

Plant Breeders' Rights Act

(S.C. 1990, c. 20)

(as amended up to February 27, 2015)

Assented to 1990-06-19

An Act respecting plant breeders' rights

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Plant Breeders' Rights Act*.

Interpretation

Definitions

2 (1) In this Act,

advertise, in relation to a plant variety, means to distribute to members of the public or to bring to their notice, in any manner whatever, any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention of promoting the sale of any propagating material of the plant variety, encouraging the use thereof or drawing attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise acquired; (*publicité*)

advisory committee means such advisory committee as may be constituted pursuant to subsection 73(1); (*comité consultatif*)

agent, in relation to an applicant or a holder of plant breeder's rights, means a person who is duly authorized by the applicant or holder to act, for the purposes of this Act, on behalf of the applicant or holder and to whom as a person so authorized recognition is, consistent with any requirements prescribed therefor, accorded by the Commissioner; (*mandataire*)

agreement country means any of the following entities that is designated by the regulations as an agreement country with a view to the fulfilment of an agreement concerning the rights of plant breeders made between Canada and that entity:

- (a) a country,
- (b) a colony, protectorate or territory subject to the authority of another country or under its suzerainty,
- (c) a territory over which another country exercises a mandate or trusteeship;
(*pays signataire*)

applicant means a person by or on behalf of whom an application for the grant of plant breeder's rights is made pursuant to section 7; (*requérant*)

breeder, in respect of a plant variety, means

- (a) any person who originates or who discovers and develops the plant variety, or
- (b) any person in respect of whom an officer, servant or employee, while acting within the scope of his or her duties as the officer, servant or employee of that person, originates or discovers and develops the plant variety; (*obtenteur*)

category means, in relation to a plant, a species, a grouping of species or any class within a species; (*catégorie*)

Commissioner means the Commissioner of Plant Breeders' Rights designated pursuant to subsection 56(2) and, except in section 56, includes any person acting under a written authorization given pursuant to section 58; (*directeur*)

country of the Union means any country or other entity that is a party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended from time to time, or any WTO Member as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*; (*État de l'Union*)

document means anything on which information that is capable of being understood by a person, or read by a computer or other device, is recorded or marked;
(*document*)

filing date means, in respect of an application, the date specified in the notice given under subsection 10(2); (*date de dépôt*)

holder, in relation to plant breeder's rights, means the person whom the register indicates, with respect to a plant variety, is entitled to the plant breeder's rights respecting that variety by a grant made under section 27 or is an assignee of, or other successor in title to, the rights granted under that section in respect of that variety; (*titulaire*)

index means the index prepared pursuant to section 62; (*répertoire*)

infringement, in relation to plant breeder's rights, means the doing, without authority under this Act, of anything that the holder of those rights has the right to do under any of sections 5 to 5.2; (*violation*)

legal representative, in respect of a breeder of a plant variety, includes the breeder's executor or administrator and any assignee of, or other successor in title to, the rights of the breeder in respect of the plant variety; (*représentant légal*)

Minister means the Minister of Agriculture and Agri-Food; (*ministre*)

new variety means a plant variety that is described in subsection 4(3); (*obtention végétale*)

person has the same meaning as in section 2 of the *Criminal Code*; (*personne*)

plant breeder's rights, in relation to a plant variety, means the rights that are granted under section 27; (*certificat d'obtention*)

plant variety means any plant grouping within a single botanical taxon of the lowest known rank that, whether or not the conditions for the grant of plant breeder's rights are fully met, is capable of being

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of those characteristics, and

(c) considered as a unit with regard to its suitability for being reproduced

unchanged; (*variété végétale*)

prescribed means prescribed by regulation; (*Version anglaise seulement*)

propagating material means any reproductive or vegetative material for propagation, whether by sexual or other means, of a plant variety, and includes seeds for sowing and any whole plant or part thereof that may be used for propagation; (*matériel de multiplication*)

protective direction [Repealed, 2015, c. 2, s. 2]

register means the register kept pursuant to section 63; (*registre*)

sell includes agree to sell, or offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or agree to exchange or to dispose of to any person in any manner for a consideration. (*vente*)

(2) [Repealed, 2015, c. 2, s. 2]

1990, c. 20, s. 2; 1994, c. 38, s. 25; 1997, c. 6, s. 75; 2015, c. 2, s. 2.

Her Majesty

Act binds Crown

3 This Act is binding on Her Majesty in right of Canada or a province.

Conditions for Protection

Eligible plant varieties

4 (1) Plant breeder's rights may not be granted except in respect of a plant variety that belongs to a prescribed category and meets all of the conditions set out in subsection (2).

Conditions

(2) Plant breeder's rights may be granted in respect of a plant variety if it

(a) is a new variety;

(b) is, by reason of one or more identifiable characteristics, clearly distinguishable from all varieties whose existence is a matter of common knowledge at the filing date of the application for the grant of plant breeder's rights respecting that plant variety;

(c) is stable in its essential characteristics in that after repeated propagation or, if the applicant has defined a particular cycle of propagation, at the end of each cycle it remains true to its description; and

(d) is, having regard to the particular features of its sexual reproduction or vegetative propagation, a sufficiently homogeneous variety.

New variety

(3) A plant variety is a new variety if the propagating or harvested material of that variety has not been sold by, or with the concurrence of, the breeder of that variety or the breeder's legal representative

(a) in Canada, before

(i) the prescribed period preceding the filing date of the application for the grant of plant breeder's rights, in the case of a variety belonging to a recently prescribed category, and

(ii) the period of one year before the filing date of the application for the grant of plant breeder's rights, in the case of any other variety; and

(b) outside Canada, before

(i) the period of six years before the filing date of the application for the grant of plant breeder's rights, in the case of a tree or vine, and

(ii) the period of four years before the filing date of the application for the grant of plant breeder's rights, in any other case.

Definition of *sufficiently homogeneous variety*

(4) For the purposes of paragraph (2)(d), ***sufficiently homogeneous variety*** means a variety for which, in the event of its sexual reproduction or vegetative propagation in substantial quantity, any variations in characteristics of the plants so reproduced or propagated are predictable, capable of being described and commercially acceptable.

Regulations

(5) The Governor in Council may make regulations prescribing classes of sales that

are not to be considered sales for the purposes of subsection (3).

1990, c. 20, s. 4; 2015, c. 2, s. 3.

Plant Breeder's Rights

Nature of plant breeder's rights

5 (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right

- (a)** to produce and reproduce propagating material of the variety;
- (b)** to condition propagating material of the variety for the purposes of propagating the variety;
- (c)** to sell propagating material of the variety;
- (d)** to export or import propagating material of the variety;
- (e)** to make repeated use of propagating material of the variety to produce commercially another plant variety if the repetition is necessary for that purpose;
- (f)** in the case of a variety to which ornamental plants belong, if those plants are normally marketed for purposes other than propagation, to use any such plants or parts of those plants as propagating material for the production of ornamental plants or cut flowers;
- (g)** to stock propagating material of the variety for the purpose of doing any act described in any of paragraphs (a) to (f); and
- (h)** to authorize, conditionally or unconditionally, the doing of any act described in any of paragraphs (a) to (g).

Royalty

(2) Without prejudice to any rights or privileges of the Crown, an authorization conferred under paragraph 1(h) may be subject to a condition to pay royalty to the holder of the plant breeder's rights whether or not the holder is Her Majesty in right of Canada or a province.

1990, c. 20, s. 5; 2015, c. 2, s. 5.

Rights respecting harvested materials

5.1 Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(a) to (h) in respect of any harvested material, including whole plants or parts of plants, that is obtained through the unauthorized use of propagating material of the plant variety, unless the holder had reasonable opportunity to exercise his or her rights under section 5 in relation to that propagating material and failed to do so before claiming rights under this section.

2015, c. 2, s. 5.

Rights respecting certain other varieties

5.2 (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(a) to (h) in respect of

(a) any other plant variety that is essentially derived from the plant variety if the plant variety is not itself essentially derived from another plant variety;

(b) any other plant variety that is not clearly distinguishable from the plant variety;
and

(c) any other plant variety whose production requires the repeated use of the plant variety.

