



# Webinar - Save Our Seed

February 21, 2019 1:00 – 2:30 PM Eastern Time

Strong Communities. Sound Policies. Sustainable Farms.

# Terry Boehm



Strong Communities. Sound Policies. Sustainable Farms.

Terry Boehm is a grain farmer and activist in central Saskatchewan growing a diverse mix of eight different crops annually.

He is former President, Vice-President (Policy), and Board member of the National Farmers Union. He has served on numerous other boards, commissions, and co-operatives.

Terry has worked extensively on issues around seeds, intellectual property, international trade agreements, railway legislation, and many other issues related to agriculture and social justice. He has spoken domestically and internationally on many issues, and is a frequent witness before Parliamentary Committee hearings on agriculture policy matters.

# What is at stake?

Farmers have a Farmers Privilege under our *Plant Breeders' Rights Act* as amended by Bill C-18 in 2015.

The current plant breeders' rights legislation is based on UPOV'91

UPOV is an International Union for the Protection of Plant Varieties. It creates **templates** for increasingly restrictive laws around seeds that reinforce breeders' rights at the expense of farmers. Over time the UPOV templates have become more restrictive. The current iteration is UPOV'91

For varieties registered since Canada adopted UPOV '91 farmers have the privilege to save and reuse seed for use on their own holdings only. Farmers cannot sell or exchange seed (cuttings, tubers, etc.) of these varieties.

# Plant breeders' have exclusive rights

## Nature of plant breeder's rights

5 (1) Subject to the other provisions of this Act and the regulations, **the holder of the plant breeder's rights** respecting a plant variety **has the exclusive right**

- (a) to **produce and reproduce** propagating material of the variety;
- (b) to **condition** propagating material of the variety for the purposes of propagating the variety;
- (c) to **sell** propagating material of the variety;
- (d) to **export or import** propagating material of the variety;
- (e) to make repeated use of propagating material of the variety to produce commercially another plant variety if the repetition is necessary for that purpose;
- (f) in the case of a variety to which ornamental plants belong, if those plants are normally marketed for purposes other than propagation, to use any such plants or parts of those plants as propagating material for the production of ornamental plants or cut flowers;
- (g) to **stock** propagating material of the variety for the purpose of doing any act described in any of paragraphs (a) to (f); and
- (h) to **authorize, conditionally or unconditionally**, the doing of any act described in any of paragraphs (a) to (g).

# Rights to collect royalties

The plant breeders' exclusive rights include the right to collect royalties anywhere in the production system if not collected at time of seed sale (cascading right)

## Royalty

(2) Without prejudice to any rights or privileges of the Crown, **an authorization conferred under paragraph 1(h) may be subject to a condition to pay royalty to the holder of the plant breeder's rights** whether or not the holder is Her Majesty in right of Canada or a province.

# Farmers have 'farmers' privilege'

## Farmers' privilege

5.3 (2) The rights referred to in paragraphs 5(1) (a) and (b) and —for the purposes of exercising those rights and the right to store — the right referred to in paragraph 5(1) (g) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer's holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety.

## Regulations

75 (1) The Governor in Council may make regulations ...

**(I.1) respecting any classes of farmers or plant varieties to which subsection 5.3(2) is not to apply;**

**(I.2) respecting the use of harvested material under subsection 5.3(2),** including any circumstances in which that use is restricted or prohibited and any conditions to which that use is subject;

# Famers' privilege subject to limits

Under our Plant breeders rights legislation based on UPOV'91 farmers privilege is to subjected to reasonable limits. These can be

- complete elimination of seed saving where seed saving is not customary (current case with almost all canola),
- limiting the number of planting cycles for certain crops or varieties where farm saved seed can be reused,
- limiting farmers who can reuse seed to a certain class based on farm size, farm type, or any other criteria deemed appropriate.

Many methods can be used to make farmers privilege essentially unworkable.



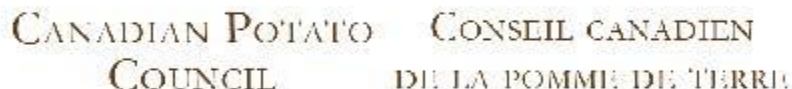
# Who decides?

Limits to farm saved seed and reuse can be recommended by an **Advisory Committee on Plant Breeders Rights** appointed by the Agriculture Minister for a three-year term.

This Committee is made up of members of breeders organizations, seed dealers, seed growers, farmers and horticulturists (see next slide).

The Governor in Council (Cabinet) can change the conditions for seed saving and reuse by regulatory change without amending the Act.

# PBR Advisory Committee



GRAIN GROWERS OF CANADA



LES PRODUCTEURS DE GRAINS DU CANADA

# AAFC and Seed Synergy

Agriculture Canada and a group calling itself *Seed Synergy* are advancing the notion that seed breeding in cereals (wheat etc.) is broken.

