



Plant Breeders Rights Office
Plant Production Division
Canadian Food Inspection Agency
59 Camelot Drive
Ottawa, ON K1A 0Y9

Response to proposed amendments to the Plant Breeders Rights Act

Prepared by Bryan Harvey and Istvan Rajcan

on behalf of the Agricultural Institute of Canada, February 2005

The Agricultural Institute of Canada (AIC) is pleased to provide comments on the development of agricultural policy, and specifically the Plant Breeders Rights Act. Our comments are in support of the proposed changes to bring existing legislation into conformity with the 1991 UPOV Convention while protecting farmers privilege and promoting use of Plant Breeders Rights.

For over eighty years AIC has responded to the needs of its members in serving the agricultural community, playing a central role as a source of credible information and comment for the Canadian agriculture and agri-food sector.

AIC seeks discussion rather than consensus based on the expertise and participation of more than 6,000 individuals within its Individual, Association and Corporate membership.

The Agricultural Institute supports the proposed changes in that they clarify a number of issues which are important to plant breeders and to farmers. It also makes important changes which allow better access to remedial measures and for preparing material for commercialization. The following are more detailed comments on a point-by-point basis.

1. Definitions – Support. This is a clarification of the current definition and is straightforward. It recognizes that most varieties involve a clear development phase before finalizing a commercial product. We would recommend that a revised definition of sale be developed to relate only to sales outside a corporate entity and for the purposes of commercial activity.

2. Obligation – Mixed response. Some members support this proposal because it adds flexibility to IP coverage. Others opposed this change because they felt that this would take away from usage of PBR which is felt to be more appropriate coverage for this type of IP. Others felt that the removal of the ban on coverage by more than one type of intellectual property protection and will promote wider use of PBR rather than relying on patent law alone.
3. Coverage – Support. Canada already complies with the broad coverage.
4. National Treatment – Support. This will provide reciprocity with other UPOV compliant countries and thus make it easier for Canadians to obtain protection for their varieties in other jurisdictions. It will also of course make it easier for non-Canadians to obtain protection for their varieties in Canada making a broader range of varieties available for Canadian farmers.
5. Novelty (prior sale) – Support. This is a much-needed amendment which will allow for more efficient management of seed increases during the evaluation phase of variety development. The current restriction on sales makes it very difficult for breeders to increase seed in a timely manner thus building in delays in marketing new varieties.
6. Priority – Reservations. We do not see a good reason to make this change and in fact it is a step backwards in the Canadian environment where multiple years of data are necessary and the vagaries of our climate often result in lost data sets. Canadian Breeders could live with this if it is essential but it will cause problems from time to time. It would not have been a high priority change for us.
7. Provisional Protection – Support. This is a highly desirable amendment that facilitates seed increase and evaluation testing of new varieties or candidate varieties during the period of evaluation of the application (2-3 yrs in Canada). Protection during this evaluation phase is essential.
8. Scope – a) cascading rights. This is a confusing concept which needs to be much more clearly defined in its application. There is much misunderstanding of this provision and with that, unwarranted fears from the commercial sector. We support the concept as we understand it in order to ensure that a breeder has the opportunity to exercise their right. It may be desirable to limit this to certain species if UPOV 1991 permits.

We do not support the optional provision of extending the reach through to derived products such as wine, flour, oil etc.

- b) Essentially derived. We support this concept as a necessary protection for plant breeders to guard against cooption of their work by simple genetic changes. We also recognize that it is a difficult concept to enforce, nonetheless the principle should be incorporated in the law.
9. Exceptions – These amendments make explicit what was implicit in the current act, in that it was not prohibited. We support the research and related exemptions. They favor use of materials as germplasm for further variety development. We also support farmers privilege allowing farmers to use farm saved seed for use on their own farm. We should look at special provisions for vegetatively propagated material to ensure that this privilege is not abused.
 10. Exhaustion of Rights – Support. This is a sensible provision. The two exemptions are reasonable and more clearly defined than previously.
 11. Duration – Support. This will have no significant impact on species where variety turnover is rapid and will provide extended coverage in those species where variety life is much longer.
 12. Annulment – Support. Housekeeping changes. Provided we do not get heavy handed in our interpretation of uniformity and stability. It is obvious that rights should not be granted where the applicant is not entitled to them. This was not provided for in the current act.
 13. Revocation – Support. Housekeeping changes. Again with the proviso that the assessment of uniformity and stability is not applied in a heavy-handed manner. The lack of a new denomination when an old one is cancelled is a logical reason to revoke a right.
 14. See comments under 1. We support the concept of not including such things as evaluation test material or seed increase on behalf of a breeder should not constitute a sale.