Meaning of essentially derived

(2) For the purpose of paragraph (1)(a), a plant variety is essentially derived from another plant variety (in this subsection referred to as the "initial variety") if

(a) it is predominantly derived from the initial variety or from a plant variety that is itself predominantly derived from the initial variety and it retains the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(b) it is clearly distinguishable from the initial variety; and

(c) it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences that result from its derivation from the initial variety.

2015, c. 2, s. 5.

Non-application of rights

5.3 (1) The rights referred to in sections 5 to 5.2 do not apply to any act done

- (a) privately and for non-commercial purposes;
- (b) for experimental purposes; or
- (c) for the purpose of breeding other plant varieties.

Farmers' privilege

(2) The rights referred to in paragraphs 5(1)(a) and (b) and — for the purposes of exercising those rights and the right to store — the right referred to in paragraph 5(1)(g) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer's holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety.

2015, c. 2, s. 5.

Non-application of rights

5.4 (1) The rights referred to in sections 5 to 5.2 do not apply to any act done in relation to material of a plant variety after the material has been sold in Canada by the holder or with the holder's consent, unless that act involves

- (a) the further propagation of the plant variety; or
- (b) the export of material of the plant variety to a country that does not protect varieties of the plant genus or species to which the exported plant variety belongs if the exported material is not intended for consumption.

Definition of *material*

(2) For the purpose of subsection (1), ***material*** means propagating material and harvested material, including whole plants and parts of plants.

2015, c. 2, s. 5.

Term of plant breeder's rights

6 (1) The term of the grant of plant breeder's rights, subject to earlier termination under this Act, shall be a period of 25 years in the case of a tree, a vine or any category specified by the regulations and 20 years in any other case. The period begins on the day on which the certificate of plant breeder's rights is issued.

Payment of annual fee

(2) A holder of plant breeder's rights shall, during the term of the grant of those rights, pay to the Commissioner, within the prescribed time, the prescribed annual fee.

1990, c. 20, s. 6; 2015, c. 2, s. 5.

Applications for Plant Breeder's Rights

Application for plant breeder's rights

7 (1) A breeder or the breeder's legal representative may make an application to the Commissioner for the grant of plant breeder's rights respecting a plant variety if, in the case of an individual, the breeder or legal representative is a citizen of, or is resident in, Canada, a country of the Union or an agreement country or, in the case of a person that is not an individual, the breeder or legal representative has an establishment in Canada, a country of the Union or an agreement country.

If two or more breeders

(2) If a plant variety is bred by two or more breeders otherwise than independently of each other, the persons entitled to make an application for the grant of plant breeder's rights respecting that variety may make an application jointly and, if any of those persons refuses to do so or information regarding their whereabouts cannot be obtained through diligent inquiry, the remainder of those persons may make an application for that grant.

1990, c. 20, s. 7; 2015, c. 2, s. 6.

8 [Repealed, 2015, c. 2, s. 6]

How application to be made

9 (1) An application for the grant of plant breeder's rights must

- (a)** include the prescribed information and be made in the prescribed manner;
- (b)** be accompanied by the prescribed fee;
- (c)** be supported by the prescribed documents and any other prescribed material;
and
- (d)** in the case where the applicant wishes to request that those rights be exempted from compulsory licensing under subsection 32(1), include the request and his or her reasons for it.

Agent required for non-resident applicant

(2) An applicant that, in the case of an individual, is not resident in Canada and, in the case of a person that is not an individual, does not have an establishment in Canada shall submit the application through an agent resident in Canada.

1990, c. 20, s. 9; 2015, c. 2, s. 7.

Filing date of application

10 (1) Subject to subsection 11(1), the filing date of an application for the grant of plant breeder's rights is the date on which the Commissioner has received, in respect of the application, all of the information, fees, documents and other materials that are required by subsection 9(1).

Notice of filing date

(2) The Commissioner shall send to the applicant a notice specifying the filing date.

1990, c. 20, s. 10; 2015, c. 2, s. 7.

Priority when breeders breed independently

10.1 In the case of two or more applications respecting a plant variety whose breeders bred it independently of each other, priority shall be given to the application with the earliest filing date. If the filing dates of the applications are the same, priority shall be given to the application pertaining to the breeder that was first in a position to apply for the plant breeder's rights respecting the variety or that would have been first in the position to do so if the provisions under this Act for so doing had always been in force.

2015, c. 2, s. 7.

Priority when preceding application in country of Union or agreement country

11 (1) If an application made under section 7 is preceded by another application made in a country of the Union or an agreement country for protection in respect of the same plant variety and the same breeder, the filing date of the application made under section 7 is deemed to be the date on which the preceding application was made in that country of the Union or agreement country and, consequently, the applicant is entitled to priority in Canada despite any intervening use, publication or application respecting the variety if

- (a)** the application is made in the prescribed form within 12 months after the date on which the preceding application was made in that country of the Union or agreement country; and

(b) the application is accompanied by a claim respecting the priority and by the prescribed fee.

Confirmation of claim to priority

(2) A claim respecting priority based on a preceding application made in a country of the Union or an agreement country shall not be allowed unless, within three months after the date that would be the filing date of the application if there were no claim respecting priority, the claim is confirmed by filing with the Commissioner a copy, certified as correct by the appropriate authority in that country of the Union or agreement country and accompanied by an English or French translation of the certified copy, if made in any other language, of each document that constituted the preceding application.

Supporting evidence

(3) An applicant that is given priority shall provide, within a period of three years after the date on which the preceding application was made in the country of the Union or agreement country, evidence that the applicant has begun the tests and trials with the plant variety referred to in subsection 23(2).

Two or more preceding applications

(4) If an application made under section 7 is preceded by two or more applications made in different countries of the Union or agreement countries for protection in respect of the same plant variety and the same breeder, only the first of those preceding applications is to be taken into account for the purposes of subsection (1).

1990, c. 20, s. 11; 2015, c. 2, s. 7.

Priority conditional on residence, etc.

12 (1) No claim referred to in paragraph 11(1)(b) shall be based on any preceding application unless it was made by a person who, at the time of the application, was entitled to make an application under subsection 7(1).

When previous application disregarded

(2) For the purposes of subsection 11(1), no account shall be taken of an application that was made in a country outside Canada at a time when the plant variety to which the application relates did not belong to a prescribed category.

1990, c. 20, s. 12; 2015, c. 2, s. 8.

Priority established over previous grant

13 Where priority for an application is established pursuant to this Act, the Commissioner shall refuse any application against which the priority is established or, if the priority against it is established after granting on it any plant breeder's rights, the Commissioner shall annul the grant and section 36 and paragraph 70(3)(b) apply, with such modifications as the circumstances require, in respect of the annulment.

Denominations

Designation of denominations

14 (1) A plant variety in respect of which an application for the grant of plant breeder's rights is made shall be designated by means of a denomination proposed by the applicant and approved by the Commissioner.

Rejection of proposed denomination

(2) Where a denomination is proposed pursuant to subsection (1), the Commissioner may, during the pendency of the application referred to in that subsection, reject the proposed denomination, if considered unsuitable for any reasonable cause by the Commissioner, and direct the applicant to submit a suitable denomination instead.

Suitable denomination

(3) A denomination, in order to be suitable pursuant to this section, must conform to the prescribed requirements and must not be such as to be likely to mislead or to cause confusion concerning the characteristics, value or identity of the variety in question or the identity of its breeder.

International uniformity of denomination

(4) A denomination that the Commissioner approves for any plant variety in respect of which protection has been granted by, or an application for protection has been submitted to, the appropriate authority in a country of the Union or an agreement country must, subject to subsections (2), (3) and (5), be the same as the denomination with reference to which that protection has been granted or that application submitted.

Change of denomination

(5) A denomination approved by the Commissioner pursuant to this section may be changed with the Commissioner's approval in the prescribed circumstances and manner.

Denomination must be recognizable

(6) Where a trade-mark, trade name or other similar indication is used in association with a denomination approved by the Commissioner pursuant to this section, the denomination must be easily recognizable.

1990, c. 20, s. 14; 2015, c. 2, s. 10.

Approved denomination to be used exclusively

15 After the grant of plant breeder's rights respecting any plant variety, and even after the expiry of the term of the grant of those rights, every person who is designating the variety for the purposes of the sale of propagating material of the variety shall use the denomination approved by the Commissioner.

