



Canadian Food
Inspection Agency

Agence canadienne
d'inspection des aliments

A GUIDE TO PLANT BREEDERS' RIGHTS

January 2006

Canada 

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1. THE LEGISLATION

The Canadian Plant Breeders' Rights Act, given Royal Assent on June 19, 1990, came into force on August 1, 1990. The legislation makes it possible for plant breeders to legally protect new varieties of plants. Plant varieties, both sexually and asexually reproduced, may be covered under the legislation for a period of up to 18 years. All plant species, except algae, bacteria and fungi, are eligible for protection.

The owner of a new variety who receives a 'Grant of Rights' will have exclusive rights over the use of the variety, and will be able to protect his/her new variety from exploitation by others (see page 7: Rights of the holder). The intent of the legislation is to stimulate plant breeding in Canada, to provide Canadian producers better access to foreign varieties and to facilitate the protection of Canadian varieties in other countries.

2. THE PLANT BREEDERS' RIGHTS OFFICE (PBRO)

The Plant Breeders' Rights Office (PBRO) is part of the Canadian Food Inspection Agency (CFIA). The Office functions to secure the rights of plant breeders by granting protection for their new varieties. The Office examines applications to determine whether applicants are entitled to receive a grant of rights. It publishes and distributes plant breeders' rights information via the *Plant Varieties Journal* (see page 9: *Plant Varieties Journal*), records details of incoming applications and assists the public in obtaining documentation pertaining to a right that has been published.

An Advisory Committee has been appointed from various organizations within the agricultural and horticultural sectors (see Appendix II: Advisory Committee Members) to advise the PBRO on the administration of the Act. The Committee assists by providing technical information for the development of regulations and policy.

Applications and communications must be completed in either French or English. When requesting an application from the PBRO the applicant should specify the crop kind and preferred language to ensure the appropriate forms are sent. Application forms are also available from the CFIA website (see below).

Business with the PBRO should be addressed to:

Plant Breeders' Rights Office
Canadian Food Inspection Agency
2 Constellation Crescent
Ottawa, Ontario K1A 0Y9
CANADA
Telephone: (613) 225-2342
Telefax: (613) 228-4552
CFIA website: www.inspection.gc.ca

3. WHO CAN APPLY

The applicant may be the breeder, his/her employer, or the legal representative. The applicant must also be a citizen of, a resident of, or have a registered Office in Canada or a UPOV member country. All applications require a Canadian address to which correspondence from the PBRO may be sent. Applicants resident outside of Canada must appoint an agent (resident in Canada) to submit an application on their behalf.

Application made by a legal representative

The legal representative includes the breeder's executor, administrator, any assignee or successor in title to the rights. The legal representative must have the unconditional right to apply in his/her name. Documentation must be provided at the time of application to establish that the applicant is the legal representative when the applicant is not the breeder. Documentation must also be provided if the ownership of the variety is assigned to someone else after the application is filed. Such documentation should include the following particulars: (For an example see Appendix VI)

- the name and address of the breeder or previous owner of the variety
- the category and denomination of the plant variety
- letter of assignment signed by both the assignor and the assignee, each in the presence of a witness; and
- the effective date of the assignment

Application made through an agent

The agent acts on behalf of the applicant or holder of the right. The agent will serve as the contact person for the Plant Breeders' Rights Office. Documentation must be provided establishing that an agent has been properly authorized by an applicant or holder of a right. There are no special qualifications for the agent, although it would be in the interest of the applicant for the agent to have some knowledge of the candidate variety. The PBRO has the authority to refuse recognition of an appointed agent at any time. For an example of an authorization of agent, see Appendix VII.

4. CRITERIA VARIETIES MUST MEET

Varieties that will be protected will have demonstrated that they are:

- new;
- distinct;
- uniform; and
- stable.

The criteria used to determine whether a variety is eligible for protection are as follows:

NEW The sale of a candidate variety prior to application for protection is restricted. Regulations covering the sale of varieties prior to applying for protection are as follows:

Sales of Varieties in Canada

Varieties may not have been sold in Canada prior to submitting an application for protection.

