



## PLANT BREEDERS' RIGHTS

**Plant breeders' rights (PBR)** are a form of intellectual property protection that allows plant breeders to protect new varieties of plants, similar to the way an invention can be protected with a patent. When a PBR certificate is granted for a variety, the holder has **legal protection** in the marketplace and may seek compensation if the variety is used without authorization.

The holder also has exclusive rights over the sale, production, reproduction, import, export, stocking and conditioning of their variety's propagating material (e.g. seeds or cuttings). If the holder is unable to exercise these rights on the propagating material, they may exercise the rights on harvested material (e.g. grain or fruit).

### To be protected by PBR, a variety must be:

- **new:** before you can file an application for a variety in Canada, that variety may not have been sold longer than 1 year in Canada and 4 years outside Canada, with the exception of trees and vines, which can be sold up to 6 years outside Canada
- **distinct:** a variety must be distinct from varieties whose existence was of common knowledge on the date of filing of the PBR application
- **uniform:** a variety must be sufficiently uniform in its characteristics
- **stable:** a variety must express the same characteristics from generation to generation

### APPLICATION PROCESS

You may file an application for a PBR certificate with the Plant Breeders' Rights Office (PBRO) at the Canadian Food Inspection Agency. You must then request an examination of your new variety, and if you decide to conduct the trials in Canada, a PBRO examiner will examine them. The PBRO will then publish the details of the application in the *Plant Varieties Journal*, and if no objections against the application are received within 6 months, the variety will become eligible for PBR protection.

PBR are not only limited to Canada, as similar protection can be obtained in other member countries of the International Union for the Protection of New Varieties of Plants (UPOV).

**Term of protection:** PBR are valid for up to 25 years (in the case of a tree or vine) and 20 years (in any other case) from the certificate's issue date. For more information on PBR fees, consult the Canadian Food Inspection Agency's Guide to Plant Breeders' Rights in Canada.

## DID YOU KNOW?

You can file a plant variety protection application online using the UPOV PRISMA system at [upov.int/upovprisma](http://upov.int/upovprisma).

**Provisional protection** is a form of interim protection granted from the application's filing date to the date the PBR certificate is issued. Under certain conditions, it enables a PBR applicant to seek remuneration from any person who carries out acts without authorization while the application is pending grant of rights.

A plant breeder who obtains PBR usually collects royalties each time propagating material of the protected plant variety is sold, similar to the way an author collects royalties on a copyrighted book.

Your filing date in the first UPOV member country is important and may be useful in **claiming priority** (i.e. backdating) when you file in other UPOV member countries. Claiming priority means your application can be backdated, up to 12 months, to the date you first filed in a UPOV member country. You must make a request to claim priority when you file your application.



## OBTAINING A PBR CERTIFICATE

In **Canada**, it is possible to sell a variety in the marketplace for up to 1 year before filing a PBR application. After the first commercialization in a UPOV member country, you can file an application in Canada within 4 years, except for trees and vines, for which you have 6 years. If you have sold your variety for a longer time, the variety becomes ineligible for protection as it is no longer considered "new."

If you are not a resident of Canada, you must hire a **PBR agent residing in Canada** to represent you in all matters related to obtaining and maintaining PBR.

## BENEFITS TO HOLDERS AND PRODUCERS

PBR allow the holder to:

- control the sale, production, reproduction, import, export, conditioning and stocking of their variety
- exercise their rights on harvested material (grain, fruit, etc.) when propagating material has been used without authorization
- seek civil recourse against individuals or companies that have sold the protected variety without authorization
- receive royalties to be fairly compensated in order to recuperate their initial investments and to encourage reinvestment in plant breeding

PBR help the producer to:

- be competitive in national and international markets
- secure greater access to foreign plant varieties
- increase access to a greater number and diversity of varieties
- ensure a positive business environment for continued investment in plant breeding, and the release of new and improved varieties

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## ENFORCING YOUR RIGHTS

Monitor the marketplace for any unauthorized use of your new variety and its denomination (variety name). Enforcement is the responsibility of the certificate holder.



For more information about PBR, please consult the Canadian Food Inspection Agency's Guide to Plant Breeders' Rights in Canada.

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