

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

## **A Policy Statement of the Christian Farmers Federation**

**Whereas** the Christian Farmers Federation of Ontario supports the need for legislation that will guarantee plant breeders a reasonable return on their research work so that there will be incentives for the introduction of new varieties to the Canadian marketplace.

**Whereas** CFFO believes this to be foundational to an entrepreneurial agriculture and support community.

**Whereas** this economic imperative must be balanced by the intrinsic value of the plant life that we mold and shape. Plant life is part of God's creation, of which we are but stewards.

**Whereas** any initiative that promotes an exclusive right for individuals or firms to use plant life degrades the intrinsic value of that life form and it lays a claim on the created environment that goes far beyond our role as stewards.

**Whereas** Canada ratified the 1978 UPOV convention and the current Plant Breeders' Rights Act (PBR Act) is consistent with that convention (International Union for the Protection of New Varieties of Plants).

**Whereas** the Canadian Food Inspection Agency is proposing amendments to the PBR Act to bring Canada's rules into compliance with the 1991 UPOV convention<sup>1</sup>. (Note: Canada has signed the 1991 UPOV signifying Canada's intention to ratify. To enable ratification Canada needs to amend the PBR Act.)

**Whereas** the proposed amendments to the PBR Act make a number of proposals that conflict with past CFFO policy statement and are of concern to CFFO members.

**Therefore be it resolved**

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<sup>1</sup> Supporters of the proposed amendments believe that the amendments will result in increased investment in plant breeding and in an improvement of access to foreign varieties in both agriculture and horticulture.

## **1. Exclusive Rights**

**That** CFFO object to the continuation of exclusive rights in the PBR Act. Exclusive rights are not necessary to guarantee plant breeders a reasonable return on their research.

## **2. Double Dipping**

**That** CFFO object to the removal from the 1978 UPOV the ban on double dipping – protection under both the PBR Act and Patent Act.

## **3. Extension of Plant Breeder's Right**

**That**, if the result of the proposed extensions allows the holder of the breeder's right to claim more fees than would have been the norm if the right had been exercised when the propagated material was first introduced into the marketplace, CFFO object to the extension of plant breeders rights to include:

- the production, reproduction, conditioning, exporting, importing and stocking of propagating material;
- the harvested material (the grain, the fruit, the cut flower); and
- the products of harvested material (flour from the grain, juice from the fruit, perfume from the flower).

(Note: The scope of a breeder's rights in the current PBR Act includes the breeder's exclusive prior authorization for the production for the purposes of commercial marketing, the offering for sale, and the marketing of the reproductive material of the variety. The proposed extensions appear to apply only if breeders have not exercised their rights in relation to the propagated material or if the variety is propagated without their consent. But, it is unclear whether the result just allows for claiming the missed value at point of entry into the marketplace or creates a whole new opportunity to collect much more value at a different point in the value chain.)

## **4. Farmer's Privilege**

**That** CFFO support the continued right of farmers to save and use their own seed. Saving propagating material of a protected variety for own use should not be against the law. This should apply to all crops: cereals, potatoes, fruit, etc.<sup>2</sup>

## **5. Extension of Duration of Breeder's Rights**

**That** CFFO object to the extension of protection from 18 to 20 years for all varieties except vines, forest trees, fruit trees, ornamental trees and root stock, and object to the extension of protection from 18 to 25 years for vines, forest trees, fruit trees, ornamental trees and root stock.

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<sup>2</sup> The 1991 UPOV allows for adopting the farmer's privilege as an exception to the breeder's right.

## **6. Essentially Derived Varieties**

**That** CFFO support the extension of compulsory licencing to essentially derived varieties, defined as predominantly derived from the initial variety.

## **7. Compulsory Licencing**

**That** CFFO supports legislation that provides for the payment of a compulsory license fee to breeders by all those who wish to use a new life form during its first 7 years of registration. This is a concept of universal access with a legislated right to receive a royalty fee. A commission established under the legislation should guarantee that the royalties are paid, especially for smaller seed producers. CFFO would agree to let the marketplace play a role in setting royalty levels, but not at the expense of universal access.

*Adopted by Provincial Council  
Christian Farmers Federation of Ontario  
January 26, 2005*

### **Notes:**

- The Canadian Food Inspection Agency's "Consultation Discussion Paper" can be found at <http://www.inspection.gc.ca/english/plaveg/pbrpov/ammende.shtml>
- The Plant Breeders' Rights Act provides legal protection to plant breeders for new, distinct, uniform and stable (DUS) varieties.
- CFFO adopted a statement on Plant Breeders' Rights in 1988. Some of the language in this statement has been cribbed from the 1988 one.