Sales of Varieties outside of Canada

Varieties, excluding those of woody plants and their rootstocks, may have been sold outside of Canada for up to four years. Varieties of woody plants and their rootstocks may have been sold outside of Canada for up to six years prior to submitting an application for protection.

DISTINCT A candidate plant variety must be measurably different from all other varieties which are known to exist within common knowledge at the time the application was made. Common knowledge includes varieties already being cultivated or exploited for commercial purposes in Canada and those varieties described in a publication that is available to the public.

UNIFORM A candidate plant variety must be uniform in that any variation should be predictable to the extent that it can be described by the breeder. Any variations in the uniformity of a variety must be commercially acceptable.

STABLE A candidate variety must remain true to its description over successive generations. The variety must be stable in its essential characteristics to the degree where further generations of seed or other propagating material exhibit the same characteristics as described in the original description for which rights were granted.

5. THE APPLICATION PROCESS

FILING AN APPLICATION An application will be officially accepted when a completed application form including attachments and filing fee have been submitted to the PBRO. The date when all items requested have been submitted will determine the effective date of an application. This will be used to determine the priority of applications when two varieties under examination are indistinguishable.

The information to be submitted to the PBRO is listed on the application form. These items must be included at the time of application in order for the basic requirements to be met. Some of these requirements are detailed below: (copies of the application forms are available from the PBRO and from the CFIA website).

- # **A proposed denomination for the variety**
May be a temporary name or experimental number. Examination of the candidate variety will not commence until a final denomination has been approved (see Appendix III: Variety Naming Guidelines).

- # **Distinctness statement**
A brief summary of how the variety is distinct from all varieties known in Canada. The main distinguishing characteristics of the candidate variety must be compared to the reference variety(ies) (see page 3: Distinct).

- # **Description of the origin and breeding history of the variety**
To include: the location and year of the breeding work; the genealogy, including varieties, lines, or clones used; method of origination and location, breeding technique, selection criteria used and stage of selection and multiplication. For asexual crops include method of propagation.

- # **Statement of uniformity and stability**
A statement that the variety is uniform and stable (see page 3: Uniform and Stable).

- # **Sample of propagating material**
Where specified, a sample must be submitted to the PBRO. The applicant must comply with all import procedures. (see Appendix IV: Sample Requirements).

- # **Maintenance of the Variety**
The applicant is required to submit both the particulars of where the variety will be maintained throughout the duration of the rights, and the methods to be used for maintaining the variety.

- # **Previous commercialization/protection**
Statements verifying whether the candidate variety has been sold in Canada or outside of Canada, and whether the variety is protected, or filed for protection, in another country.

- # **Verification of the ownership of the variety** (if required)
Necessary documentation showing the applicant to be the legal representative, or an authorization of an agent.

- # **Supply any other information as required by the PBRO.**

The following items are included on the application form, but are optional and are not required unless the applicant selects them. These items, as detailed below, must be requested at the time the application is filed.

- # **Protective Direction**
A protective direction serves as a means to protect a candidate variety for the time period extending from when the applicant files for protection

and the date when rights are granted. With a protective direction, the applicant will be permitted to initiate legal action against any infringements which may occur while the application is pending. The applicant must agree not to sell propagating material of the variety while a protective direction is in force, unless it is for scientific research, for multiplying stock for sale back to the applicant, or for part of a transaction involving the sale of a right. The Commissioner may withdraw the protective direction in the event that the applicant fails to comply with these requirements or allows another to infringe the rights. As well, the applicant may remove the protective direction at any time during the application process by notifying the Commissioner. A protective direction must be requested at the time of filing an application along with the appropriate fee.

Request for Exemption from Compulsory Licensing

Any request for exemption from compulsory licensing, including reasons for it, must be made at the time of application (see page 8: Compulsory licensing). The only reason for which an exemption from compulsory licensing is granted is that the applicant requires time to multiply and distribute propagating material of the variety.