They claim that yields are not rising fast enough and that for innovation to take place, private industry must have access to increased royalties.

They claim that there is a crisis in wheat breeding and plant breeding in general, and that the solution is to charge farmers royalties on farmers' legally saved seed (via trailing contracts) or to charge royalties on the farmers entire crop (via end point royalties).

# Seed Synergy members

Canadian Seed Growers Association

Canadian Seed Trade Association

Canadian Seed Institute

Commercial Seed Analysts Association of Canada

Canadian Plant Technology Agency

CropLife Canada.

# Canadian Seed Trade Association

Companies represented on the Board

\* Asterisk = multinational corporations or their subsidiaries (parent company in brackets)

**BASF Canada\***

**Bayer CropScience\***

C & M Seeds

**CANTERRA SEEDS (Limagrain)\***

**Cibus\***

**Corteva AgriScience (DowDupont)\***

**Gro Alliance, LLC\***

La Coop Fédérée

Nadeau Seeds

**Nufarm Agriculture\***

**Nutrien Ag Solutions\***

**PRIDE Seeds (KWS & Limagrain)\***

SeCan

Sevita International

**Stokes Seeds Ltd.\***

**Syngenta Canada (ChemChina)\***

# CropLife Canada

Companies represented on the Board

\* Asterisk = multinational corporations or their subsidiaries (parent company in brackets)

**BASF Canada\***

**Bayer CropScience Canada\***

**CANTERRA SEEDS (Limagrain)\***

Cargill Limited\*

**Corteva Agriscience (DowDuPont)\***

Federated Co-operatives Limited

**FMC Agricultural Solutions\***

La Coop Fédérée

**Nufarm\***

**Nutrien\***

Premier Tech Home & Garden

**Richardson International\***

**Scotts Canada Limited\***

SeCan

**Syngenta Canada Inc. (ChemChina)\***

United Farmers of Alberta (UFA)

**Univar Canada Ltd.\***

**UPL Corporation\***

# Companies on both CSTA and Croplife Canada boards:

- **BASF**
- **Bayer**
- **CANTERRA SEEDS (Limagrain)**
- **Corteva Agriscience (DowDuPont)**
- **La Coop Fédérée**
- **Nufarm**
- **Nutrien**
- **SeCan**
- **Syngenta (ChemChina)**

# If these regulatory changes are allowed to proceed ....

- Farmers will pay royalties on their own seed or entire crop!
- Farmers will have no say in what level the royalty is set at!
- Farmers will have no say in how the royalty money is used!



# To convince farmers to accept these proposed changes ...

- Farmers are told that they must pay up to facilitate innovation and competitiveness.
- Farmers are told they have a crisis.
- Farmers become subjected to the normalization of the idea that they must pay to save seed
- Farmers experience seed saving and reuse becoming more difficult as old varieties are deregistered.

# Why Now?

The amended *Plant Breeders Rights Act* legislation makes it possible. Amendments passed in 2015 brought Canada under the UPOV '91 template.

*Seed Synergy* speaks for global seed and agro-chemical corporations

*Seed Synergy* aims to

- maximize profits by creating monopoly conditions
- take advantage of public research investment by taking control of the final product – the finished varieties
- restrict access to new varieties in order to extract maximum payment for seed
- Replace older varieties with new UPOV '91 varieties with higher restrictions
- Eliminate independent seed production and replace with contract growers tied to corporations
- eventually eliminate farm saved seed as much as possible so farmers become dependent on them for seed at their prices