1990, c. 20, s. 15; 2015, c. 2, s. 11.

Prior rights not prejudiced

16 Nothing in section 14 or 15 authorizes or requires any person to use, or the Commissioner to approve any person's use of, a denomination to the prejudice of any prior right of another person to the use of any designation.

Direction to change denomination

16.1 If, after the grant of plant breeder's rights respecting any plant variety, the Commissioner has reasonable grounds to believe that the use of the denomination is unsuitable or that the prior rights of another person are prejudiced by its use, the Commissioner may direct the holder to change the denomination, subject to the Commissioner's approval of the new denomination.

2015, c. 2, s. 12.

Summary Disposition of Applications

Rejection of application

17 (1) The Commissioner may reject an application for the grant of plant breeder's rights if the application is not consistent with any provision of this Act or the regulations, including if the plant variety in respect of which the application is made is not a new variety or if the applicant is not entitled to apply under section 7.

Opportunity for representations before application rejected

(2) The Commissioner shall not reject the application of a person for the grant of plant breeder's rights without first giving the person notice of the objections to it and of the grounds for those objections as well as a reasonable opportunity to make representations with respect thereto.

1990, c. 20, s. 17; 2015, c. 2, s. 13.

Amendment of application

18 An applicant may, within the period prescribed for so doing, or with leave given by the Commissioner at the applicant's request after the expiry of that period, add to or alter the denomination proposed by that applicant under section 14 or the description of the plant variety for the purposes of the application.

1990, c. 20, s. 18; 2015, c. 2, s. 14.

Provisional Protection

Applicant's rights

19 (1) Subject to subsection (2), an applicant for the grant of plant breeder's rights in respect of a plant variety has, as of the filing date of the application, the same rights in respect of the variety that he or she would have under sections 5 to 5.2 if plant breeder's rights were to be granted.

When rights in effect

(2) If the applicant is granted plant breeder's rights, the applicant is, in respect of the period beginning on the filing date and ending on the date on which the plant breeder's rights are granted, entitled to equitable remuneration from any person who, having been notified in writing by the applicant that the application for those rights has been filed under this Act, carried out acts that require the authorization of the applicant.

1990, c. 20, s. 19; 2015, c. 2, s. 14.

Rights extinguished

20 (1) The rights granted under section 19 cease if the application is withdrawn by the applicant, is rejected or refused or is deemed to have been abandoned under section 26.

Reinstatement of application

(2) Despite subsection (1), if an application that is deemed to have been abandoned is subsequently reinstated, the rights granted under section 19 are deemed never to have ceased.

1990, c. 20, s. 20; 2015, c. 2, s. 14.

Filing date — claim respecting priority

21 For the purposes of sections 19 and 20, with respect to an applicant that has made a claim respecting priority under section 11, the filing date is the date that would be the filing date of the application if there were no claim respecting priority.

1990, c. 20, s. 21; 2015, c. 2, s. 14.

Consideration and Disposition of Applications

Making objection to application

22 (1) A person who considers that an application in respect of which particulars have been published under section 70 ought to be refused on any ground that constitutes a basis for rejection under section 17 or that a request in the application for an exemption from compulsory licensing ought to be refused, may, on payment of the prescribed fee, file with the Commissioner, within the prescribed period beginning on the date of publication, an objection specifying that person's reasons. The prescribed fees are not required in the case of an objection made for the purpose of this subsection under the authority of the Minister of Industry after notice under subsection 70(2).

Copy of objection to be sent to applicant

(2) As soon as practicable after the filing of an objection pursuant to subsection (1), the Commissioner shall send a copy of the objection to the person in respect of whose application the objection is filed, unless the Commissioner rejects the objection in accordance with subsection (3).

Rejection of objection

(3) Where it appears to the Commissioner that there is good reason for rejecting an objection referred to in subsection (2), the Commissioner shall give the person making the objection a reasonable opportunity to show cause why the objection should not be rejected and, if the person shows the Commissioner no such cause, the Commissioner shall reject the objection and give notice accordingly to the person.

Representations by objector and applicant

(4) If the objection is not rejected in accordance with subsection (3), the Commissioner shall give the person making the objection and the person in respect of whose application the objection is filed a reasonable opportunity to make representations with respect to the objection and shall take those representations into account before making the decision to refuse the application or to grant plant breeder's rights with or without an exemption from compulsory licensing.

Upholding objection

(5) Where the Commissioner upholds an objection made under this section, the Commissioner shall refuse the application or request therein for exemption accordingly.

1990, c. 20, s. 22; 1995, c. 1, s. 52; 2015, c. 2, s. 15.

Consideration of applications

23 (1) After the publication under section 70 of the particulars of an application, the Commissioner shall, in order to ascertain whether it conforms to this Act, consider the application and all documents and any other material that are submitted to the Commissioner in connection with the application.

Tests and trials

(2) For the purpose of determining if the plant variety to which the application relates meets the requirements set out in section 4, the Commissioner shall require the performance of any tests and trials with the plant variety, under any conditions, as the Commissioner considers necessary.

Fee and materials

(3) The person on whose part material is submitted for consideration under subsection (1) shall, without prejudice to the requirements of subsection 9(1) and at the time and place that the Commissioner directs,

(a) pay the appropriate prescribed examination fee;

(b) provide any of the following that the Commissioner considers necessary for the purposes of carrying out or evaluating the results of tests and trials with the plant variety in question:

(i) propagating materials,

(ii) information, whether by way of photographs, drawings, documentation or

otherwise, respecting the plant variety, and

(iii) specimens of the plant variety or of parts of it; and

(c) provide any prescribed information, documents or materials.

1990, c. 20, s. 23; 2015, c. 2, s. 16.

Acceptance of foreign results

24 (1) If the Commissioner obtains from an appropriate authority in any country of the Union or agreement country the official results of tests and trials referred to in subsection 23(2) and the Commissioner considers them to be acceptable, the Commissioner may rely on those results. The person on whose part material is submitted for consideration under subsection 23(1) shall pay the costs incurred in obtaining those results.

Submission to foreign tests and trials

(2) The Commissioner may submit to the appropriate authority in a country of the Union or an agreement country, in order that any necessary tests and trials may be undertaken in that country with the plant variety in question, anything furnished in support, as required by subsection 9(1), of an application or in compliance with subsection 23(3) and the Commissioner may accept such results of any of the tests and trials as are furnished by that authority.

1990, c. 20, s. 24; 2015, c. 2, s. 17.

Prohibition during pendency of objection

25 Subject to the regulations, where an objection to an application has been filed under section 22, the Commissioner shall not, before disposal of the objection, carry out in respect of the application any functions of the Commissioner under section 23 or 24.

Abandonment of application

26 (1) An application shall be deemed to have been abandoned on failure of the applicant to prosecute the application, whether in default of compliance with subsection 23(3) or of payment of any fee pursuant to subsection 27(3) or otherwise, within the prescribed period after the taking on the part of the Commissioner, with respect to the application, of any action of which the Commissioner gives notice to the applicant.

Reinstatement of abandoned application

- (2)** An application deemed abandoned pursuant to subsection (1) may be reinstated
- (a)** within the prescribed time and on payment of the prescribed fee; or
 - (b)** on petition presented to the Commissioner within the prescribed time subsequent to the time referred to in paragraph (a) and on payment of the prescribed fee if the petitioner satisfies the Commissioner that the failure to prosecute the application was not reasonably avoidable.

1990, c. 20, s. 26; 2015, c. 2, s. 18(F).

Grant, Refusal and Disposal of Plant Breeder's Rights

Decision of Commissioner

27 (1) If the Commissioner approves a denomination proposed by an applicant under section 14 and, after consideration of the application in accordance with subsection 23(1) and evaluation of the results of any tests and trials carried out with the plant variety to which the application relates, the Commissioner is satisfied that the plant variety meets the requirements set out in section 4 and that the application otherwise conforms to this Act, the Commissioner shall grant plant breeder's rights in accordance with subsection (3).

Refusal

(2) If the Commissioner is not satisfied as described in subsection (1), the Commissioner shall refuse the application.

