is both a producer and a processor of a regulated product has all the rights and privileges of both a producer and a processor, and also all the duties and obligations of both. This applies even if the processor is only processing his or her own product.”)⁴⁴

Some food business owners in this sector feel that there should be some streamlining and rationalization of regulations (for example, at the provincial and federal levels) in cases where regulations or licensing requirements involve similar or equivalent efforts in terms of compliance. One interviewee observes, for example, that provincial and federal excise licenses for alcohol production are completely separate. Given the large number of licenses that must be acquired in order to conduct business in this sector—for example, those tied to specific facilities (i.e., for the distillery and “tied house”—the part of the establishment where alcoholic products can be showcased and sold)—the interviewee wonders if these processes cannot be combined.

Providing some indication of the wide range of licensing requirements necessary to engage in alcohol production and sale in Ontario, an innovative, start-up wine producer provided the following list of needed items:

- A Farm Business registration, requiring business name registration (even though he is not yet an incorporated business)

⁴³ Ontario Federation of Agriculture, “Individual Farm Membership Sign-up”, <https://ofa.on.ca/join-ofa/individual-farm-membership-sign-up/>

⁴⁴ Ontario Ministry of Agriculture, Food, and Rural Affairs, “Overview of the Farm Products Marketing Act,” <http://www.omafra.gov.on.ca/english/farmproducts/factsheets/2overview.htm>

- A license from the Alcohol and Gaming Commission of Ontario for producing alcohol
- A federal excise license for producing alcohol
- An LCBO Product testing license
- A license from the Grape Growers of Ontario as a grape producer
- A license from the Grape Growers of Ontario as a processor of grapes

This is in addition to separate processes and applications that must be undertaken to acquire permission to make use of certain “terms, descriptions and designations” relating to Ontario wine, as provided by the Ontario Vintners Quality Alliance Act, 1999.⁴⁵

Lack of Guidance/Clarity

A common theme heard among interviewees and survey participants was that the volume and complexity of regulation at municipal, provincial, and federal levels is a challenge to understand and keep up with. This is particularly true for very small farming operations, or for those farming operations, highly engaged in community or advocacy work related to local food (or simply occupied with other employment obligations), which reduce the time available to learn about food law and regulation. As one interviewee notes, “it would help to make regulation more navigable and simplify information—even slight barriers can become insuperable.” Some interviewees expressed a desire for comprehensive regulatory guidance through a single source that would provide all the information and advice necessary to comply with regulations at different levels of jurisdiction and relating to different aspects of food business.

Adding to the sense of need on this issue is the apparent lack of “continuity” among different levels of government—i.e., instances where governments may be working at cross-purposes with respect to certain elements of local food system performance. For example, one interviewee noted that municipal bylaws around signage for farmers’ markets is too difficult to navigate and impedes the objectives of the Ontario Local Food Act to better develop local food systems in the province. Another interviewee noted that some form of guidance or training (i.e. through government-supported workshops) would be desirable to aid with regulatory compliance, with respect to upcoming changes to Canadian food labelling laws.

Some producers mentioned a fear of reaching out to regulators, to obtain clarity on regulations from the source—particularly with respect to the KFL&A Public Health unit. “it’s best not to poke your head up,” said one small-scale farmer, expressing the view that to ask questions about regulatory compliance is to put oneself on the regulatory “radar” and thus open to being “targeted”. Given what is sometimes considered to be an adversarial feature of the regulatory system, there is a view among some that a third-party agency, either public sector (i.e. a local economic development office) or non-profit organization, would be in a better position to provide regulatory guidance services: or, as one local food stakeholder put it, “there should be a source of guidance and help for dealing with the regulators that aren’t the regulators themselves.”

⁴⁵ See, for example, Vintners Quality Alliance Act, 1999, S.O. 1999, c. 3, s. 6(1).

Another interviewee described the potential value of consolidating food-related regulation under the auspices of a single “umbrella” organization—thus simplifying legal and regulatory issues at the source.

Regulatory Uncertainty

While this report has mostly focused on the impacts of law and regulation that is “on the books”, along with related enforcement activities, uncertainty about new legal and regulatory developments can also impose costs and challenges for food businesses.

