Questions and Answers about Bill C-18

Bill C-18, the *Agricultural Growth Act*, is an omnibus bill introduced on December 9, 2013. It is a complex bill that amends several Acts. This fact sheet answers the most common questions we have received about Bill C-18's proposed changes to Canada's Plant Breeders' Rights Act. For more information, please visit www.nfu.ca/issue/stop-bill-c-18 .

What is an Omnibus Bill?

An omnibus bill is a large bill that amends many pieces of legislation at once, often on unrelated matters. The size of omnibus bills makes it impossible to fully examine each significant change proposed in the legislation. They are used primarily to minimize debate. A single vote enacts all aspects of the bill, which forces voters to accept things they disagree with to obtain what they want. The word omnibus comes from *omnis*, Latin for "everything".

What is UPOV?

The UPOV Convention is an international entity that establishes rules that recognise, ensure and define the intellectual property rights of breeders of new plant varieties. UPOV is the French acronym for *Union Internationale pour la Protection des Obtentions Vegetale*: in English, the *International Union for the Protection of New Varieties of Plants*. Countries may join UPOV by agreeing to adopt one of UPOV's model laws, with UPOV '91 being the most restrictive. To date, 71 of the world's 196 countries have joined UPOV. Canada joined UPOV in 1991 after we adopted the UPOV '78 model law. Twenty countries, including Brazil, Argentina, Chile, China, Uruguay and Italy also use UPOV '78. If passed, Bill C-18 will change plant breeders' rights (PBRs) to conform to the UPOV '91 model law.

What does IP mean?

The acronym 'IP' has two meanings in Canadian agriculture: *Identity Preserved* and *Intellectual Property*.

"Identity Preserved" refers to a system to segregate a specific variety for marketing and processing purposes. Farmers engaged in Identity Preserved contracts generally must adhere to certain conditions regarding planting, storing, handling, shipping and selling the crop, and may be offered a premium price for doing so.

"Intellectual Property" refers to creations of the mind that are used in commerce, such as inventions; literary and artistic works; designs; and symbols, names and images. Plant Breeders' Rights are a form of intellectual property rights that relate specifically to the field of plant breeding.

Does C-18 affect all seed?

Under Bill C-18, PBRs will not apply to private, non-commercial growers (backyard gardens), experimental use of seed and seed used for the purpose of breeding other plant varieties, which is also the case under our current legislation. However, under C-18, PBRs do apply to newly bred varieties that are "essentially derived" from PBR-protected varieties, allowing plant breeders to exercise control over the results of future plant breeding. PBRs will cease to apply when a PBR holder has agreed to sell the seed, unless it is for further propagation of the plant variety or exported to a country that does not recognize PBRs on that variety. A plant breeder may obtain PBRs for a new variety of plant regardless of species.

PBRs do not apply to seed that is in the public domain, such as older commercial varieties of wheat, barley, soy, etc. and heritage or heirloom seed.

National Farmers Union – www.nfu.ca – nfu@nfu.ca – 306-652-9465 – 2717 Wentz Ave., Saskatoon SK S7K 4B6

Are patents and PBRs the same? If not, what is the difference between them?

Both patent rights and plant breeders' rights are forms of intellectual property rights. Both patent-holders and PBR holders have exclusive rights to their "intellectual property" which allows them to restrict access and/or charge royalties to users of their "property".

A patent is an exclusive right granted for an invention – (a process, machine, manufacture, composition of matter) or any new and useful improvement to an existing invention. A Canadian patent applies within Canada for 20 years. Plants cannot be patented in Canada (they are not inventions), thus plant varieties cannot be patented.[1] Gene-sequences, however, can be patented. When biotech companies insert patented gene sequences or chimeric genes (gene constructs) into a plant variety, the resulting plant becomes a form of property by virtue of the patent on the inserted genes, and thus can be exploited through patent rights.

PBRs, on the other hand, are intellectual property rights that apply specifically to new varieties of plants (whether genetically modified or not) as defined by national legislation. Canada's current legislation gives plant breeders the exclusive right to sell and collect royalties from selling the seed/propagating material of their own plant varieties for 18 years. UPOV '91, however, gives additional rights to PBR-holders and extends these rights to 20 years for seed and 25 years for trees and vines.