Request for exemption

(2.1) In the case where the applicant for plant breeder's rights has requested that those rights be exempted from compulsory licensing under subsection 32(1), the Commissioner may, at the time of the grant of those rights, approve that request if the Commissioner is satisfied with the reasons given by the applicant for that request.

Rights granted by issuance of certificate

- (3)** The Commissioner shall, on payment of the prescribed fee,
- (a)** enter in the register the particulars required by section 63 in relation to the plant variety in respect of which the plant breeder's rights are to be granted; and

(b) make the grant by issuing a certificate of plant breeder's rights in respect of the plant variety to the applicant.

Opportunity for representations before refusal of grant

(4) The Commissioner shall not refuse the application of a person for the grant of plant breeder's rights without first giving the person notice of the objections to it and of the grounds for those objections as well as a reasonable opportunity to make representations with respect thereto.

Destroyed or lost certificates

(5) If a certificate of plant breeder's rights issued under paragraph (3)(b) is destroyed or lost, a certified copy may be issued in lieu of that certificate on payment of the prescribed fee.

1990, c. 20, s. 27; 2015, c. 2, s. 19.

Grant to joint applicants

28 If the Commissioner grants plant breeder's rights to joint applicants as described in subsection 7(2), the grant shall be in the names of all those joint applicants.

1990, c. 20, s. 28; 2015, c. 2, s. 20.

29 [Repealed, 2015, c. 2, s. 20]

Maintenance of Propagating Material

Maintenance of propagating material

30 (1) A holder of the plant breeder's rights respecting a plant variety shall

(a) ensure that he or she is in a position, throughout the period of his or her registration as the holder, to furnish the Commissioner, on request, with propagating material of that variety that is capable of reproducing that variety so that its identifiable characteristics correspond with those taken into account for the purpose of granting those rights; and

(b) provide the Commissioner at the Commissioner's request with such facilities, free of charge, and with such information as the Commissioner deems necessary in order to be satisfied that the holder is causing the propagating material to be maintained and is otherwise complying with paragraph (a).

Inspection

(2) Facilities requested under paragraph (1)(b) may include facilities for inspection and the Commissioner has power to undertake the inspection accordingly for the purposes of that paragraph.

1990, c. 20, s. 30; 2015, c. 2, s. 21.

Assignment of Plant Breeder's Rights

Assignment of plant breeder's rights

31 (1) The Commissioner shall be, in the prescribed manner and within the prescribed period after the holder of plant breeder's rights has assigned them,

(a) informed of the name and address of the assignee; and

(b) furnished with such proof of service of a notice of the assignment on any person granted any of those rights by licence under section 32 as is prescribed or as the Commissioner, in the absence or in lieu of anything so prescribed or in addition thereto, requires.

Default precluding registration

(2) An assignee who has not complied with subsection (1) may not be registered as the holder of the plant breeder's rights.

Unregistered assignment void against subsequent assignee

(3) An assignment of plant breeder's rights is void against a subsequent assignee thereof for valuable consideration without notice who is registered as the holder of the rights unless, before the subsequent assignee is so registered, the person to whom that assignment is made is registered as holder of the rights.

Compulsory Licences

Grant of compulsory licences

32 (1) Subject to subsections (2) to (6) and the regulations and if the Commissioner considers that it is appropriate to do so, the Commissioner may, on application by any person, authorize the doing of any act described in any of paragraphs 5(1)(a) to (g) by granting the person a compulsory licence.

Objectives on granting compulsory licence

(2) In disposing of an application for, and settling the terms of, a compulsory licence pursuant to this section in relation to any plant variety, the Commissioner shall endeavour to secure that

(a) the plant variety is made available to the public at reasonable prices, is widely distributed and is maintained in quality; and

(b) there is reasonable remuneration, which may include royalty, for the holder of the plant breeder's rights respecting the plant variety.

Provision as regards propagating material

(3) A compulsory licence under this section may include terms requiring the holder of the plant breeder's rights affected by the licence to make propagating material available to the holder of the compulsory licence.

Variation and revocation of licence

(4) The Commissioner may at any time, on representations made by any interested person, extend, limit, vary or revoke a compulsory licence granted pursuant to this section.

Representations by persons adversely affected

(5) The Commissioner shall not dispose of any application for, or settle the terms of, a compulsory licence pursuant to this section or exercise jurisdiction pursuant to subsection (4) without giving interested persons who will be adversely affected by the Commissioner's decision a reasonable opportunity to make representations with respect thereto pursuant to such notice as the Commissioner deems it appropriate to give.

Compulsory licence not to be exclusive

(6) No compulsory licence that is an exclusive licence shall be granted pursuant to this section.

1990, c. 20, s. 32; 2015, c. 2, s. 22.

Concurrent compulsory and other licences permissible

33 (1) A person applying for a compulsory licence may be granted it pursuant to section 32, whether or not that or any other person has a licence, including an exclusive licence granted by the holder, in relation to the plant breeder's rights that the compulsory licence affects.

No contracting out

(2) An agreement is invalid to the extent that it purports to bind any person not to apply for a compulsory licence or to apply for a grant thereof on any particular terms.

Annulment and Revocation of Grants

Annulment of grant

34 The Commissioner may, before the end of the term fixed by subsection 6(1) for a grant of plant breeder's rights, annul the grant if the Commissioner is satisfied that, at the time of the grant of those rights, the requirements set out in section 4 or the conditions set out in subsection 7(1) were not fulfilled or the holder was otherwise not entitled under this Act to the grant.

1990, c. 20, s. 34; 2015, c. 2, s. 23.

Revocation of plant breeder's rights

35 (1) The Commissioner may, prior to the end of the term fixed by subsection 6(1) for a grant of any plant breeder's rights, revoke the rights if the Commissioner is satisfied that

- (a)** their holder has failed to comply with paragraph 30(1)(a);
- (b)** their holder has failed, within the prescribed period, to comply with any request of the Commissioner referred to in section 30;
- (c)** their holder has failed to comply with a direction under section 16.1 to change the denomination of the plant variety to which the rights relate;
- (d)** their holder has failed, within the prescribed period, to pay the fee required under subsection 6(2); or
- (e)** the plant variety which is the subject of those rights no longer meets the conditions described in paragraph 4(2)(c) or (d).

(2) [Repealed, 2015, c. 2, s. 24]

1990, c. 20, s. 35; 2015, c. 2, s. 24.

Procedure

36 (1) The Commissioner shall, before annulling a grant of plant breeder's rights or revoking those rights, give notice in writing that the Commissioner proposes to annul the grant or revoke the rights and the grounds on which the Commissioner proposes to do so to

- (a) the holder of those rights;
- (b) any person licensed under section 32 to exercise any of those rights; and
- (c) any person who appears to the Commissioner to be otherwise sufficiently interested in any of those rights.

Objection

(2) Within

- (a) the prescribed period after the date on which notice is given under subsection (1), or
- (b) such further period as the Commissioner may allow,

any interested person may file with the Commissioner an objection against the intended annulment or revocation to which the notice relates.

Representations to be taken into account

(3) Where, under subsection (2), an interested person files an objection against any intended annulment or revocation, the Commissioner shall not carry out the intention or otherwise dispose of the objection unless the Commissioner has taken into account any representations made by interested persons with respect to the matters in question.

Opportunity to object and make representations

(4) Interested persons having objections to file in accordance with subsection (2) or representations to make for the purposes of subsection (3) shall be given a reasonable opportunity to do so pursuant to such notice as the Commissioner deems appropriate, but nothing in this subsection prejudices the requirements of subsection (1).

1990, c. 20, s. 36; 2015, c. 2, s. 25(F).

Carrying out annulment or revocation

37 The Commissioner's intention to annul the grant of plant breeder's rights pursuant to section 34 or to revoke them pursuant to section 35 shall be carried out on the grounds set out in the notice referred to in subsection 36(1) unless the grounds are shown to be false or, in the case of grounds specified in paragraphs 35(1)(b) to (e), any other cause considered by the Commissioner to be sufficient for abandoning that intention is shown.

