



National Farmers Union
Union Nationale des Fermiers



Plant Breeders Rights in Canada under UPOV '91

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Background:

Plant Breeders' Rights (PBR) is a type of “intellectual property” similar to a patent, where the developers of new plant varieties claim ownership over the variety. Countries can recognize this type of ownership by creating laws that define PBRs and give PBR-holders authority over seed and propagating material (such as tubers and cuttings) that, among other things, requires growers to ask permission and pay royalties before planting them. UPOV '91 is the most restrictive form of PBR law. It enhances the rights of seed companies such as Monsanto, Syngenta, Bayer, Dow, Viterra, Pioneer, DuPont and Cargill at the expense of farmers.

The **International Union for the Protection of New Varieties of Plants (UPOV)** is an intergovernmental organization that has created model PBR laws. Canada joined UPOV and adopted its 1978 model law with the *Plant Breeders' Rights Act* in 1990. On February 27, 2015 the amended *PBR Act* came into force which brought Canada under UPOV '91. The new rules apply to all new varieties granted rights after that date. Varieties that were already on the market continue to be dealt with under UPOV '78 rules.

Canada's current PBR law includes a “**farmers' privilege**” clause that allows farmers to condition (treat) and use harvested seed from a UPOV '91 variety to plant a future crop on their own holdings. The original wording of the farmers' privilege would have left the right to stock (store) seed exclusively in the hands of the PBR-holder. **The NFU pushed for and obtained an amendment that adds “stocking” seed to the farmers' privilege.** However, the new law enables government to diminish farmers' privilege by regulation in the future.

For more information about how the current law affects your seed-saving rights, please see the article, ***Seed saving under the amended Plant Breeders Rights Act*** in the November 2015 edition of the NFU Newsletter (<https://tinyurl.com/z98b9uw>). To find out whether the varieties you grow are under UPOV '91, UPOV '78 or in the public domain, visit the Canadian Seed Trade Association's database at <https://tinyurl.com/ph4thhs>.

UPOV '91 interacts with other parts of Canada's seed regulatory system and trade agreements. For example, **CETA** and the **TPP** expand enforcement measures to help PBR-holders sue for infringement. Recent changes to the variety registration system make it easier for seed companies to withdraw older varieties from the market, limiting farmers' ability to choose royalty-free seed.

Corporate demands for royalty payments, along with potential future restrictions on farm-saved seed, have negative implications including **higher per-acre cost of production** due to higher seed prices; **fewer and larger farms** because reduced profitability will drive larger-scale production; **loss of independent seed cleaning** businesses; **increased litigation** as PBR holders seek to maximize royalty revenues; **loss of rural wealth** transferred from local farmers to distant, often foreign, PBR-holders.

When the amended PBR Act came into force, **NFU President, Jan Slomp** said: “Restrictions on farmers' seed saving, and the massive transfer of wealth from farmers to seed companies that will follow, are not necessary for the development of useful new varieties. It is a shame that Canada's government has decided to pass a law that will enrich some of the wealthiest and most powerful global corporations at the expense of Canadian farmers and the biodiversity of Canada's food system.”



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PBR in Canada under UPOV'91

Public Domain	UPOV '78	UPOV '91 (varieties granted rights after Feb 27, 2015)
<p>No restrictions.</p> <p>The variety is not covered by Plant Breeders' Rights because it has been on the market for over 18 years; it is a heritage variety; or the PBR holder has voluntarily given up its rights to the variety</p>	<p>Moderate restrictions for 18 years.</p> <p>PBR holders can sue someone who <u>sells</u> seed or propagating material of a PBR-protected variety, <u>uses it to produce hybrids</u> or <u>uses plant parts</u> to commercially produce a PBR-protected variety without permission.</p> <p>Farmers are free to use harvested seed to plant future crops without restriction.</p> <p>Royalties can only be charged when seed is purchased</p>	<p>Severe restrictions in effect for 20 years.</p> <p>PBR holders of varieties protected after February 27, 2015 can sue someone who <u>sells, reproduces, conditions, stocks, imports, exports, repeatedly uses to create a hybrid or uses plant parts to commercially produce plants</u> of a PBR-protected variety without permission.</p> <p>The "farmers' privilege" allows farmers to reproduce, condition and store UPOV '91 seed varieties for use as seed on their own holdings.</p> <p>If royalties were not collected when seed is sold, the PBR-holder can demand payment later, such as when the crop is sold. Also known as End Point Royalties or EPR's.</p> <p>Government can restrict or remove the "farmers privilege" by passing regulations</p> <p>The PBR holder can sue for damages and can ask the judge to order the convicted infringer to stop any further infringement, fine the infringer if they continue to infringe, and to dispose of the seed in question.</p>

There are alternatives to laws created under UPOV '91!

Canada can still adopt its own seed laws that meet international obligations.

Fundamental Principles of a Farmers Seed Act

The NFU has outlined the **Fundamental Principles of a Farmers Seed Act** to guide a new, farmer-friendly seed regime for Canada.

Farmers and other concerned citizens need to protect and enhance farmers' control over seed – and thus our food system -- by becoming informed, refusing to be intimidated by seed companies and their PR campaigns, practicing and reviving seed-saving skills, speaking out publicly and communicating with decision-makers, being vigilant to prevent new regulations from diminishing farmers' ability to control seed any further and by promoting public plant breeding and new tools, such as open-source seed licensing that bring forth useful varieties for the benefit of farmers and the public.

Seed issues are one of the NFU's priorities. Visit our website to see our extensive collection of material on UPOV '91 and seed law.

Visit nfu.ca/issues/save-our-seed for more information.



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