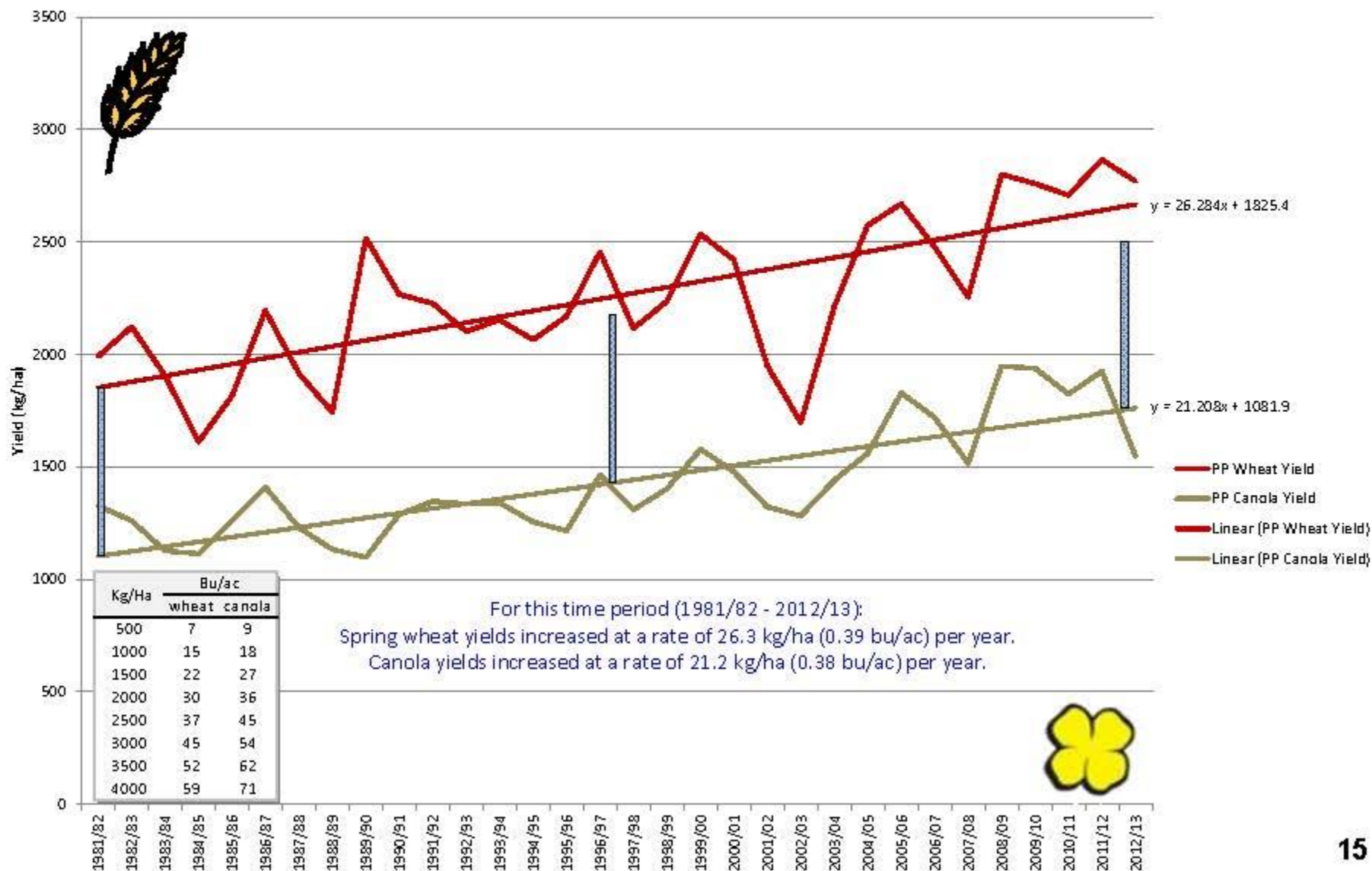
# AAFC abandoning public role

- Federal funding of public breeding has gone down for many years
- Federal government has lost sight of public good and value of agriculture's contributions
- AAFC funded Seed Synergy to advance anti-citizen privatization model that would transfer wealth from farmers to corporations.
- AAFC is advancing the false idea that wheat yield improvements falling behind privately funded canola breeding.
- In reality – cash-strapped public sector breeding is on par with well-financed private system (see next slide – research by R. Graf).
- Canola is immensely profitable due to the virtual elimination of any farm saved seed, allowing it to be priced at +\$600.00 a bushel for seed
- Wheat seed is priced around \$15.00 a bushel, farm saved seed is the norm.

# PP Spring Wheat and Canola Yield (1981/82 – 2012/13)

Graf 2013

Prairie province spring wheat and canola yield, 1981/82 - 2012/13



# Usurping 10,000 years of farmers' seed

Farmers have protected, improved and nurtured seed for 10,000 years.

Scientists and professional breeders have been involved in improving seed for only the last 100 years

The vast majority of "scientific breeding" was done in the public interest by publicly employed scientists until UPOV was established in 1961

Most crops are still primarily developed by public sector breeding

UPOV '91 style laws are slowly shifting the balance to the private sector, where 10,000 years of work could be usurped in a few decades.

# Variety Registration and UPOV '91

Under UPOV '78 plant breeders' rights last for 18 years – UPOV '91 extends the term to 20 years for field crops (25 for vines and trees)

Varieties registered in Canada after February 27, 2015 are under UPOV '91

Canada's variety registration regulations allow plant breeders to cancel their varieties at will. Higher royalties available for UPOV '91 varieties will promote cancellation of less restrictive UPOV '78 varieties.

Our variety registration system was created to protect farmers. It offers independent testing of varieties to verify their performance. Farmers can trust the information they receive.

Increasingly that public interest element is being pushed aside to create a system that gives priority to private commercial interests.

(Note – New varieties of all plant types are subject to plant breeders rights, not just those of commercial crops that are required to be registered under the *Seeds Act*.)