Claiming Priority for an Application previously filed Outside of Canada

Priority may be claimed by an applicant submitting an application for a variety which previously has been filed for protection outside of Canada in a UPOV member country. The date the foreign application was originally filed would be considered as the date of filing in Canada. The advantage of claiming priority is that it would give an applicant precedence over competitors applying for rights for an identical variety.

The applicant must apply to claim priority within one year from the date when the application was originally filed in the member country. A copy of the preceding application, certified by the appropriate authority (translated into either French or English), must be submitted within 3 months after the claim has been filed with the PBRO. A request for priority must be applied for at the time of filing an application along with the appropriate fee.

**REJECTION
OF AN
APPLICATION**

The Commissioner may reject an application, after it has been filed, when:

- the candidate variety is not a new variety; or
- the person making the application is not entitled to do so; and
- any other incompatibility with the Act or Regulations.

Prior to rejecting the application, the applicant will be notified and given reasons for the intended rejection. The applicant may request the PBRO to reconsider the rejection by providing further evidence supporting his/her case.

COST OF PROTECTION

For a list of fees and charges required for obtaining a grant of rights, refer to Appendix V.

6. THE EXAMINATION PROCESS

EXAMINING AN APPLICATION

The examination of an application determines whether the candidate variety meets the requirements for distinctness, uniformity and stability (DUS). Please refer to the "Guidelines for Conducting PBR tests and trials" for more information.

- **Tests and trials outside of Canada:** Foreign tests and trials may be accepted when they are purchased from Plant Breeders' Rights Offices in UPOV member countries. In such cases it is required that all candidate varieties are tested for at least one year in Canada and grown in comparison to varieties currently in use in Canada.

PUBLICATION OF VARIETY DESCRIPTION

After the site examination and submission of the completed objective description form, comparative photographs and results of tests and trials, a description of the variety is written for publication in the *Plant Varieties Journal*.

OBJECTIONS

Any person who considers that an application under examination should be refused a grant of rights may file an objection, on payment of the prescribed fee. The objection may be made for any incompatibility with the Act or Regulations. An objection to an application must be filed with the PBRO within six months following the date an application, including the description, was published in the Journal. If, at the end of the six month period, there are no valid objections to a published variety description, the variety becomes eligible for a grant of rights.

REFUSAL OF AN APPLICATION

Following examination, an application may be refused grant of rights when the Commissioner:

- is not satisfied, after consideration of the application and the results from tests and trials, that the candidate variety is new, distinct, uniform and stable;
- has withdrawn a protective direction and finds no reason to grant a right;
- has found that the application does not conform to the Act or Regulations.

Before an application is refused, the Commissioner will inform the applicant of the reasons for the refusal. The applicant will have an opportunity to make representations in support of his/her case.

WITHDRAWAL OF AN APPLICATION

Applicants may withdraw their applications at any time prior to a grant of rights. All papers and other material submitted in connection with the application will be returned to the applicant. The examination fee may be refunded where it had been paid prior to withdrawal and the examination had not been requested by the applicant.

ABANDONED APPLICATION

An application may be deemed abandoned at any time during the application or examination process upon failure of the applicant to proceed with the application within six months after the date of notice of any action by the Commissioner. It may be possible for the application to be reinstated where the application had been deemed abandoned.

7. GRANT OF RIGHTS

GRANT OF A PLANT BREEDER'S RIGHT

When an application meets all of the criteria for Plant Breeders' Rights, the PBRO will grant rights providing all fees have been paid. A plant breeders' rights certificate will be issued to the applicant.

RIGHTS OF THE HOLDER

The holder of a plant breeders' right has the exclusive right to:

- Sell, and produce the variety in Canada for the purpose of selling, the propagating material of the protected variety;
- Make repeated use of the protected variety as a step to commercially produce another variety;
- Make repeated use of the protected variety for use in the production of ornamental plants or cut flowers; and
- License a third party to do any of the above acts, conditionally or unconditionally.