Surrender of Plant Breeder's Rights

Surrender of plant breeder's rights

38 (1) The holder of the plant breeder's rights respecting a plant variety may surrender those rights by giving the Commissioner notice to that effect and, in the case of rights affected by a compulsory licence granted under section 32, by satisfying the Commissioner that a copy of the notice has been given to the holder of that licence.

Fees due not affected

(2) No surrender of plant breeder's rights shall affect any liability for any fee due and payable in respect of those rights before the surrender.

1990, c. 20, s. 38; 2015, c. 2, s. 26(F).

Agents

No residency or establishment

39 (1) If a holder of plant breeder's rights, in the case of an individual, is not resident in Canada or, in the case of a person that is not an individual, does not have an establishment in Canada, the holder shall have an agent in respect of those rights who is resident in Canada.

Where agent lacking

(2) Notwithstanding anything in this Act, where an applicant or a holder of plant breeder's rights fails to

(a) comply with subsection 9(2) or subsection (1), or

(b) furnish the Commissioner, in writing, with the name and address of a new agent or with a new and correct address, as the case may require, on notice from the Commissioner that

(i) the agent of the applicant or holder has died or, pursuant to section 40, is refused continued recognition by the Commissioner, or

(ii) a letter sent by ordinary mail to the agent of the applicant or holder at the agent's address of which the Commissioner last had notice has been returned undelivered,

the Commissioner or the Federal Court may, without requirement of service on the applicant or holder, dispose of any proceedings under this Act after the continuance of that failure for the prescribed period or any further period allowed by the Commissioner or the Federal Court, as the case may be.

Other consequences not affected

(3) Nothing in subsection (2) affects any consequences, other than those for which that subsection provides, that the applicant or holder may, at law, suffer as a result of any failure described in paragraph (2)(a) or (b).

1990, c. 20, s. 39; 2015, c. 2, s. 27.

Refusal of recognition

40 The Commissioner may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Commissioner to be sufficient, refuse to recognize, or to continue to recognize, any person as authorized by an applicant or a holder of plant breeder's rights to act in the capacity of agent.

Civil Remedies

Infringement

41 (1) A person who infringes plant breeder's rights is liable to the holder thereof and to all persons claiming under the holder for all damages that are, by reason of the infringement, sustained by the holder or any of those persons and, unless otherwise expressly provided, the holder shall be made a party to any action for the recovery of those damages.

Relief in the event of infringement

(2) In an action for infringement of plant breeder's rights that is before a court of competent jurisdiction, the court or a judge thereof may make any interim or final order sought by any of the parties and deemed just by the court or judge, including provision for relief by way of injunction and recovery of damages and generally respecting proceedings in the action and, without limiting the generality of the foregoing, may make an order

(a) for restraint of such use, production or sale of the subject-matter of those rights as may constitute such an infringement and for punishment in the event of disobedience of the order for that restraint;

- (b) for compensation of an aggrieved person;
- (c) for and in respect of inspection or account; and
- (d) with respect to the custody or disposition of any offending material, products, wares or articles.

Appeals

(3) An appeal lies from any order under subsection (2) under the same circumstances and to the same court as from other judgments or orders of the court in which the order is made.

1990, c. 20, s. 41; 2015, c. 2, s. 28(F).

Jurisdiction of provincial courts

42 (1) An action for infringement of plant breeder's rights may be brought in the court of record that, in the province in which the infringement is alleged to have occurred, has jurisdiction pecuniarily to the amount of the damages claimed and that, in relation to other courts of the province, holds its sittings nearest to the place of residence or place of business of the defendant.

Proof of jurisdiction

(2) The court in which an action is brought in accordance with subsection (1) shall decide the action and determine costs, and assumption of jurisdiction by the court is of itself sufficient proof of jurisdiction.

Section 43 not impaired

(3) Nothing in this section impairs the jurisdiction of the Federal Court under section 43.

Jurisdiction of Federal Court

43 (1) The Federal Court has jurisdiction to entertain an action or proceeding, other than the prosecution of an offence, for the enforcement of a provision of this Act or a right or remedy conferred or defined thereby.

Idem

(2) Subject to section 44, the Federal Court has exclusive original jurisdiction, on the application of the Commissioner or of any interested person, to order that any entry in the register be struck out or amended on the ground that, at the date of that application, the entry as it appears on the register does not indicate with accuracy, to

the extent of any requirement thereof by virtue of section 63, existing rights of the person appearing to be the registered holder of the plant breeder's rights to which that entry relates.

Invalidation by Federal Court

(3) Subject to section 44, plant breeder's rights may, at the instance of the Attorney General of Canada or an interested person, be declared invalid by the Federal Court, but only on the following grounds:

- (a)** a condition specified in paragraph 4(2)(a) or (b) was not fulfilled; or
- (b)** the holder has not complied with paragraph 30(1)(a).
- (c)** [Repealed, 2015, c. 2, s. 29]

Declaration

(4) A person who has reasonable cause to believe that any thing done or proposed to be done by that person might be alleged by the holder of plant breeder's rights to constitute an infringement of those rights may, subject to subsection (5), bring an action in the Federal Court against the holder for a declaration that the thing so done or proposed to be done does not or would not constitute an infringement.

Proceedings not to be taken without giving security

(5) A plaintiff, except the Attorney General of Canada or the attorney general of a province, in an action referred to in subsection (4) shall, before proceeding therein, give security for the costs of the holder in such sum as the Court may direct.

Defendant not required to give security

(6) A defendant in an action for infringement of plant breeder's rights is not required to give any security for the purpose of obtaining a declaration under subsection (4).

1990, c. 20, s. 43; 2015, c. 2, s. 29.

Restriction

44 No person who has actual notice of a decision given by the Commissioner and a right to its review pursuant to any regulations made under paragraph 75(1)(m) or a right of appeal from that decision or any decision given on its review is entitled to institute any proceeding under subsection 43(2) or (3) calling into question the decision given by the Commissioner or on the review.

Holder required to take proceedings

45 (1) A person who has been granted, in respect of plant breeder's rights, an authorization described in paragraph 5(1)(h) or a compulsory licence under subsection 32(1) may, subject to any agreement between that person and the holder of the rights,

(a) call on the holder to take proceedings for infringement of the rights; and

(b) where the holder refuses or neglects to take proceedings within the prescribed period after being called on under paragraph (a) to do so, institute in the name of that person, making the holder a defendant, proceedings for infringement as if that person were the holder.

Holder not liable for costs

(2) A holder who is made a defendant pursuant to paragraph (1)(b) is not liable for any costs unless the holder takes part in the proceedings.

1990, c. 20, s. 45; 2015, c. 2, s. 30.

Defence

46 A defendant in an action for infringement of plant breeder's rights may plead as a matter of defence any of the following grounds but no others, in relation to the invalidity of the plant breeder's rights:

(a) that a condition specified in paragraph 4(2)(a) or (b) was not fulfilled; or

(b) that the holder has not complied with paragraph 30(1)(a).

(c) [Repealed, 2015, c. 2, s. 31]

1990, c. 20, s. 46; 2015, c. 2, s. 31.

Admissibility of certificates given outside Canada

47 In an action or proceeding respecting plant breeder's rights that is authorized to be had or taken before a court in Canada pursuant to this Act, a document purporting to be a certificate of the grant of protection of a plant variety by the appropriate authority in a country of the Union or an agreement country or to be a certified copy of an official document relating to any such protection, if the certificate respecting the grant or copy purports to be signed by the proper officer of the government of the country, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document.

1990, c. 20, s. 47; 2015, c. 2, s. 32(F).

Commissioner's costs

48 The costs of the Commissioner in proceedings before any court under this Act are in the discretion of the court but the Commissioner shall not be ordered to pay the costs of any other of the parties.

Recording judicial invalidation

49 (1) A certificate of a decision of the Federal Court, the Federal Court of Appeal or the Supreme Court of Canada holding plant breeder's rights to be invalid shall, at the instance of the person filing it to make it of record in the Plant Breeders' Rights Office, be noted in relation to those rights in the register.

Appeal from decision re validity

(2) A decision holding or refusing to hold plant breeder's rights invalid is subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which that decision was made.

1990, c. 20, s. 49; 2002, c. 8, s. 158; 2015, c. 2, s. 33(F).

