

# Amending Plant Breeders' Rights Legislation

## *Frequently Asked Questions, Myths and Misconceptions*

On December 9, 2013, the Government of Canada introduced Bill C-18, the Agricultural Growth Act in the House of Commons. When implemented, Bill C-18 will amend 9 agricultural Acts, with the intention to clarify and make those Acts more efficient. The largest part of Bill C-18 is amendments to Canada's Plant Breeders' Rights Act to bring it into compliance with the 1991 Convention of the International Union for the Protection of New Plant Varieties (UPOV).

Here are some answers to frequently asked questions, myths and misconceptions:



**Q. Will PBR amendments allow plant breeders to patent all of their material?**

A. Plant Breeders' Rights (PBR) are not patents. Unlike patents, plant breeders who use PBR are required by law to allow other breeders to use their protected varieties for research and to develop new varieties. Also unlike patents, PBR allows farmers to save harvested material for use as seed on their own farms.

**Q. How will PBR amendments benefit farmers?**

A. The amendments will give plant breeders the confidence to invest time and money in developing and commercializing new varieties for farmers. The amendments will also put Canada on the same footing as most other UPOV member countries, giving international plant breeders the confidence to give Canadian farmers access to their new, improved varieties. Together these two things will result in more choice for farmers as they will have access to more varieties with a wider range of characteristics, including increased productivity and attributes for specific niche markets.

**Q. How will PBR amendments benefit plant breeders?**

A. The amendments give plant breeders who choose to use PBR the ability to set conditions for the use of their inventions, including requiring remuneration (often called royalties) as soon as they apply for PBR and for up to 20 years.



The amendments also allow plant breeders to set conditions on an expanded list of activities. In addition to selling, advertising for sale, and the repeated use of the material to produce another variety, breeders can now set conditions for production, reproduction, and conditioning for propagation; and for exporting, importing and stocking propagating material. Anyone who wishes to undertake any of these activities must abide by the conditions set by the plant breeder. The result is a more predictable environment for investment in plant breeding.



**Q. Will PBR amendments prevent farmers from saving seed?**

A. Bill C-18 specifically provides for a “Farmers’ Privilege”.

Section 5(c) permits farmers to produce, reproduce and condition harvested material produced on their own farms to use as seed on their own farms.

**The sale of farm saved seed has always been illegal, and will continue to be illegal.**

**Q. Will PBR amendments mean that farmers will have to pay royalties on everything they plant?**

A. Farmers will always have choice. Just as plant breeders can choose whether or not to protect their inventions (new varieties) with PBR, farmers have the choice to not use PBR protected varieties. You can find a list of PBR protected varieties on the Plant Breeders’ Rights Office website.

**Q. Will farmers have to pay royalties on harvested grain?**

A. Bill C-18 says that if the propagating material (seed) was obtained and used without the authorization of the breeder, the breeder can exercise his/her rights on the harvested material (grain). This includes collecting a royalty.

**Q. Do PBR amendments benefit only the private sector – big companies?**

A. 45% of all of the agricultural varieties protected under current PBR were developed at public institutions. Agriculture and Agri-Food Canada; Universities and Provincial research facilities all receive royalties from PBR protected varieties they have developed. The amendments in Bill C-18 will also improve the investment environment for public institutions.

**Q. Will PBR amendments place more liability on seed cleaners and conditioners?**

A. The amendments state that cleaning and conditioning for purposes of propagation cannot be done without the permission of the plant breeder unless the seed being cleaned is for planting on the grower's own land (that is, farm-saved seed). So seed cleaners will need to be aware of which varieties have been granted rights, to ensure that permission has been obtained before cleaning seed of a protected variety.



**Q. Do PBR amendments include penalties if rights are violated?**

A. The amendments in Bill C-18 do not spell out penalties for infringement. The provisions in the current Act state that if the plant breeder proves that there has been an infringement of his or her rights, the plant breeder is entitled to receive damages.

