



## **Response on the Proposed Amendments to the Plant Breeders' Rights Act**

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Keystone Agricultural Producers (KAP) is the general farm policy organization that represents crop and livestock producers throughout the province of Manitoba. We thank you for the opportunity to comment on the proposed amendments to the Canadian Plant Breeders' Rights Act.

We recognize that the agriculture industry is global, meaning that agreements must be international if protection of plant breeders' rights is to be effective. We understand that it is important to conform to the International Union for the Protection of New Varieties of Plants. It must be recognized, however, that farmers do participate in a global agriculture industry - one in which regulatory and trade agreement protection for a farmer's ability to ensure a reasonable return on his production is continually being eroded in the interests of freer trade, greater competition, and greater protection for the developers of the technology that farmers use. As the CFIA develops the amendments to the Plant Breeders' Right Act, we ask that you keep in mind the need to balance the rights of technology developers with the needs of farmers to have affordable access to newly developed technologies in order to remain competitive in the world market, and financially viable in their own operations.

We would like to comment specifically on the following proposed amendments:

### **Basic Obligation of the Contracting Parties**

We have a concern about the 1991 UPOV Convention's removal of the ban on double protection. There may be a possibility that a developer could use double protection to extend the protection period for the product. While double protection might be an advantage to a developer, it must be balanced with society's right to access new and affordable technologies.

### **Novelty**

We are somewhat puzzled as to the need for an amendment to allow one year of sale in Canada prior to application. If a plant breeder's rights are protected from the time of application pending a decision on the grant of rights, and if research applications are exempt from the legislation, we do not see the purpose in applying this amendment. This assumes that variety testing in a new market is regarded as research for the purposes of this legislation.

### **Scope of the Breeder's Right**

We do not agree with the consideration to extend the holder's rights to products of harvested materials. We believe this level of detail would become virtually impossible to manage - for example, what would be the plant breeder's interest in soup that includes a trace of flour produced from the wheat that the breeder developed? If the purpose of Plant Breeders' Rights is to allow the technology developer to reap appropriate returns for his or her investment, surely those returns can be achieved without this level of complexity.

We further question the need to extend the right to harvested product. The discussion document describes the need for this right "...if the breeder has not had an opportunity to exercise his right in relation to the propagating material." The Plant Breeders' Rights Act is the appropriate mechanism to allow the breeder an opportunity to exercise this right and should be sufficient protection, particularly as our Canadian legislation, even in its current form, covers all crops.

### **Exception to the Breeder's Right**

KAP strongly opposes any action to prevent or in any way limit the farmers' privilege to save and use their own seed. It is our belief that protection of farmers' privilege should in fact, be enshrined within the legislation. As PBR and patent rights legislations become more vigorous at protecting technology developers, it is absolutely critical that we continue to be entitled to the small measure of protection that farmers' privilege allows us. We must be able to use our own seed in situations where highly inflated seed costs threaten our ability to grow a crop profitably. We must be able to use our own seed when poor growing conditions or disease outbreaks result in a severe shortage of uncontaminated commercial seed. (We can borrow a medical example from the United States, where the recent contamination and subsequent disposal of flu vaccine from their one limited volume source threatened the health of their citizens.) Furthermore, technology developers have a financial incentive to limit the availability of seed to force price increases. There needs to be a "check" in the system to protect against extreme manipulation of seed stocks. We, as farmers, are willing to pay a reasonable price for access to new technology, but we must not be held for ransom.

We believe there is another consideration that should enter into this discussion of farmers' privilege. The legislation that protects plant breeders' rights does not take into account the fact that many of the crop varieties developed are done so with financial assistance from farmers themselves through research support from commodity association check-offs, and programs such as the Western Grains Research Foundation. However, the equity that farmers should be entitled to by rights of their financial support is seldom recognized. While it would be difficult to focus on that equity for recognition under this type of legislation, we believe that entrenchment of farmers' privilege is at least one way of recognizing that farmers have contributed extensive financial resources to enable researchers to develop new varieties.

KAP also believes that it is important to ensure that the exemption for research remains within this legislation. If a plant breeder cannot make use of propagation material from another breeder until the protection period is over, the protection period for the original developer actually becomes extended, as it would be several more years before new varieties using that propagation material could be commercialized. In order to foster continued new technology development, it is important to continue to allow unprotected access to propagation material for research purposes.

## **Duration of Breeder's Right**

From a farmer's perspective, competition within the farm supply industry is beneficial. It controls the cost of our inputs and it provides us with new technologies. In our opinion, excessively long protection periods are a drag on that competition. We have a further concern that, with the growing tendency to stack new traits in existing crop varieties, it is going to become more difficult to develop varieties with a desired mix of agronomic traits from a variety of developers because earlier traits are protected too long. We believe that there is plenty of opportunity within our present protection periods for technology developers to recover their investments and make decent profits before competition forces price reductions.

If it is absolutely necessary to change protection periods to comply with UPOV, we believe that Canada's legislation should allow "maximum" protection periods of 20 and 25 years, not "minimum" protection periods. Lengthening protection periods make it even more important to ensure that farmers' privilege continues to be a part of this system.

## **Other**

We ask that the CFIA give consideration to another amendment, one to mandate that, where it can be shown that a supply of seed or propagation materials is being limited to force price increases or to subvert legal competitive activities, the protection for the breeder can be removed or modified. It is our understanding that patent legislation contains a provision to remove protection if a patent is granted but the technology is not subsequently commercialized. It is important to structure this type of protection legislation in such a way that the benefits of new technology are realized by society as quickly as possible.

## **In Conclusion...**

We believe that it is important to make sure that any amendments to Plant Breeders' Right legislation are done right, as this legislation would likely be referenced should we eventually be called upon to build the rules for the development of other higher life form food products such as livestock and poultry.

Plant Breeders' Rights protection was implemented with the belief that our agriculture industry would become more competitive and more profitable through the introduction of new plant varieties. While we agree that Plant Breeders Rights has very likely resulted in the more rapid introduction of new technology, we question the level to which that technology has contributed to our competitiveness or our profitability. Pricing of new technology tends to be set at such a level that the large majority of the yield and quality gains are absorbed in paying for the technology itself.

Better than average yields will let a farmer keep a small percentage of the improvements, but poor yields will mean the farmer experiences a net loss - the risk is the farmer's. Legislation such as PBR and patent protection enable these pricing practices. So while the breeders and seed companies realize profits, the farmers' cost of production and our risks have increased, and Canadian farm income statistics show that our profitability has not. This means that protection for technology developers must be redesigned to encourage and reward innovation

with the goal of fostering improved profitability and reduced risk at the farm level, as was its original intent.

While the proposed amendments to our Plant Breeders' Right legislation might serve to better protect the plant breeder, it appears to us that it will only make it more difficult to introduce the balance that we need on the input side of our ledger to make our farms profitable.