Any of these acts undertaken by an unauthorized person constitutes an infringement of the holder's rights.

RESTRICTIONS TO THE HOLDERS' RIGHTS

Developing new varieties from protected varieties
Protected varieties may be used for breeding and developing new plant varieties.

Farmers' Privilege
Farmers may save and use their own seed of protected varieties without infringing on the holder's rights.

DURATION OF THE RIGHTS

Plant Breeders' Rights are granted for a period of up to 18 years, effective from the date of issue of the rights certificate. At any time during this period the holder may surrender the rights on the variety.

ANNUAL FEE

A plant breeders' right will remain in force so long as the holder of the rights pays the annual fee. The fee must be paid annually on the anniversary of the date the rights were granted.

MAINTENANCE OF PROPAGATING MATERIAL

It is the responsibility of the holder of the rights to be able to supply the Commissioner with a sample of propagating material of the variety throughout the term of protection. The Commissioner may request samples of propagating material at any time and the holder must provide the sample within 60 days of the request. The sample of propagating material must exhibit the same characteristics as described in the original variety description at the time when the right was granted. The Commissioner may also request to inspect

the facilities used for maintaining the variety. Failure to comply with these requests may result in the revocation of the rights.

**REVOCA
TION
OF RIGHTS**

The Commissioner may revoke rights when it has been determined that the holder:

- failed to pay the annual renewal fee;
- was unable to supply propagating material of the variety;
- was unable to prove that the variety was being maintained;
- sold propagating material of the variety while a protective direction was in force;
- did not meet the obligations imposed by a compulsory licence.

Before revoking rights, the Commissioner will inform the holder of the intended revocation. The holder will have an opportunity to make representations in support of his/her case.

**ANNULMENT
OF RIGHTS**

The Commissioner may annul rights when there is sufficient evidence that:

- the variety was not distinct when rights were granted;
- the variety was sold prior to application in contravention to the Act or Regulations.

Before a right is annulled, the Commissioner will inform the holder of the intended annulment. The holder will have an opportunity to make representations in support of his/her case.

**ASSIGNMENT
OF RIGHTS**

Holders of rights may assign their rights to another person. The PBRO will not become involved in these agreements. However, an assignment of a plant breeders' right is not considered valid by the PBRO unless it is registered by the assignee with the PBRO within 30 days after the assignment occurred. The following particulars should be included in an assignment of rights (for example see Appendix VIII):

- the name and address of the previous owner of the variety
- the category and denomination of the plant variety
- the plant breeders' rights certificate number
- a letter of assignment signed by both the holder and the assignee, each in the presence of a witness; and
- the effective date of the assignment

**CHANGES TO A
DENOMINATION**

A denomination may be changed after a right has been granted where any of the following conditions apply:

- the denomination granted is not the one proposed by the holder owing to error; or
- the Commissioner receives additional information that justifies a change to the denomination; or
- an objection has been filed to a change in denomination.

Any changes to a denomination requested by the holder will require the payment of a fee.

COMPULSORY LICENSING

A compulsory licence may be granted to anyone who can demonstrate to the Commissioner that the holder of the right of a particular variety has unreasonably refused to license them. The Commissioner may issue a compulsory licence to ensure that:

- the variety is available to the public at reasonable prices;
- the supply of the variety is widely distributed;
- reproductive material of high quality is kept; and/or
- royalty rates are kept reasonable.

The person to whom the compulsory licence is issued will be required to recompense the holder of the right. A compulsory licence is not exclusive and anyone may apply for one. Each application for a compulsory licence will be reviewed on a case by case basis.

8. DOCUMENTATION

PBR REGISTER

The PBRO maintains a register of new varieties which have been granted rights. The Register is open for public inspection.

PLANT VARIETIES JOURNAL

The PBRO publishes the *Plant Varieties Journal* containing information concerning plant breeders' rights. The Journal is distributed on a quarterly basis. The *Plant Varieties Journal* can be obtained by contacting the Plant Breeders' Rights Office. The Journal provides an opportunity for all interested persons to review the information concerning a variety and to object to the particulars of the published applications/ descriptions if they feel the DUS requirements or other requirements of the Act have not been met.