Appeal to Federal Court

50 (1) An appeal lies to the Federal Court from a decision on review under any regulations made pursuant to paragraph 75(1)(m) or from a decision of the Commissioner, other than a decision subject to review under any such regulations, where the decision on review is given in respect of, or the Commissioner's decision is, a decision

- (a)** disposing of an application for the grant of plant breeder's rights, an objection filed under section 22 or a petition presented under paragraph 26(2)(b);
- (b)** determining whether or not annulment of the grant of plant breeder's rights is required by section 13;
- (c)** settling terms referred to in subsection 32(2) or determining remuneration or any other matter in disposing of an application for a compulsory licence;
- (d)** determining whether or not to extend, limit, vary or revoke such a licence or determining the extent or manner of any such extension, limitation or variation;
- (e)** determining whether or not to carry out any intention referred to in section 37 or subsection 66(3); or
- (f)** exercising any authority conferred on the Commissioner by section 40.

Limitation

(2) An appeal under subsection (1) shall be brought within two months after the date on which the decision is made or within such further time as the Federal Court may allow, either before or after the expiration of the two months.

1990, c. 20, s. 50; 2015, c. 2, s. 34.

Transmission of documents to Federal Court

51 (1) If any proceedings have been instituted in the Federal Court under this Act, the Commissioner shall, at the request of any party to the proceedings and on payment of the prescribed fee, transmit to the Court all records and documents on file in the Plant Breeders' Rights Office that relate to the matters in question in the proceedings.

Idem

(2) Transmission to the Federal Court by the Commissioner of certificates of entries, certified copies or certified extracts made under the authority of the Commissioner and admissible pursuant to subsection 60(2) or 64(2) or section 65, to the extent that the contents of those records or documents are composed of the entries or shown in the copies or extracts, satisfies the requirements of subsection (1).

1990, c. 20, s. 51; 2015, c. 2, s. 35.

Judgments to be filed

52 A certified copy of every judgment or order made by the Federal Court or the Supreme Court of Canada in relation to any plant breeder's rights that are recorded or to be recorded on the register or for which an application is pending shall be filed with the Commissioner by an officer of the registry of the Federal Court.

1990, c. 20, s. 52; 2015, c. 2, s. 36(F).

Offences

Secrecy

53 (1) Every person commits an offence who knowingly discloses any information with regard to any variety in respect of which an application for plant breeder's rights is made or with regard to the business affairs of the applicant that was acquired by that person in performing any functions under this Act except if the information is disclosed

(a) to the Minister, the advisory committee or the Commissioner or to any other person for the purposes of the performance by that other person of any functions pursuant to this Act or of any duties in an official capacity for enforcement of this Act; or

(b) in compliance with any requirements imposed by or under this Act or by virtue of any power lawfully exercised in the course or for the purposes of any judicial proceedings.

Offences respecting denominations and sales

(2) Every person commits an offence who

(a) knowingly contravenes section 15;

(b) for the purpose of selling any propagating material, knowingly designates the material by reference to

(i) a denomination different from any denomination registered in respect of the plant variety of which the material is propagating material,

(ii) a denomination registered in respect of a plant variety of which the material is not propagating material, or

(iii) a denomination corresponding so closely to a registered denomination as to mislead; or

(c) knowingly, for the purpose of selling any propagating material, represents falsely that the material is propagating material of, or is derived from, a plant variety in respect of which plant breeder's rights are held or have been applied for.

Falsification in relation to administration

(3) Every person commits an offence who, in relation to the administration of this Act, knowingly

(a) makes any false representation;

(b) makes or causes to be made any false entry in the register or any record;

(c) makes or causes to be made any false document or any alteration, false in a material respect, in the form of a copy of any document; or

(d) produces or tenders any document containing false information.

Punishment of individuals

(4) An individual who commits an offence under subsection (1), (2) or (3)

(a) is liable on summary conviction to a fine of not more than five thousand dollars; or

(b) is liable on conviction on indictment to a fine of not more than fifteen thousand dollars or to imprisonment for a term not exceeding three years, in the case of an offence under subsection (1) or (2), or five years, in the case of an offence under subsection (3), or to both.

Punishment of corporations

(5) A corporation that commits an offence under subsection (1), (2) or (3)

(a) is liable on summary conviction to a fine of not more than twenty-five thousand dollars; or

(b) is liable on conviction on indictment to a fine the amount of which is in the discretion of the court.

Definition of *representation*

(6) In this section, ***representation*** includes any manner of express or implied representation, by whatever means it is made.

Limitation period

(7) A prosecution for a summary conviction offence under this Act may be instituted at any time within two years after the day on which the subject matter of the prosecution becomes known to the Commissioner.

Commissioner's certificate

(8) A document purporting to have been issued by the Commissioner, certifying the day on which the subject matter of any prosecution became known to him or her, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is evidence of the matters asserted in it.

1990, c. 20, s. 53; 1997, c. 6, s. 76; 2015, c. 2, s. 37.

Certificate of examiner as proof

54 A certificate purporting to be signed by an officer of the Plant Breeders' Rights Office who is appointed or designated a principal examiner, stating that a substance or a sample submitted to that examiner by any other officer of that Office has been

examined by that examiner and stating the result of the examination is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate.

1990, c. 20, s. 54; 2015, c. 2, s. 38(F).

Plant Breeders' Rights Office

55 [Repealed, 1997, c. 6, s. 77]

Plant Breeders' Rights Office

56 (1) The Plant Breeders' Rights Office is part of the Canadian Food Inspection Agency established by the *Canadian Food Inspection Agency Act*.

Commissioner

(2) The President of the Canadian Food Inspection Agency shall designate a Commissioner of Plant Breeders' Rights.

Employees

(3) The President of the Canadian Food Inspection Agency has the authority to appoint the employees of the Plant Breeders' Rights Office.

Functions of Commissioner

(4) The Commissioner shall receive all applications, fees, documents and materials submitted for plant breeders' rights, shall do all things necessary for the granting of plant breeders' rights and for the exercise of all other powers conferred, and the discharge of all other duties imposed, on the Commissioner under this Act and shall have the charge and custody of the register and any other documents or materials belonging to the Plant Breeders' Rights Office.

Absence, etc., of Commissioner

(5) Where the Commissioner is absent or unable to act or the office of Commissioner is vacant, such other officer as may be designated by the President of the Canadian Food Inspection Agency shall, in the capacity of Acting Commissioner, exercise the powers and perform the duties of the Commissioner.

1990, c. 20, s. 56; 1997, c. 6, s. 78; 2015, c. 2, s. 39.

Officers and employees not to acquire plant breeder's rights

57 A person who has been appointed as an officer or employee of the Plant Breeders' Rights Office may not, during the period for which the person holds the appointment and for one year thereafter, apply for the grant of any plant breeder's rights or acquire directly or indirectly, except under a will or on an intestacy, any right or interest in any such grant.

Delegation

58 (1) The Commissioner may in writing authorize, either generally or particularly, such officers or employees of the Plant Breeders' Rights Office as the Commissioner deems fit to exercise and perform, subject to any general or special directions given or conditions attached by the Commissioner, all or any of the powers conferred and duties imposed on the Commissioner by or pursuant to this or any other Act.

Presumption of authority

(2) Every person purporting to act pursuant to any authorization under this section shall, in the absence of evidence to the contrary, be presumed to be acting in accordance with the terms of the authorization.

Engagement of services

59 (1) The Commissioner

(a) for the purposes of carrying out and evaluating the results of tests and trials referred to in section 23, may engage the services of persons other than employees of the Canadian Food Inspection Agency and pay to those persons fees in accordance with a scale determined by the Minister, with the approval of the Treasury Board, in respect of their services; and

(b) may constitute panels of persons, composed of employees of the Agency or persons appointed or engaged pursuant to paragraph (a), which have the function of conducting examinations for purposes described in that paragraph and of advising the Commissioner as to

(i) the examinations necessary or expedient for those purposes, and

(ii) the results of those examinations.

Discretion unaffected

(2) Nothing in subsection (1) prejudices any discretion exercisable by the Commissioner.

1990, c. 20, s. 59; 1997, c. 6, s. 79.

