Draft regulations aim to strengthen, clarify and simplify Canada's Plant Breeders' Rights system

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On Aug. 9, 2025, proposed amendments to the Canadian Plant Breeders' Rights Regulations were published in *Canada Gazette, Part I*. Intended to address the concerns raised by stakeholders in an earlier public pre-consultation, the changes are aimed at enhancing Canada's intellectual property protection framework for plant breeders in order to encourage the introduction of new and improved plant varieties to the Canadian market.

A summary of key proposed changes is provided.

Excluding certain advertising from determinations of novelty

To be eligible for PBV protection, a candidate variety must be novel. Novelty is assessed primary based on lack of prior sale. However, the current definition of "sell" includes both actual sale, offering for sale, and advertising. Therefore, promotion or description online prior to a variety being available for sale could disqualify an otherwise novel variety from PBR protection under a strict interpretation.

The proposed amendments exclude "advertising or any exposure that is not for a consideration" from the novelty determination, reducing ambiguity and aligning Canadian requirements with UPOV guidance.

Narrowing the farmers' privilege exemption

"Farmers' privilege" is an exemption to plant breeders' rights (PBR) codified within the Canadian *Plant Breeders' Rights Act*. The exemption permits farmers to save and reuse seeds of protected varieties, respecting longstanding practice of farmers in relation to certain small grain agricultural crops, such as cereals and pulses. However, the scope of farmers' privilege is currently not limited by crop type. This open-ended exemption may be a disincentive for breeders of ornamental and horticulture varieties to enter the Canadian market. Another concern is that farmers' privilege may extend to valuable

parental varieties used in plant breeding, which may, through unintended self-pollination, inadvertently make their way into large batches of seeds sold to farmers.

Accordingly, the proposed amendments would exclude the following from farmers' privilege:

- fruit, vegetable, and ornamental plants,
- plants reproduced vegetatively (*e.g.,* via cuttings, grafting, or tissue culture), and
- hybrid varieties and their parental lines.

These changes would align the Canadian exemption with international peers and guidance from the UPOV, while maintaining a meaningful exemption for farmers.

Extending duration of PBR protection for certain crops

To better reflect the breeding cycles and development timeframe required for certain crops, the amendments propose extending the term of Canadian PBR protection from 20 years to 25 years for:

- potatoes,
- asparagus, and
- woody plants (e.g., berry fruit and flowering shrubs).

This would align Canada more closely with protection provided by international trading partners and provides breeders additional time to recoup their investments.

Easing access to the Canadian PBR system

Several proposed updates aim streamline and simplify application processes and to reduce administrative barriers before the Plant Breeders' Rights Office (PBRO):

- **Flexibility for submission of propagating material:** Applicants must currently submit a sample of propagating material (e.g., seeds) as an application requirement at the time of filing for relevant varieties. This can present logistical challenges, especially for breeders outside Canada acting through a local agent. The proposed amendments would allow delayed submission "if the applicant establishes to the satisfaction of the Commissioner that a representative reference sample was unavailable at the time of filing" and provided that a sample is received by the PBRO before rights are granted
- **Simplified assignment requirements:** The proposed amendments remove the requirement for assignment documents to be witnessed and remove the requirement for the original, written document to be submitted (a digital copy will suffice). Importantly, the proposed amendments do not alter the onerous requirement to submit an assignment with 30 days of its effective date.
- **Incentive for online filing:** Presently, applicants choosing electronic filing via the UPOV PRISMA system face dual costs: a Swiss-franc-based fees for PRISMA plus the Canadian filing fee. The amendments propose a modestly reduced Canadian fee to encourage online applications.

Public Consultation

There is a 70-day consultation period running to October 18, 2025, which invites comments from breeders, industry stakeholders, and the public. These can be submitted directly via the publication website. Subject to the results of this consultation, changes are expected to come into force in 2026.

Conclusion

If adopted, these changes would not only bring Canada's plant variety protections better in line with global standards but would also send a clear signal to breeders that the Canadian market is open for innovation, investment, and fair reward. Stronger rights today should yield a richer harvest of new plant varieties tomorrow.

BLG can assist with applications for PBR in Canada. Please see our Guide to Plant Breeders' Rights in Canada and contact a contact a member of our team for further assistance.

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