# Essentially Derived

## **Rights respecting certain other varieties**

5.2 (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(a) to (h) in respect of

(a) any other plant variety that is essentially derived from the plant variety if the plant variety is not itself essentially derived from another plant variety; ...

## **Meaning of essentially derived**

(2) For the purpose of paragraph (1)(a), a plant variety is essentially derived from another plant variety (in this subsection referred to as the "initial variety") if

(a) it is predominantly derived from the initial variety or from a plant variety that is itself predominantly derived from the initial variety and it retains the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(b) it is clearly distinguishable from the initial variety; and

(c) it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences that result from its derivation from the initial variety.

# Implications of “Essentially Derived”

The interpretation of the “essentially derived” clauses in the Plant Breeders’ Rights Act are very broad and far-reaching

The holder of Plant Breeders’ Rights for a variety have the exclusive rights for varieties that are bred from it – no matter how it is done, even including natural mutation.

The Essentially Derived clause gives plant breeders rights to all future breeding from the varieties they claim under UPOV ‘91

This clause is particularly puts independent (such as farmer-owned) breeding results at risk of being massively sued if a big seed corporation claims the new variety is essentially derived from one they own.



# How do they interact?

- Exclusive Plant Breeders Rights
- Farmers Privilege
- Essentially derived
- Trade Agreements
  - Precautionary Enforcement Measures
  - Tantamount to Expropriation
- Litigation and farmers
- Material Transfer Agreements

# How would government enact regulation?

What is Canada Gazette 1 and 2?

How is enacting regulations different from opening legislation and amending it?

The screenshot shows the Government of Canada website header with the Canadian flag and the text "Government of Canada" and "Gouvernement du Canada". Below the header is a navigation menu with tabs for Jobs, Immigration, Travel, Business, Benefits, and Health. The breadcrumb trail reads: Home → How government works → Treaties, laws and regulations → Canada Gazette → Publications → Part I: Vol. 153. The main heading is "Canada Gazette, Part I, Volume 153, Number 7: Index". Below the heading is a note: "(An asterisk indicates a notice previously published.)" and the date "February 16, 2019".

The screenshot shows the Government of Canada website header with the Canadian flag and the text "Government of Canada" and "Gouvernement du Canada". Below the header is a navigation menu with tabs for Jobs, Immigration, Travel, Business, Benefits, Health, and Taxes. The breadcrumb trail reads: Home → How government works → Treaties, laws and regulations → Canada Gazette → Publications → Part II: Vol. 153 (2019). The main heading is "Canada Gazette, Part II, Volume 153, Number 4: Index". Below the heading is the date "February 20, 2019". There are two sub-headings: "SOR: Statutory Instruments (Regulations)" and "SI: Statutory Instruments (Other than Regulations) and Other Documents". At the bottom, there is a note: "The information in the index appears in the following order: Regulations, Statutes, Registration Number, Date, and Comments (one e - erratum, n - new, r - revises, x - revokes)."

# Consultation process

- What is the consultation really about?
- How fast can regulatory change happen?

# Regulatory Capture

Is this what we have?



Where is the Minister of Agriculture?

# What you can do

## LEARN MORE ...

Visit Save Our Seed web page <https://www.nfu.ca/campaigns/save-our-seed/>  
Subscribe to the NFU SOS Action Group to get info and updates by email – go to <http://eepurl.com/dt7s0n> to sign up.

## SHARE YOUR VIEWS ...

Make the issue a discussion topic in your community  
Write letters to your local paper  
Phone in to radio call-in shows  
Comment on social media – hashtag #SaveOurSeed

## CONTACT ...

Your Member of Parliament, Agriculture Minister MacAulay,  
and the Prime Minister. Letters to MPs do not need a stamp when mailed to  
**House of Commons, Ottawa, ON K1A 0A6**



# Take Action!



Download the **Save Our Seed Postcard** and send the PDF file to your local print shop for printing on card stock then distribute to people to send to their MPs. Just write in the MP's name – the postcard is pre-printed with the House of Commons mailing address.

Visit <https://www.nfu.ca/campaigns/save-our-seed/> for the PDF

Farm families (including single farmers and non-traditional families) can join as full voting members. Non-farmers can join as non-voting Associate Members. Visit <https://www.nfu.ca/join/> to sign up.

## The NFU welcomes new members!



## Donate to support our work!

Donations will be put used to advance the interests of family farmers. The NFU relies on membership fees and voluntary donations to fund our work. Our voice is not influenced by corporate or government sponsorship. Visit <https://www.nfu.ca/join/donate/> to donate.







national farmers union | union nationale des fermiers

**[www.nfu.ca](http://www.nfu.ca)**  
**[nfu@nfu.ca](mailto:nfu@nfu.ca)**

Strong Communities. Sound Policies. Sustainable Farms.