

Bill C-18 and Farmers' Privilege

What's the whole story?

Federal Agriculture Minister Gerry Ritz claims that Bill C-18, the *Agriculture Growth Act*, will not stop farmers from saving seed. But is he telling the whole story?

“It’s entrenched in UPOV 91, ... Should you decide to save seed from crop that you grow you have the ability to do that and, again, just pay the royalty on the end when you sell it out.”

– Ag Minister Gerry Ritz, December 9, 2013

Minister Ritz’s statement¹ tells us that if Bill C-18 passes, farmers will have to pay 'end-point royalties' to the seed company on their whole crop if they save and replant varieties that come under PBR protection. It’s a “save (your seed) now, pay later” plan that will probably return more money to the seed companies than they would get by simply charging the royalty on the seed at planting time.

Bill C-18 not only gives seed companies exclusive rights over PBR-protected seed, but allows them the same rights over harvested material (i.e. crops) if they did not have an earlier opportunity to exercise their rights over the seed² used to plant the crop (see Section 5).

“Farmers’ privilege” is optional within UPOV ‘91. The UPOV Convention says it should only be permitted “*within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.*” This is a far cry from “entrenching” the right of farmers to save seed.

While Bill C-18 provides the optional “farmers’ privilege”, it only allows farmers to *produce and reproduce* PBR-protected seed and *condition* the seed for the purposes of planting, and then, only on their own holdings (see Section 5).

End point royalty:

A royalty collected from the farmer and paid to the plant breeder when a crop is sold if the crop is a PBR-protected variety and no royalty was collected on the seed used to plant the crop.

Bill C-18, would give plant breeders the exclusive right to:

- produce and reproduce PBR-protected seed;
- condition such seed for the purposes of planting;
- sell the seed;
- export or import the seed;
- make repeated use of the seed to produce commercial hybrid seed;
- use PBR protected ornamental plants or their parts to produce ornamental plants or cut flowers;
- and to stock (store) seed in order to do any of the above.

Bill C-18 would also give plant breeders exclusive rights to authorize, conditionally or unconditionally any of the above activities and to make paying a royalty a condition.

The farmers’ privilege provision in C-18 does not include *stocking* seed. Bill C-18 does not protect farmers from being accused of infringing on PBR-holders’ rights for any of these traditional practices:

- Storing seed harvested in the fall for planting in the spring.
- Storing unsold wheat in bins in the farmyard -- since the grain could potentially be used to grow more wheat.
- Cleaning and storing three years’ supply of seed to protect against crop failure, disease or frost.

¹ *Agriculture bill aims to boost crop varieties, enhance trade and R & D*, by Kelsey Johnson, Dec 9, 2013. Provided by iPolitics <http://www.ipolitics.ca/2013/12/09/agriculture-bill-aims-to-boost-crop-varieties-enhance-trade-and-r-d/>

² In this leaflet “seed” refers to both seeds and other propagating material.



Worse, Section 50 (4) of Bill C-18 enables the Governor in Council (i.e. Cabinet) to make regulations³ to put even more limits on the farmers' privilege provisions. These regulations can:

- Exclude classes of farmers
- Exclude plant varieties
- Exclude uses of harvested material
- Restrict or put conditions on farmers' use of harvested material
- Stipulate what is to be considered "conditioning" of seed.

The wording of future PBR regulations is not known, but we can expect them to follow the official UPOV '91 Guidance Document⁴, which states that farmers' privilege should be understood "*to relate to selected crops where the product of the harvest is used for propagating purposes, for example small-grained cereals where the harvested grain can equally be used as seed ...*" It goes on to say "*it may be considered inappropriate to introduce the optional exception for agricultural or horticultural sectors, such as fruit, ornamentals and vegetables, where it has not been a common practice for the harvested material to be used as propagating material.*"

The UPOV Guidance Document also suggests that countries "*limit the level of farm-saved seed to those levels which had been common practice*

When "farmers' privilege" is included, UPOV advises governments to consider:

- the type of variety or crop,
- the size of farm,
- the value of the crop,
- the area of crop grown,
- the proportion of a farmer's crop allowed under the Farmers Privilege,

and to be prepared to limit or avoid granting farmer privilege too widely. The priority is to ensure that the Plant Breeders' interests are taken care of first.

before the introduction of plant variety protection." In Canada, this recommendation could be used to restrict or even prohibit saving corn, soy, and canola seed, which many, but not all, farmers purchase annually.

The Guidance Document also says, "*For those crops where the optional exception is introduced, a requirement to provide remuneration to breeders might be considered as a means of safeguarding the legitimate interests of the breeders.*" This recommendation is in line with Minister Ritz's public statements that farmers will be able to save PBR-protected seed, but will have to pay end-point royalties when they sell their crops.

So, what we see in Bill C-18 is:

- **a sweeping increase in the rights of plant breeders to control new varieties;**
- **a limited provision for farmers to save and clean seed for replanting;**
- **a virtually unlimited scope for present and future governments to use regulations to take away or further restrict the farmers' privilege; and**
- **a system designed for seed companies to get more money from farmers.**

So Minister Ritz has only told us part of the story. One farmer put the whole story this way: Bill C-18 is like moving livestock. You start by herding them into a large corral, and then close the gates behind them one by one until they cannot turn around. Eventually, there will be little choice but to buy seed and pay royalties every year.

Meanwhile, the global seed corporations are eagerly anticipating the money and power they will gain by increasing their control of the Canadian seed supply, our farming practices and ultimately, our food.

³ Regulations are rules that have the force of law that are written after the Act has been passed. While Acts must be debated and voted on in Parliament, regulations are approved by Cabinet and simply posted in the Canada Gazette before coming into force.

⁴ Guidance For The Preparation Of Laws Based On The 1991 Act Of The UPOV Convention adopted by the Council at its forty-fifth ordinary session on October 20, 2011 http://www.upov.int/edocs/infdocs/en/upov_inf_6_2.pdf