9. ENFORCEMENT AND INFRINGEMENT

It is the responsibility of the holder of the plant breeder's right to bring legal action against any person infringing on his/her rights. Court proceedings may be taken to the appropriate court in the province in which the infringement occurred.

10. OFFENCES

Offences under the Act are outlined below:

- (a) It is an offence for any person when selling a variety to not use the registered denomination for that variety; to use another denomination for the variety, or one that has been registered for another variety or could be confused with a registered denomination; or to falsely claim that the variety is a protected variety.
- (b) It is an offence for any person to make false representation, make a false entry in the register, falsify documents, or produce any false documentation.

A person committing any of these offences is liable on summary conviction to a fine of up to \$5000. A person convicted on indictment for an offence may be fined up to \$15,000 and/or jailed for up to three years for offences listed in part(a) above, or for up to five years for offences listed in part(b) above. For any of the offences listed, a corporation is liable to a fine of up to \$25,000 on summary conviction and to a fine at the discretion of the court on conviction on indictment.

11. INTERNATIONAL PLANT VARIETY PROTECTION

UPOV

The International Union for the Protection of New Varieties of Plants (UPOV) is an organization concerned with the promotion of international cooperation in the area of plant varietal protection. There are 60 member countries of UPOV, including Canada. Other members are: Albania, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Estonia, European Community, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Ukraine, the United Kingdom, the United States of America, Uruguay and Uzbekistan (see Appendix VIII for addresses).

Membership in UPOV enables Canadian plant breeders to protect their varieties in member States and gives Canadian producers improved access to protected foreign varieties.

PROTECTION OUTSIDE OF CANADA

A grant of rights is only valid in Canada. To obtain protection in other countries, the applicant must apply separately to the appropriate authority. Applications originally filed in Canada may serve as a basis for claiming priority for an application filed in a UPOV country (see page 5: Claiming Priority).

APPENDIX I

PRESCRIBED CATEGORIES		
1.	African violet ^b	<i>Saintpaulia</i> H. Wendl.
2.	Alfalfa ^b	<i>Medicago sativa</i> L. sensu lato
3.	Apple ^b	<i>Malus</i> Mill.
4.	Barley ^b	<i>Hordeum vulgare</i> L. sensu lato
5.	Bean ^b	<i>Phaseolus vulgaris</i> L. & <i>Phaseolus coccineus</i> L.
6.	Begonia ^c	<i>Begonia</i> L.
7.	Blueberry ^c	All species of blueberry of <i>Vaccinium</i> L.
8.	Canola/rape ^a	<i>Brassica rapa</i> L. & <i>Brassica napus</i> L.
9.	Cherry ^b	All species of cherries of <i>Prunus</i> L.
10.	Chrysanthemum ^a	<i>Chrysanthemum</i> L.
11.	Clematis ^c	<i>Clematis</i> L.
12.	Corn ^b	<i>Zea mays</i> L.
13.	Creeping Red Fescue ^c	<i>Festuca rubra</i> L.
14.	Dianthus ^b	<i>Dianthus</i> L.
15.	Flax ^b	<i>Linum usitatissimum</i> L.
16.	Grapevine ^b	<i>Vitis</i> L.
17.	Impatiens ^c	<i>Impatiens</i> L.
18.	Kentucky Bluegrass ^c	<i>Poa pratensis</i> L.
19.	Lentil ^c	<i>Lens culinaris</i> Medikus
20.	Maple ^c	<i>Acer</i> L.
21.	Mustard ^c	<i>Brassica carinata</i> A. Braun, <i>B. juncea</i> (L.) Czern et Coss., <i>B. nigra</i> (L.) W. Koch & <i>Sinapis alba</i> L.
22.	Oats ^b	<i>Avena</i> L.
23.	Peach ^c	<i>Prunus persica</i> (L.) Batsch
24.	Pear ^b	<i>Pyrus</i> L.
25.	Pea ^b	<i>Pisum sativum</i> L. sensu lato
26.	Pelargonium ^c	<i>Pelargonium</i> L'Hér. ex Ait.
27.	Plum ^c	All species of plums of <i>Prunus</i> L.
28.	Poinsettia ^b	<i>Euphorbia pulcherrima</i> Willd. ex. Keotzsch
29.	Potato ^a	<i>Solanum tuberosum</i> L.
30.	Potentilla ^b	<i>Potentilla</i> L.
31.	Raspberry ^c	<i>Rubus idaeus</i> L.
32.	Rose ^a	<i>Rosa</i> L.
33.	Soybean ^a	<i>Glycine max</i> L. Merrill
34.	Spirea ^c	<i>Spiraea</i> L.
35.	Strawberry ^b	<i>Fragaria</i> L.
36.	Timothy ^c	<i>Phleum pratense</i> L. & <i>Phleum bertolonii</i> DC.
37.	Viburnum ^c	<i>Viburnum</i> L.
38.	Wheat ^a	<i>Triticum</i> L.
39.	Yew ^b	<i>Taxus</i> L.
40.	All other plant species except algae, bacteria and fungi ^d	