Seal of office

60 (1) The Commissioner shall cause a seal to be made for the purposes of this Act and each certificate of plant breeder's rights issued under paragraph 27(3)(b) to be sealed with that seal. The Commissioner may also cause any other instrument or copy of any document issuing from the Plant Breeders' Rights Office to be sealed with that seal.

Notice of seal and other documents

(2) Every court, judge and person shall take notice of the seal of the Plant Breeders' Rights Office and shall admit impressions of the seal in evidence without proof thereof and shall take notice of and admit in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal to be copies of or extracts from documents on file in that Office.

1990, c. 20, s. 60; 2015, c. 2, s. 40(E).

Time limit extended

61 Where any time limit or period of limitation specified by or under this Act expires on a day when the Plant Breeders' Rights Office is closed for business, that time limit or period of limitation shall be deemed to be extended to the next day when that Office is open for business.

Records

Index

62 The Commissioner may prepare an index of names, together with descriptions comprising particulars of distinguishing identifiable characteristics, of such plant varieties in each of the prescribed categories as are ascertainable by the Commissioner to exist as a matter of fact within common knowledge.

Register

63 The Commissioner shall keep a register of plant breeders' rights and, subject to the payment of any fee required under this Act to be paid in the case of any entry in the register, the Commissioner shall enter in it

(a) in relation to each plant variety that is the subject of those rights, the prescribed category to which it belongs;

- (b)** the denomination of the variety, and any change to that denomination;
- (c)** the full name and address of the breeder of that variety;
- (d)** the name and address of the person whom the Commissioner is satisfied, in the manner provided by or under this Act, ought to be registered as the holder of the plant breeder's rights respecting that variety;
- (e)** the date of the grant of plant breeder's rights respecting that variety;
- (f)** the date of, and the reason for, any termination or invalidation of plant breeder's rights;
- (g)** if plant breeder's rights are the subject of a compulsory licence under section 32, a statement to that effect;
- (h)** the prescribed particulars of each application for the grant of plant breeder's rights and of any abandonment or withdrawal of the application; and
- (i)** the prescribed particulars, subject to the provisions of this Act and the regulations, that are considered by the Commissioner to be appropriate for entry in the register.

1990, c. 20, s. 63; 2015, c. 2, s. 41.

Evidence of registered matters

64 (1) The register is evidence of all matters entered in it as directed or authorized by this Act.

Certified copy or extract

(2) A document purporting to be a copy of any entry in, or an extract of any contents of, the register and to be certified by the Commissioner to be a true copy or extract is evidence of the entry or contents without further proof or production of the register.

1990, c. 20, s. 64; 2015, c. 2, s. 42(F).

Certificate of Commissioner

65 A certificate purporting to be made by the Commissioner to the effect that an entry has or has not been made in the register or that any other thing authorized by or under this Act to be done in the course of the administration of this Act has or has not been done is evidence of the matters specified in that certificate.

1990, c. 20, s. 65; 2015, c. 2, s. 43(F).

Rectification of errors

66 (1) Subject to subsection (2), the Commissioner may, on such terms, if any, as the Commissioner deems proper, authorize

(a) the correction of any clerical error or error in translation appearing in a certificate of plant breeder's rights issued under paragraph 27(3)(b), in an application for plant breeder's rights, in any document filed for the purposes of such an application or in the register or index;

(b) the amendment of any document that belongs to the Plant Breeders' Rights Office and in respect of which no express provision for its amendment is made in this Act; and

(c) the condonation or correction of any procedural irregularity in any proceedings subject to the authority of the Commissioner.

When rectification permissible

(2) Any power conferred by subsection (1) may, of the Commissioner's own motion or on request in writing, be exercised if, but only if, that exercise of the power is in the interests of the due administration of this Act and is not prejudicial to the interests of justice.

Opportunities for representations by interested persons

(3) The Commissioner, if intending to exercise any power pursuant to subsection (1), shall give notice of the intention to each person appearing to the Commissioner to have an interest in the matter and shall not carry out the intention without first giving that person a reasonable opportunity to make representations with respect thereto.

1990, c. 20, s. 66; 2015, c. 2, s. 44(E).

Preservation of documents

67 (1) An application for the grant of plant breeder's rights and other documents filed with the Commissioner in connection with any such rights shall, subject to subsection (3), be preserved for the prescribed periods.

Public accessibility

(2) The Commissioner shall make the following accessible to the public on the Internet and, if the Commissioner considers it appropriate, by any other means:

(a) the register;

(b) the index; and

(c) any documents referred to in subsection (1) that are prescribed and any other documents that should, in the Commissioner's opinion, be made accessible to the public.

Withdrawn application papers to be returned

(3) Where an application for plant breeder's rights has been withdrawn, the Commissioner shall return to the applicant at the address indicated in the application all the papers and other material submitted in connection with the application but, to any extent to which it is impracticable for the Commissioner to do so, and on the expiration of the prescribed period for so doing, the Commissioner shall destroy the material.

(4) [Repealed, 2015, c. 2, s. 45]

1990, c. 20, s. 67; 2015, c. 2, s. 45.

Service of notices, etc.

68 (1) A notice or other document required to be given or transmitted to any person pursuant to this Act may be given or transmitted

(a) by delivering it to the person;

(b) by sending it by registered mail addressed to the person at any place pursuant to notice thereof given by the person or, if no such notice is given, at the person's usual or latest known address in Canada; or

(c) in any other manner prescribed.

Deemed delivery

(2) Where any notice or other document is sent by registered mail pursuant to subsection (1), it shall, in the absence of evidence to the contrary, be deemed to be given or transmitted at the time at which the registered letter containing it would be delivered in the ordinary course of post.

1990, c. 20, s. 68; 2015, c. 2, s. 46(F).

Defect not to invalidate notices

69 A defect in a notice given pursuant to this Act, if the notice is such as to intelligibly and substantially effect the required notification, shall not render unlawful any administrative action executed in respect of the matter to which the notice relates and shall not be a ground for exception to any legal proceeding that may be taken in respect of that matter.

Publication

Matters to be published

70 (1) The Commissioner shall cause to be published in the *Canada Gazette* such particulars of the following as are prescribed:

- (a) every application that is not rejected pursuant to section 17;
- (b) every request included pursuant to subsection 9(1) in an application that is not rejected pursuant to section 17;
- (c) and (d) [Repealed, 2015, c. 2, s. 47]
- (e) every grant or refusal to grant plant breeder's rights;
- (f) every assignment of plant breeder's rights of which the Commissioner is informed;
- (g) every application for a compulsory licence;
- (h) every grant or refusal to grant a compulsory licence and every thing done under subsection 32(4) with respect to a compulsory licence; and
- (i) every surrender of plant breeder's rights.

Notice to Department of Industry

(2) The Commissioner shall, on causing particulars of a request referred to in paragraph (1)(b) to be published, give notice of the request to the Department of Industry.

Matters to be published

(3) In addition to the matters referred to in subsection (1), the Commissioner shall cause to be published in the *Canada Gazette*

- (a) such other matters as the Commissioner considers appropriate for public information; and
- (b) a notice of every annulment under section 34 or revocation under section 35.

1990, c. 20, s. 70; 1995, c. 1, s. 53; 2015, c. 2, s. 47.

Provision for publication of Plant Varieties Journal

71 (1) Where the volume of matters to be published in the *Canada Gazette* pursuant to section 70 is such as to warrant their inclusion wholly or partly in a separate journal, the Commissioner may cause to be published periodically a journal, to be called the Plant Varieties Journal, containing such of those matters as the Commissioner, subject to any regulations made pursuant to paragraph 75(1)(g), considers expedient.

Notice of intention to publish Journal

(2) The Commissioner shall, by publication in the *Canada Gazette*, at least twenty-eight days before commencing the issue of the Plant Varieties Journal, give notice of intention to do so.

Cessation of publication of Journal

(3) If at any time the volume of matters for the publication of which the Plant Varieties Journal is available ceases to be such as described in subsection (1), the Commissioner may cause the issuing of the Plant Varieties Journal to cease but, at least twenty-eight days before doing so, the Commissioner shall, by publication in that Journal, give notice of intention to do so.

Publication in Journal to be deemed publication in *Canada Gazette*

(4) For the purposes of this Act other than of subsections (2) and 75(2), publication in the Plant Varieties Journal pursuant to this Act shall be deemed to be publication in the *Canada Gazette* and references in this Act to the *Canada Gazette* shall be construed accordingly.

