

Amendments to Plant Breeders' Rights Legislation Proposed in Bill C-18, the Agricultural Growth Act

Questions and Answers

1. Why do the members of Partners in Innovation want PBR legislation to be amended? What's in it for farmers?

We need access to new and improved varieties to stay competitive in the domestic and international markets. Updated Plant Breeders' Rights legislation does increase investment and does result in the delivery of new varieties both from breeders operating in and outside of Canada. It was proven when Canada went from no PBR to PBR in the early 1990s. For example:

- The pulse crop sector was able to access new varieties. 89% of the new varieties were developed outside of Canada.
- Public cereal breeders in Canada saw an increase of 400% in the revenue they receive from new varieties, and cereal yields increased by between 11 and 22%.
- Oilseeds accounted for 61% of the agricultural PBR applications. Research investment tripled in the 10 years after PBR was implemented and production area increased by 75%
- And the potato example that was given earlier shows that 82 new internationally developed potato varieties came to Canada. Potato production increased by 18% and farm cash receipts from potatoes increased by 47%.

As Canada fell behind other countries, we once again lost access to international varieties. A letter from the European Seed Association to the Minister of Agriculture and Agri-Food directly said that European seed companies would not send varieties to Canada because our PBR legislation was not UPOV 1991 compliant. Some seed companies were refused varieties to evaluate in Canada, and large plant breeding companies chose to invest in countries other than Canada.

With the introduction of amendments to PBR, things started to happen again. Sod was turned on a new plant breeding and research facility in Saskatoon. At least two medium sized seed operations announced new partnerships with international plant breeders to bring new varieties to Canada. It was made very clear that all of these initiatives were completely dependent on Canada updating Plant Breeders' Rights

2. If these amendments are implemented, will farmers lose the right to save seed?

The amendments actually ensure that farmers will not lose the ability to save seed. Our current legislation is silent. It doesn't say anything about saving grain of protected varieties to use as seed. The new legislation clearly spells it out. It says that farmers don't need the authority of the breeder to produce, reproduce, and condition grain of protected varieties to use as seed on their farms.

Because it is entrenched in legislation, it can't be taken away without a legislative change. That's pretty good assurance.

3. In the legislation it is called a "farmers' privilege". Doesn't that mean that it can be taken away at any time by the Minister of the day?

The term "farmers' privilege" is only in the margins for reference. We asked the Department of Justice about it and we were told that the Government's Implementation Act makes it clear that marginal notes are not a part of the Act. But it really doesn't matter what it is called. The legislation clearly states that farmers can save, condition, and plant grain of protected varieties to use as seed on their farms.

It is important to point out that the sale of farm saved seed has always and will continue to be illegal.

4. The proposed amendments would prevent farmers from "stocking" grain or seed. How can seed be saved if it can't be stocked. Isn't that just a way to take away the farmers' right?

We agree that there is some confusion around the definition of the word "stocking". Some say it is clearly meant to mean stocking for sale – like on a grocery store shelf, but it is unclear. We were happy to hear the Minister say that the intent was not to prevent farmers from storing seed to use on their farms, and in fact we heard him say very clearly that farmers would be able to store saved seed for use on their farms. But we did ask for this to be clarified in the bill, and on Tuesday the Minister said that government will propose an amendment to clarify the language and make it clear that seed can be stored.

5. Will these amendments give seed companies the ability to charge royalties to farmers at every stage of production, from seed to grain to the finished product? Doesn't it establish "end point royalties"?

There is nothing in this legislation that allows the breeder to collect a royalty anywhere but on the seed. The bill gives the breeder authority over things done with the propagating material – in the case of agricultural crops, that is the seed. That includes the ability to collect a royalty should the breeder choose. But only on the propagating material. Nowhere in the bill does it talk about the right to collect royalties anywhere but on the seed.

The bill does allow the breeder to seek compensation on the harvested material/grain if the breeder can prove that he/she didn't have the opportunity to collect on the seed. In other words if the seed was acquired illegally, in contravention of the Plant Breeders' right, the breeder can take action in civil court.

If there is a demand from farmers and the rest of the value chain of a crop for the government to implement some sort of system to generate additional funds for plant breeding, this bill allows the Minister to start a regulatory process to do that. That system could be whatever the agriculture sector and the government agree it should be.

But it would have to go through a very extensive regulatory process that includes consultations, the development of economic and practical rationale for the proposal, a number of different impact assessments on stakeholders in the crop value chain, and then the Canada Gazette process with additional consultations.

6. Are you concerned about the impact of this legislation on seed cleaners and conditioners? We are told that they will be put out of business because the breeders' authority extends to cleaning and conditioning.

The legislation says that farmers can condition and clean their farm saved seed to use on their farms, just like they do now. They can take grain produced on their farms and have it cleaned for use as seed on their farms. What they can't do is take grain produced on their farms and sell it as seed. They can't do that now.

7. Won't the big seed companies just de-register varieties once the Plant Breeders' Rights expires to make farmers always have to pay royalties?

Once the PBR expires, the variety is in the public domain, and there are no restrictions on its use from the Plant Breeders' Rights law. To date we haven't seen breeders de-register because the PBR has expired. Quite the contrary, Breeders quite often surrender the Plant Breeders' Right well before the right expires. Data from the Plant Breeders' Rights Office shows that the average length of protection for cereal (wheat, oats, barley) varieties is only 4 to 6 years. That is far less than the current 18 (and proposed 20) years allowed by PBR. Breeders commonly surrender their rights before the PBR expires, but they don't cancel the variety registration. Here are the details:

- Wheat: average PBR protection is 5.5 years
- Barley: average PBR protection is 5.8 years
- Soybean: average PBR protection is 4.6 years
- Oats: average PBR protection is 4.2 years

There are far more registered varieties out there than there are PBR protected varieties. For example of the 494 wheat varieties currently registered for sale, only 89 are protected by Plant Breeders' Rights.

8. Will these amendments only benefit big trans-national companies like Monsanto?

The amendments will encourage all plant breeders, big or small, private or public, international or domestic to invest in the development of new plant varieties for Canadian farmers.

In fact, 50% of the plant breeders' rights granted on agricultural crops came from public institutions like Agriculture and Agri-Food Canada; provincial governments and Universities.

9. Some are concerned that updated Plant Breeders' Rights will limit genetic diversity. Is that something you are worried about?

Actually bringing our PBR legislation in line with that in the rest of the world will encourage foreign plant breeders to bring their varieties to Canada, increasing the diversity of varieties and crops available to Canadians. It will also give Canadian plant breeders access to different varieties to use in their own breeding programs, further increasing genetic diversity.

10. This legislation gives the breeder authority over essentially derived varieties. How does that fit with the requirement that breeders must make their varieties available to other breeders for research or to develop new varieties? Doesn't it just lock up germplasm?

An essentially derived variety is a variety that is virtually identical to the variety that was used to develop it, except that it differs in only one or two characteristics. A good example is herbicide resistance. The only difference between the new variety and the one from which it was developed is that characteristic. Everything else is the same.

The legislation doesn't prevent breeders from creating essentially derived varieties. It also allows them to protect the new varieties under Plant Breeders' Rights. However the legislation does make it clear that the new variety can't be sold without the permission of the breeder of the original variety. That usually comes through negotiation that results in some sort of compensation to the original breeder.

In short, the legislation protects breeders of new varieties against someone taking the product of their hard work, making minor changes and then commercializing without compensating the original breeder.