When their protected period ends, patented inventions and plant varieties are in the "public domain" and can be freely used without asking for permission or paying royalties. For most crop kinds, farmers can sell their crop at full price only if they use registered varieties. In May 2013, the CFIA proposed a regulatory change that would allow companies to de-register their varieties at will. If this regulatory change goes forward, PBR holders will be able to withdraw varieties before their rights expire, thus preventing older varieties from entering the public domain and forcing farmers to use seed that requires royalty payments. See ***NFU Comments on Regulations Amending the Seeds Regulations - May 2013*** at www.nfu.ca/story/nfu-comments-regulations-amending-seeds-regulations for more information.

Would Bill C-18 apply to all existing PBR-protected varieties?

The new, far-reaching PBRs conferred by Bill C-18 would apply only to varieties that are introduced after the new Act comes into force. Existing varieties under our current PBR Act would continue to be subject to UPOV '78 rules and conditions.

What is an endpoint royalty (EPR)?

Bill C-18 allows for collection of end-point royalties (EPRs) if royalties are not first collected on seed. An EPR system would require compulsory payments by farmers to the plant breeder upon sale of a crop grown from a PBR-protected variety. Companies involved in plant breeding find this approach attractive because it allows them to collect royalties on the entire yield of a crop and thus obtain higher revenues. The Canadian Seed Trade Association, which promotes the interests of its member plant breeders, has been lobbying for an EPR system.

How would endpoint royalties be collected?

EPRs would probably be collected at grain elevators or other facilities where farmers deliver their crops to be sold. The EPR would be deducted by the buyer and remitted directly to the PBR holder before the farmer is paid. Under C-18, PBR holders are entitled to collect EPRs on harvested material at any later point in the food system if they fail to collect royalties when seed is sold.

Australia has been using the EPR system since 1996. Farmers there must submit an annual declaration by variety: volumes of grain produced; volumes sold to grain traders or end users (e.g. millers); grain used on farm as stock feed; grain stored on farm or warehoused for later sale; and grain retained for use as seed in the

[1] The Harvard Mouse case: developments in the patentability of life forms, Canadian Bar Association. http://www.cba.org/cba/newsletters/ip-2003/ip2.aspx

following year. EPRs are collected on the whole harvest; the only exception is what is retained to be used as seed for the subsequent crop. EPRs are also collected on each cut of hay, on grazing land, oats cut for feed, and crops used for feed if PBR-protected varieties are planted. There are several Australian EPR-Royalty Management companies that collect money from farmers on behalf of PBR holders. These companies are increasingly integrated with grain traders to "streamline" the paperwork required to administer EPRs.

How much would the royalties be?

Royalty rates would be set solely by the PBR holder. In Australia, EPRs (per tonne) for the 2014/15 crop year are $7 - $12 for soy; $1- $4 for barley: $5 for canola: $2.50 - $6.50 for pulse crops: $.95 - $4.25 for wheat: and $1 - $3 for other cereals.[2] Amounts are in Australian dollars, at par with the Canadian dollar at time of writing.

Who are the plant breeders that would get rights under Bill C-18?

C-18 defines "breeder" as any person who originates or discovers and develops the plant variety or any person whose officers, servants or employees originate, discover and develop the plant variety while performing their assigned duties. The definition of *person* includes corporations.

Public institutions may collect royalties on varieties developed by public-interest breeders and have done so under Canada's current PBR Act. The 2012 federal budget curtailed the work of Ag Canada's public plant breeders. They can develop germplasm, but can no longer continue development to the final variety stage. Publicly developed germplasm must now be sold to private breeders for commercialization. The budgetary measures that prevent public breeders from developing new varieties deny them the opportunity to obtain PBR benefits from the work of their public-interest research. The main beneficiaries of C-18 would thus be private breeders, including the large companies that dominate the global seed industry: Monsanto, DuPont Pioneer, Syngenta, Limagrain, Land O Lakes, KWS, Bayer Cropscience, and Dow AgroSciences.[3]

The government and some seed, commodity and farm organizations say that the only way we will get new plant varieties is by adopting UPOV '91. How will we get new varieties if we do not have UPOV '91?

