

Plant Breeders' Rights: What you should know

Anthony Parker

The federal government has set an ambitious target of growing Canada's agri-food exports from \$55 billion in 2015 to over \$75 billion by 2025. A key component of increasing domestic agriculture productivity, and developing new markets, is to create a positive business environment for investment in plant breeding. Plant breeding is a highly specialized, time consuming, and resource intensive activity, often taking 7-12 years from an initial cross, through repeated cycles of selection and testing, to commercialization and finally market adoption of a new variety. However, plants by their very nature are easily reproduced and multiplied. Consequently, if new plant varieties are left unprotected, they can be propagated and sold without authorization or fair compensation to the breeder. Plant Breeders' Rights (PBR) is a form of intellectual property (IP) protection, conceptually similar to patents, specifically designed to encourage investment and innovation in plant breeding for the benefit of society. In 2015 Canada amended its *Plant Breeders' Rights Act* to conform to the *1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV'91)*. By strengthening our intellectual property protection law for plant varieties, more opportunities are now available to support domestic plant breeding entities (private, public, partnerships, etc.), as well as facilitate greater access to foreign genetics. A strong IP regime also supports greater genetic /varietal diversity and encourages a continuous pipeline of innovative varieties which ultimately benefits producers and consumers. The fundamental basis of obtaining PBR protection requires the breeder to demonstrate that their variety is new, distinct, uniform, and stable. If the breeder is successful in fulfilling the requirements and obtains PBR protection, he/she is afforded the exclusive right to; produce, reproduce, sell, condition, store/stock, and import/export propagating material of the variety for up to 20 years (25 years in the case of trees and grapevines). The breeder also has a legislative right to collect a royalty on the sale of their variety and enter into licensing agreements. If an infringement does occur in the marketplace, the breeder can seek recourse (i.e. compensation) through the civil court system. A common and pervasive myth is that PBR is only useful for large multinational corporations. Evidence strongly suggests otherwise, as PBR has proven an important tool to support public sector breeders (e.g. government and universities), small/medium/micro enterprises, and producer funded programs. Since the Canadian Plant Breeders' Rights Office opened in 1992, approximately 5400 new varieties have been granted PBR protection spanning over 340 different crop kinds. Recently, the Government of Canada launched a National IP Strategy designed to improve awareness, education and use of IP to grow our economy. Aligned with this strategy, the PBR Office is implementing several initiatives to improve access to protection through; greater harmonization internationally, online filing of applications, and the development of educational tools to support informed IP decisions.