

Seed saving under the amended Plant Breeders Rights Act

On February 27, 2015 Bill C-18's amendments to Canada's *Plant Breeders Rights Act* went into effect.

How does this affect farmers who save seed?

Innovation message replaced with intimidation tactics

Soon after Bill C-18 became law, the seed industry lobby group, the Canadian Seed Trade Association (CSTA), launched a new website called PBRfacts.ca. The site is apparently designed not only to inform, but also to intimidate farmers into buying seed – whether UPOV '91 protected or not – from CSTA members to create a paper trail of receipts as evidence they have paid applicable royalties. Intimidating language is particularly apparent in the CSTA's advice to seed cleaners and grain buyers. The CSTA raises the spectre of wide-ranging, expensive lawsuits if a company can prove Plant Breeders Rights (PBR) infringement. It advises these businesses to transfer liability to farmers by demanding proof of variety and royalty payment before providing service or taking deliveries. This kind of aggressive, self-serving behaviour by the seed companies is not surprising, even though farmers were told they would benefit from innovation and greater choice before Bill C-18 was passed.

It is important for farmers and independent seed cleaners to know their rights regarding seed saving. Replacing the age-old practice of seed saving with annual seed purchases from global corporations will create dependency and transfer wealth to the seed companies. Scaring farmers into buying new seed every year would be very lucrative for seed companies, and much less expensive than actually carrying out court actions.

Old varieties grandfathered

Bill C-18's changes apply only to new varieties granted PBRs after the law was changed. All varieties that were available before February 27, 2015 remain under the old law. If you are using the same variety you used last year, the rules for your seed have not changed.

Varieties in the public domain

Our old, UPOV '78-compliant law grants PBRs on seed varieties for 18 years unless the breeder gives up the rights sooner. If you use older varieties, your seed may already be in the public domain because its PBRs have expired. Heritage varieties have always been in the public domain. When seed is in the public domain there are no restrictions on saving and replanting seed. You can also legally buy, sell and exchange seed from public domain varieties.

Non-commercial use

PBRs do not apply to seed when it is used for private and personal use. You don't need to worry about PBRs if you are saving seed for your backyard garden or your own food supply regardless of variety.



New varieties

Only varieties granted rights after February 27, 2015 are affected by the new law. If you bought new seed this year, it might be a new variety that is covered by UPOV '91. Check to see if it has the new PBR logo on the label. New varieties are listed in the quarterly *Plant Varieties Journal* on the Canadian Food Inspection

Agency (CFIA) website (see <https://tinyurl.com/ph7nqlq>). The CFIA and CSTA have also set up a searchable database on the CSTA website (see <https://tinyurl.com/ph4thhs>) where you can look up the PBR status of varieties. You can still save seed covered by UPOV '91 and re-use it on your own farm, but buyers and seed cleaners may require proof that royalties were paid when the original seed was purchased.

Contracts

Some older varieties are sold under a commercial contract between the farmer and the seed company that contains a clause that restricts saving seed. Identity Preserved contracts usually require the entire crop to be sold back to the company or a designated buyer. Farmers who buy midge tolerant wheat seed are limited to saving one generation of seed in order to prevent the insects from evolving tolerance to the midge-resistance trait. These restrictions on seed saving are due to the contracts, not the new PBR law.

Genetically modified seed

Ever since the first genetically modified crops (GMOs) were introduced, GMO varieties have been covered by patents. Patents are not the same as PBRs.

(continued on page 8...)

(Seed saving..., from page 7)

Patents only apply to inventions – not to complex organisms such as whole plants. Biotech companies patent invented gene sequences, but because the gene sequences are integrated into the seed, these patents also give the company exclusive rights over the seed.

They generally prohibit anyone from using the GMO seed unless they buy it directly from the company or a licensee. Thus, if a farmer saves seed from a GMO crop to plant next year, the farmer would be violating the company's patent rights, and could be sued. UPOV '91 allows GMO seed to be covered by both Patent Rights and Plant Breeders Rights, but that doesn't change the situation on the ground: you can't legally save GMO seed without the company's permission.

Regulations

The amended PBR law includes new powers that enable the federal government to bring in regulations to restrict saving and re-using seed from new varieties. So far, this has not happened. The NFU will keep an eye on any proposals for such regulatory changes and make sure MPs hear our concerns loud and clear.

20