Canada has been well served by a very successful program of publicly funded, public interest plant breeding to the variety level. Public plant breeding developed some of our most important crops, including canola, the Laird lentil, and most of Canada's cereal varieties. The economy of the whole country benefits from public investment to develop new varieties. Better varieties can confer a number of benefits: more reliable and higher quality crops leading to premium export markets; higher farmer incomes; a healthy rural economy; local investment; and additional public revenue via income taxes paid by farmers. In addition, a public-interest breeding program provides the qualities our international customers want, and thus has positive effects on Canada's international balance of payments.

Public plant breeding is also supported by farmer contributions in the form of "check-offs." These small, per-tonne payments are allocated to farmer-directed organizations such as the Western Grains Research Foundation, which use the money to support breeding according to farmers' priorities.

C-18 would give private breeders the power to charge farmers royalties, but farmers would have no say in how the money thus gained would be used. The ease of extracting royalty dollars may actually reduce the level of private research on regionally appropriate varieties. A company could simply use its PBR rights to compel farmers to buy its most profitable varieties that are developed for other markets. Indeed, C-18 would streamline the importation of foreign varieties.

[2] Available at the "Variety Central" website - http://varietycentral.com.au/varieties-and-rates

[3] Putting the Cartel before the Horse, ETC Group, September 2013. http://www.etcgroup.org/sites/www.etcgroup.org/files/CartelBeforeHorse11Sep2013.pdf

How would Plant Breeders Rights be enforced?

Plant breeders would enforce their new privileges under C-18 by using the courts. Legal action would be taken against farmers suspected of infringement, and the threat of such action would be enough to ensure farmers' compliance. In other UPOV '91 jurisdictions, farmers must report on all of their seed and crop usage so that control mechanisms can be enforced on each farmer. In some countries, government inspectors check on the reports of every farmer and even inspect every farm.

How would a farmer prove the variety used was in the public domain?

A farmer would likely have to make an initial purchase of certified pedigreed seed of the variety and keep the seed tag or label on file to prove the origin of their variety.

How does Bill C-18 relate to CETA and the TPP?

According to leaked texts of the proposed Canada-EU trade agreement, CETA would give plant breeders "precautionary enforcement measures" — powerful new tools to enforce the rights granted by C-18. They would have the power to bring court actions alleging intellectual property rights infringement by farmers in which the farmers' property could be seized and bank accounts frozen prior to hearing the merits of the case. The materials and implements used to create the infringing articles (i.e. seeds) could be ordered destroyed. [4]

The Trans Pacific Partnership (TPP) is a multilateral trade and investment accord under negotiation that includes the United States and Canada. The USA requires countries to put in place UPOV '91 as a condition of entering any joint agreements, including the TPP.

What is the alternative to C-18 and UPOV '91?

Canada can continue using the current UPOV '78 Plant Breeders Rights Act and meet all of its international obligations, but we can do better. The National Farmers Union proposes a **Farmers Seed Act** that addresses farmers' needs. It creates a comprehensive framework that works for farmers and citizens. It enshrines the inalienable right of farmers to save, reuse, exchange, and sell seed. Under the **Farmers Seed Act** farmers would not be under constant threat of legal action. Disputes could be settled outside of courts so the financial resources of a giant corporation would not determine the outcome. It calls for seed cleaners to be protected; a permanent ban on terminator technology; and the elimination of anything that could be construed as counterfeiting in relation to seeds. It would ban patents on life forms, including genes. Our Act provides for a seed system that works in the interests of the public, farmers, our economy and our environment. For details see **Fundamental Principles of a Farmers' Seed Act** (http://www.nfu.ca/story/fundamental-principles-farmers-seed-act) .

See also these NFU Fact Sheets:

- **Bill C-18 Backgrounder – A Corporate Agri-business Promotion Act**
- **The Price of Patented Seed – The Value of Farm Saved Seed**
- **Bill C-18 and Farmers' Privilege – What is the whole story?**

For more information please contact the ***NFU Bill C-18 Committee through the NFU National Office*.**

[4] *A CETA – DRAFT IPR CHAPTER* Anonymous, http://www.globalmediapolicy.net/node/3151