Ignorance no defence in the event of publication

72 (1) Where in any civil, criminal or other proceedings a person's knowledge or notice, at any time, of any matter is relevant for the purpose of determining any question whether, pursuant to this Act, liability has been incurred, any right has been acquired or any thing has been duly done, the person shall, for that purpose, be deemed to have had the relevant knowledge or notice at that time if, prior thereto, the matter or notice thereof is published in the *Canada Gazette*.

Knowledge or notice, otherwise attributable, unaffected

(2) Nothing in subsection (1) prevents any question referred to therein from being determined on the ground that the person had the relevant knowledge or notice, if lawfully attributable to the person, apart from that subsection.

Advisory Committee

Constitution

73 (1) The Minister shall constitute an advisory committee on any terms and conditions determined by the Minister.

Composition

(2) The advisory committee shall be composed of persons appointed by the Minister from among representatives of organizations of breeders of plant varieties, dealers in seeds, growers of seeds, farmers, horticulturists and of any other interested persons considered appropriate by the Minister.

Function

(3) The function of the advisory committee is to assist the Commissioner in the application of this Act, including

- (a)** the manner in which the Act is to be applied in respect of each category;
- (b)** the requirements applicable in respect of each category, including those requirements relating to licensing; and
- (c)** the interpretation of the expressions “reasonable prices”, “widely distributed” and “reasonable remuneration” for the purposes of section 32.

Remuneration

(4) No terms or conditions determined under subsection (1) shall provide for any remuneration to be payable to any of the persons acting on the advisory committee, but those persons may be paid any reasonable travel and living expenses incurred by them when engaged on the business of the committee while absent from their ordinary places of residence.

1990, c. 20, s. 73; 2015, c. 2, s. 49(F).

Committee’s advice not binding

74 Nothing in this Act or the regulations shall be construed to impose any obligation to conform to the advice of the advisory committee.

Regulations

Regulations

75 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

(a) fixing the fees that a person may be required to pay in respect of any services provided by the Commissioner or by any person authorized by the Commissioner and providing for the time and manner in which the fees are to be paid and the circumstances in which the fees may be refunded in whole or in part;

(b) limiting, extending or providing for the extension, whether before or after the expiration, of the period for doing anything pursuant to this Act;

(c) defining the meanings of the words and expressions **commercially acceptable, description, designation, identifiable characteristics, reasonably priced, recently prescribed category, representations, tree, vine** and **widely distributed** for the purposes of this Act;

(c.1) prescribing, for the purposes of paragraph 5(1)(b), any acts that are to be considered as the conditioning of propagating material;

(c.2) specifying categories for the purposes of subsection 6(1);

(d) respecting the publication in the *Trade Marks Journal* of information relating to proposals, approvals and changes of denominations;

(e) establishing principles to be observed by the Commissioner in disposing of applications for compulsory licences and, particularly, in complying with subsection 32(2);

(f) designating any entity as an agreement country for the purposes of any of the provisions of this Act or the regulations, with a view to the fulfilment of an agreement concerning the rights of plant breeders made between Canada and that entity, and, despite anything in this Act, qualifying or restricting any rights or other benefits under this Act;

(g) distinguishing the kind of matters to be published in any of the ways contemplated by subsection 71(1);

(h) assigning powers or duties to persons employed by the Canadian Food Inspection Agency or designated by the President of the Agency to administer or enforce this Act or appointed or engaged pursuant to subsection 59(1);

(i) providing for the organization, including fixing the times of operation and closure, of the Plant Breeders' Rights Office, panels constituted under paragraph 59(1)(b) and the business thereof;

(j) specifying or defining methods, procedural requirements or conditions that shall be observed or may, at the discretion of the Commissioner, be adopted or imposed for the purpose or in the course of instituting, proceeding on, dealing with or disposing of any applications, objections, requests, representations, examinations, tests, trials or matters involving investigation or requiring determination by or under the authority of the Commissioner;

(k) respecting the granting of plant breeder's rights with an exemption, under subsection 27(2.1), from compulsory licensing, including the circumstances in which the exemption may be given or revoked by the Commissioner, the terms and conditions on which the exemption may be given and the factors that are to be taken into account before the exemption is revoked;

(l) prescribing

(i) the information to be entered in, and the forms of, the register, the index, applications for plant breeders' rights and any other record, instrument or document to be kept, made or used for the purposes of this Act, and

(ii) the means, factors or criteria for determining whether the existence of a plant variety is a matter of common knowledge for the purposes of paragraph 4(2)(b) or section 62;

(l.1) respecting any classes of farmers or plant varieties to which subsection 5.3(2) is not to apply;

(l.2) respecting the use of harvested material under subsection 5.3(2), including any circumstances in which that use is restricted or prohibited and any conditions to which that use is subject;

(m) respecting the procedure for review of cases involving decisions given by the Commissioner pursuant to any provision of this Act; and

(n) prescribing any matter required or authorized by this Act to be prescribed.

Publication of proposed regulations

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make pursuant to this Act shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

Exemptions

(3) Subsection (2) does not apply in respect of a proposed regulation that

(a) has been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection; or

(b) makes no material substantive change in an existing regulation.

1990, c. 20, s. 75; 1997, c. 6, s. 80; 2015, c. 2, s. 50.

Seeds Act

Seeds Act unaffected

76 (1) Nothing provided or granted by or under this Act shall be construed as conferring authority for

(a) any seed to be sold, imported, exported or advertised, or

(b) any name, mark or label to be applied in connection with any seed,

contrary to the *Seeds Act* or any regulations thereunder.

Definition of “seed”

(2) In subsection (1), **seed** has the meaning assigned to that expression by section 2 of the *Seeds Act*.

Review of Act

Report

77 (1) As soon as practicable after the expiration of the period of ten years beginning on the day of the coming into force of this Act, the Minister shall prepare a report with respect to the administration of this Act during the period and shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after it is completed.

Contents of report

(2) The report prepared pursuant to subsection (1) shall indicate whether the operation of this Act

(a) results in

(i) the stimulation of investment in businesses involving the breeding of plant varieties in respect of which protection afforded by plant breeders' rights is applicable,

- (ii) any improvement in facilities to obtain foreign varieties of plants in the interests of agriculture in Canada,
 - (iii) protection abroad, for commercial purposes, of Canadian plant varieties,
 - (iv) improvement of plant varieties to the public benefit, and particularly, to the benefit of farmers and nurserymen, and
 - (v) any other public advantage,
- (b) has some but not all of the results described in paragraph (a),
- (c) has all or any of those results but is, in any respect, not in the public interest, or
- (d) is, in the total absence of those results, not in the public interest,

as the case may be, and particulars of anything so indicated shall be furnished in the report.

Annual report

78 The Minister shall each year prepare a report with respect to the administration of this Act during the preceding calendar year and shall lay it before Parliament on any of the first fifteen days that either House of Parliament is sitting after he completes it.

Transitional Provisions

Plant breeders' rights — previously granted

79 This Act, as it reads on or after the day on which this section comes into force, does not apply with respect to plant breeders' rights granted before that day, but this Act, as it read immediately before that day, continues to apply with respect to those rights.

1990, c. 20, s. 79; 2015, c. 2, s. 51.

Existing applications

80 An application for the grant of plant breeder's rights that was made before the day on which this section comes into force and that was not disposed of before that day is to be dealt with and disposed of in accordance with this Act. However, if plant breeder's rights are granted to the applicant, sections 19 to 21, as they read immediately before the day on which this section comes into force, continue to apply with respect to those rights.

1990, c. 20, s. 80; 2015, c. 2, s. 51.

Existing proceedings

81 A proceeding commenced under this Act before the day on which this section comes into force that, on that day, is pending before a court and in respect of which no decision has been made shall be dealt with and disposed of in accordance with this Act as it read immediately before that day.

1990, c. 20, s. 81; 2015, c. 2, s. 51.

Coming into Force

Coming into force

82 This Act comes into force on a day to be fixed by order of the Governor in Council.

[Note: Act in force August 1, 1990, see SI/90-99.]