



# 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 over propagating material (e.g. seeds or cuttings) of their variety. If the holder is unable to exercise these rights on the propagating material, he/she may exercise the rights on harvested material (e.g. grain or fruit).

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

- 1 **New** – Prior to filing an application for a variety in Canada, a variety may not have been sold longer than one year in Canada and 4 years outside of Canada, with the exception of trees and vines, which can be sold up to 6 years outside of Canada.
- 2 **Distinct** – A variety must be distinct from varieties whose existence was of **common knowledge** on the date of filing of the PBR application.
- 3 **Uniform** – A variety must be sufficiently uniform in its characteristics.
- 4 **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. Subsequently, you must request an examination of your new variety, and if you decide to conduct the trials within Canada, the trials will be examined by a PBRO examiner. 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 the 6-month period, the variety becomes 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 a period of 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.

## PBRO FEES

Type of fee	Amount
Filing of an application	\$250
Examination of an application	\$750
Issuance of a certificate	\$500
Annual renewal	\$300



## DID YOU KNOW?

A plant variety protection application may be filed **online** using the UPOV PRISMA system ([www.upov.int/upovprisma](http://www.upov.int/upovprisma)).

**Provisional protection** is a form of interim protection granted from the filing date of the application, to the date when 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 an important date, and may be useful in **claiming priority** (i.e. backdating) when filing in other UPOV member countries. Claiming priority means your application can be backdated, up to 12 months, to the date of first filing in a UPOV member country. A request to claim priority must be made at the time your application is filed.



## OBTAINING A PBR CERTIFICATE

In **Canada**, it is possible to sell a variety in the marketplace for up to one year before filing a PBR application. After first commercialization in a UPOV member country, you are able to 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 are required to 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:

- 1 Control the sale, production, reproduction, import/export, conditioning, and stocking of their variety.
- 2 Exercise their rights on harvested material (grain, fruit, etc.) when unauthorized use of propagating material has occurred.
- 3 Seek civil recourse from individuals or companies that have not been authorized to sell the protected variety.
- 4 Receive royalties to be fairly compensated in order to recuperate their initial investments, and encourage further reinvestment in plant breeding.

PBR help THE PRODUCER to:

- 1 Be competitive in national and international markets.
- 2 Secure greater access to foreign plant varieties.
- 3 Increase access to a greater number and diversity of varieties.
- 4 Ensure a positive business environment for continued investment in plant breeding, and the release of new and improved varieties.

### ENFORCING YOUR RIGHTS

Watch the market closely for any infringement of your rights regarding your new variety and its denomination (variety name). It is the responsibility of the certificate holder to enforce their PBR in the marketplace.

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

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