^a prescribed since November 1991^b prescribed since March 10, 1993^c prescribed since December 28, 1994^d prescribed since December 23, 1998

APPENDIX II
ADVISORY COMMITTEE MEMBERS

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APPENDIX III VARIETY NAMING GUIDELINES

Every candidate variety must be identified by a denomination proposed by the applicant and approved by the Commissioner. The denomination must conform to the UPOV Recommendations on Variety Denominations (see below) as well as the guidelines outlined below:

- If an application for the candidate variety has been previously filed in other UPOV member countries, the denomination used in the first filing (or where rights were first granted) should be the official proposed variety denomination in Canada. This requirement ensures that the variety is known by the same denomination in all countries.
- In some instances an application for protection may not have been filed nor rights granted in another country. However, if the variety is known (commercialized) by a certain denomination in other countries it must then be protected in Canada under that same denomination. This is also in keeping with the one variety, one name policy.
- Where an application has been submitted for a variety protected in a foreign country, but the foreign name is not understandable/pronounceable in Canada, it is acceptable for the denomination to be respelled and proposed as such (this is particularly warranted in cases where unfamiliar alphabets are used, e.g. Arabic, Scandinavian, etc.).
- If a variety is protected in a foreign country by a denomination which is not acceptable to the Commissioner of PBR, an alternate denomination may be required. An example would be if the variety denomination is considered offensive.
- The denomination or any part of the denomination must not be a trademark or similar indication in Canada. In some cases (e.g. horticultural crops), varieties are marketed under trade names and/or trademarks that are not part of the official denomination. This practice is acceptable only if all propagating material of the protected variety is clearly advertised and labelled using the official denomination. The trade names and trademarks may also appear on the labels/advertising.
- The use of species names, common crop names or names of botanical types should be avoided.
- The denomination must not mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of its breeder. Any explicit or implicit claims incorporated as part of a variety name may only be used if they are accurate and verifiable.
- A prefix or suffix on a denomination is not enough of a difference if the other part of the denomination is the same as another variety. For example, 'XX Bud' would not be allowed if there was another variety in the same class named 'Bud'.
- Variety names varied only by the addition or deletion of a number or letter are acceptable providing their pedigree indicate that recurrent selections were made from the original varieties. For example, Brown's 1200A is acceptable if it is a selection from Brown's 1200. For varieties that do not fall into this category, the minimum requirements are that the denominations should differ by at least two letters.

- Punctuation marks are not allowed in variety denominations except in the case of a hyphen. No spaces are allowed in denominations which are comprised of numbers or number/letter combinations.

Proposed Denomination:

A denomination must be proposed at the time of filing the application. This may be a temporary designation or an experimental number. The denomination may be changed at any time prior to the grant of rights by providing written notification to the office. If the variety is registered, or in the process of being registered under the Seeds Act, the Plant Breeders' Rights Office should be provided with written notification of any denomination changes made with the Variety Registration Office.

