

Farmer's Privilege and UPOV '91

—by Terry Boehm

In the ongoing debate about Plant Breeders' Rights and how it will affect farmers, perhaps the most controversial area is the issue of "Farmer's Privilege". Canada currently has plant breeders' rights legislation which is patterned on an international convention known as UPOV (Union for the Protection of New Varieties of Plants) '78. There is a move by government and pressure by the Canadian Seed Trade Association, seed companies, and the Grain Growers of Canada to change our legislation to the much more restrictive UPOV '91 version of plant breeders' rights. It is being sold to farmers and to the public that this is required for Canada to have access to improved and innovative varieties and that it enshrines "farmer's privilege" which would allow farmers to save and reuse seed.

On the surface, this sounds good and proponents of UPOV '91 would like the debate to stop there. However, as with most things, when one understands the details, "farmer's privilege" is at best a temporary reprieve and in reality a means to a very miserable end.

Farmers cannot imagine being denied the ability to save, reuse, exchange or sell seeds to a neighbor and plant a crop with the harvest being theirs and theirs alone. UPOV '91 wants to change all of that. This change will happen through breeders' rights which will trump farmer's privilege every time or make it so expensive farmers will not bother to save seeds any longer. The first right plant breeders will have is the so-called cascading right. This right gives plant breeders the ability to collect royalties beyond the seed itself to harvested material (crops) and even processed products. This would mean that if the farmer had used a protected variety, royalties could be collected at any time including when he sells his crop. No one is defining how high the royalties would be and what would be done with them. It is not clear if the farmer would be responsible for the royalties for just the seed it took to produce that crop or for the whole crop. These things are conveniently undefined and would be left for the courts to determine. The object is to make farm-saved seed uneconomic when its use can trigger royalties.

The next right is the ability for breeders to control the conditioning (cleaning, treating etc.), stocking (storing), sale, import, and export of seed. This is where it gets particularly thorny. If a farmer cannot get his seed cleaned, he will not plant it. If he cannot store grain for the purpose of seeding, how can he exercise his so-called privilege? Under our present act, the breeder has the exclusive right to sell seeds of their variety but no right to control cleaning and storing. In UPOV '91 the burden of proof shifts to the farmer to prove variety. For example, the farmer would have to prove he did *not* have company "X's" variety in any dispute. Threats of court action will cause farmers to try to avoid this dilemma by purchasing pedigreed seed to prove variety. The fact is that most canola farmers in western Canada purchase seed on an annual basis at very high prices in no small part to avoid litigation.

As control extends, an increasingly concentrated seed industry will use contracts prohibiting farm-saved seed as a stipulation to accessing new varieties. These are transitional measures which will facilitate the final control of seed, agriculture, food and ultimately the choices we will have. It should be noted that the federal government is withdrawing from variety development to leave this completely in private hands with all future varieties if UPOV '91 comes into force, having plant breeders' rights and the possibility of double protection including patents would be allowed. UPOV '91 would extend the term of plant breeders' rights to 20 years or longer. Seed and agriculture are too important to let a few transnational companies own and control. If farmers do not want to become serfs, they need to fight this with all of their energy.

Canada has no obligation under international trade agreements or treaties to move to this legislation. The choice the government of Canada is giving us is to pay high prices to rent private seed while at the same time withdrawing from public varietal development. Plant breeders' rights and identity preservation contracts with small premiums at first are the tools to entice farmers to final enslavement through closed loop contracts. Slaves worked for nothing. Farmers of today and the future will pay for that enslavement. Perhaps this is what "Farmer's Privilege" really means. —nfu—