“It’s always a question as to what barriers the governments will put up,” notes one food processor. According to one participant to the Frontenac Food Law and Regulation Consultation, the risk of unanticipated regulation is particularly large for food businesses, including processors, which must build up an inventory prior to launching a new product line, or prior to launching a business altogether—this creating considerable risk of sunk costs in the form of wasted investments. Given that launching a business in the food sector is sometimes a multi-year process, this means that there are considerable costs associated with regulatory uncertainty—“you never know how regulatory issues might constrain or open new horizons,” noted one small-scale producer of artisanal meat products.

Although interviewees for this project were engaged primarily in the local food market, some nevertheless had an eye, also, on international export opportunities. Said one survey participant: “international trade disputes and trade concessions create instability and cause reduced investment in the future.”

Conclusion

Notwithstanding a robust literature on local food in general, there is always a need for timely, localized information on the legal and regulatory issues and hurdles facing particular local food systems. This report has sought to help fill a knowledge gap with respect to the Frontenac local food system—namely, the small-scale producers, processors, and community organizations whose markets consist largely of Frontenac-area buyers and consumers. In so doing, it has also helped provide a venue for many of these participants in the Frontenac food system to feel as though they have had an opportunity to provide input on issues on which they do not always feel consulted.

The findings of this research shed light on where improvements in the system may be possible. The challenges identified were of a wide-ranging nature—any and all of which could be the subject of more focused research and analysis. However, one emerging theme of the research is that food law and regulation is often shaped around the operating needs and realities of large-scale food industry. The result of this can be unequal regulatory burdens, or instances in which the unique operating needs of small operations are simply neglected by imprecise or ill-suited regulatory provisions, with no corresponding advantages in terms of public outcomes (only unnecessary costs and inefficiency). This speaks to the need for greater attention to the needs and issues of all food stakeholders when engaged in regulatory development and implementation.

To be sure, this is not always an easy process. Canada's food system is comprised of many competing interests, which in turn are shaped by differing values, beliefs, and visions as to what constitutes a successful food system. In terms of industry organization, unlike many other industries in Canada, the food sector—notwithstanding some degree of consolidation⁴⁶—is made up of a rich tapestry of firms of very different sizes and market orientations. Moreover, the relative scarcity of legal and regulatory resources means that organizations and industry associations have strong incentives to lobby governments to secure advantages (including in the form of market access), a kind of rent-seeking behaviour known as regulatory capture, which small-scale operations—often lacking in political or economic clout—are less able to effectively engage in.

Notwithstanding these challenges, optimizing the food system on the whole will involve, as best as possible, tailoring regulation and enforcement according to the costs and benefits of these interventions in different areas of the food system—seeking, always, net social benefit, with a full view of the economic and social outcomes related to food.⁴⁷

If local, small-scale producers and food stakeholders were able to have their needs and issues better reflected in the design and implementation of food-related law and regulation, the result might be a re-weighting of some of the policies and priorities that law and regulation seeks to

⁴⁶ Although not as much consolidation as might generally be believed. See, i.e., Stuckey, “Canadian farmers prove size doesn't matter”, *The Globe and Mail*. July 17, 2013.

⁴⁷ A Conference Board report identifies five guiding principles to help inform this: proportionality, responsiveness, efficiency, effectiveness, and transparency. See, The Conference Board of Canada, *Governing Food: Policies, Laws, and Regulations for Food in Canada*.

achieve. This, it would seem, would coincide in some cases with consumer interest in fewer regulatory restraints and interventions, and more freedom in food-related decision making. Such appears to be the case in Frontenac with respect to the following issues:

- The sale of ungraded eggs;
- The sale of beer at farmers' markets;
- The freedom of community groups to host potlucks and dinners;
- Street vendor food culture.

Although policy decisions often involve trade-offs between the benefits of control and oversight and the benefits of freedom and consumer choice, there is indication that some level of optimizing of the local regulatory environment (in some cases, simple “tweaks” to municipal and city bylaw), according to the needs and issues of local, small-scale food stakeholders, could help bolster the Frontenac food economy and culture—leading, ultimately, to greater overall social value.

Regardless of the approach to food law and regulation advanced by policymakers in the years to come, one thing is clear: the opportunities for local food in Frontenac are on the table.

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