Approved Denomination:

A variety denomination will receive final approval by the PBR Office only after it has been published in the *Plant Varieties Journal* and subjected to a six month objection period. Therefore, to avoid any delays in granting rights, the final denomination should be published at the same time as the variety description in the *Plant Varieties Journal*. The approved denomination should be considered the final denomination as a change of denomination after the rights have been granted may only be allowed in limited circumstances.

UPOV RECOMMENDATIONS ON VARIETY DENOMINATIONS

Suitability of Proposed Variety Denominations

Recommendation 1:

Designations that do not show clearly enough their status of variety denomination are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with designations that are identical or may be confused with other indications, in particular those that are commonly used in trade.

Recommendation 2:

- (1) Designations that the average user cannot recognize or reproduce in speech and/or writing are not suitable as generic designations and thus also as variety denominations.
- (2) In the case of varieties whose propagating material is exclusively marketed within a limited circle of specialists, as in the case of parent varieties for the production of hybrids, the average user should be taken to mean the average specialist in that circle.

Recommendation 3:

Designations whose use is to remain free are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with designations which consist exclusively or predominantly of terms in everyday language whose recognition as variety denominations would prevent others from using them when marketing reproductive or propagating material of other varieties.

Recommendation 4:

Designations whose use may be forbidden in the marketing of propagating material of the variety are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with:

- (i) designations in which the applicant himself has some other right (for instance a right in the name or a trademark) which he could assert under the legislation of the member State concerned to oppose use of the registered variety denomination, either at any time or at least after the expiration of protection;
- (ii) designations in which third parties have asserted a prior right;
- (iii) designations that are contrary to public policy in the member State concerned.

Recommendation 5:

Names and abbreviations of international organizations which are excluded by international conventions from use as trademarks or parts of trademarks are not suitable as generic designations and thus also as variety denominations.

Recommendation 6:

A designation is not suitable as variety denomination on the ground of liability to mislead if there is a risk of it giving rise to misconceptions concerning the characteristics or value of the variety. This may be the case in particular with:

- (i) designations that convey the impression that the variety has particular characteristics which in reality it does not have;
- (ii) designations that refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics;
- (iii) comparative and superlative designations;
- (iv) designations that convey the impression that the variety is derived from or related to another variety when that is not in fact the case.

Recommendation 7:

A designation is not suitable as a variety denomination on the ground of liability to mislead if there is a risk of it giving rise to misconceptions concerning the identity of the breeder.

Recommendation 8:

- (1) A designation is liable to cause confusion and/or to mislead, and therefore is not suitable, if it is identical or similar to a designation under which a variety of the same or a closely related botanical species has been made known or officially registered or under which reproductive or propagating material of that variety has been marketed.
- (2) Paragraph (1) is not to be applied where the variety made known or registered earlier or already marketed is no longer cultivated and its denomination has not acquired any particular importance, except where special circumstances nevertheless might make it liable to mislead.

Recommendation 9:

For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered closely related that belong to the same botanical genus or are contained in the same class in the list below:

List of Classes for Variety Denomination Purposes

Note: Classes which contain subdivisions of a genus may lead to the existence of a complementary class containing the other subdivisions of the genus concerned (example: Class 9 (*Vicia faba*) leads to the existence of another class containing the other species of the genus *Vicia*). *

Class 1: *Avena, Hordeum, Secale, Triticale, Triticum*

- Class 2: *Panicum, Setaria*
 Class 3: *Sorghum, Zea*
 Class 4: *Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum*
 Class 5: *Brassica oleracea, Brassica chinensis, Brassica pekinensis*
 Class 6: *Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis*
 Class 7: *Lotus, Medicago, Ornithopus, Onobrychis, Trifolium*
 Class 8: *Lupinus albus L., L. angustifolius L., L. luteus L.*
 Class 9: *Vicia faba L.*
 Class 10: *Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima*
 Class 11: *Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris*
 Class 12: *Lactuca, Valerianella, Cichorium*
 Class 13: *Cucumis sativus*
 Class 14: *Citrullus, Cucumis melo, Cucurbita*
 Class 15: *Anthriscus, Petroselinum*
 Class 16: *Daucus, Pastinaca*
 Class 17: *Anethum, Carum, Foeniculum*
 Class 18: *Bromeliaceae*
 Class 19: *Picea, Abies, Pseudotsuga, Pinus, Larix*
 Class 20: *Calluna, Erica*
 Class 21: *Solanum tuberosum L.*
 Class 22: *Nicotiana rustica L., N. tabacum L.*
 Class 23: *Helianthus tuberosus*
 Class 24: *Helianthus annuus*
 Class 25: *Orchidaceae*
 Class 26: *Epiphyllum, Rhipsalidopsis, Schlumbergera, Zygocactus*
 Class 27: *Proteaceae*

* The complementary classes have been added by the Office of the Union for the convenience of the reader and are given the numbers 28 to 35.

- Class 28: Species of *Brassica* other than (in Class 5 + 6) *Brassica oleracea, Brassica chinensis, Brassica pekinensis + Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis*
 Class 29: Species of *Lupinus* other than (in Class 8) *Lupinus albus L., L. angustifolius L., L. luteus L.*
 Class 30: Species of *Vicia* other than (in Class 9) *Vicia faba L.*
 Class 31: Species of *Beta* + subdivisions of the species *Beta vulgaris* other than (in Class 10 +11) *Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima + Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris*
 Class 32: Species of *Cucumis* other than (in Class 13 + 14) *Cucumis sativus + Citrullus, Cucumis melo, Cucurbita*
 Class 33: Species of *Solanum* other than (in Class 21) *Solanum tuberosum L.*
 Class 34: Species of *Nicotiana* other than (in Class 22) *Nicotiana rustica L., N. tabacum L.*
 Class 35: Species of *Helianthus* other than (in Class 23 + 24) *Helianthus tuberosus + Helianthus annuus*

**APPENDIX IV
SEED SAMPLE REQUIREMENTS**

Note: Quantity of seed has been determined based on the relative size and weight of seed. If the crop kind for which a PBR application is being filed is not included in the following list, either determine the quantity of seed based on a crop kind of similar seed size or contact the PBRO for further instruction.

AGRICULTURAL CROP KINDS	QUANTITY OF SEED
Bentgrass / Redtop / Tobacco	1 gram
Black Mustard / Bluegrass / Clover - Alsike, Hop or Yellow, Large, Small or Suckling, White, Ladino / Crested Dogtail / Fescue - Chewing's, Hard, Red, Creeping Red, Sheep's / Meadow Foxtail / Orchardgrass / Reed Canarygrass / Timothy	10 grams
Canola / Oilseed Rape	40 grams
Fescue - Meadow, Tall / Ryegrass / Wheatgrass / Wildrye	50 grams
Alfalfa / Bird's-foot Trefoil / Black Medick / Bromegrass / Clover - Crimson, Red, Strawberry, Subterranean, Sweet / Crownvetch / Kidneyvetch / Millet / Mustard - White, Indian / Oilseed Rape / Tall Oatgrass	75 grams
Canarygrass / Flax / Hemp / Sorghum	125 grams
Barley / Buckwheat / Emmer / Lentil / Oat / Rye / Safflower / Sainfoin / Spelt / Sunflower / Triticale / Wheat / Vetch	250 grams
Corn / Cowpea / Lupine / Pea / Soybean	500 grams
Bean - Field, Broad, Horse, Lima, Runner, Tick or Faba / Chickpea	1000 grams
FRUIT, VEGETABLE AND HERB CROP KINDS	QUANTITY OF SEED
Celeriac / Celery / Chicory / Water Cress / Savory / Sorrel / Thyme / Husk Tomato	5 grams
Cornsalad / Garden Cress / Parsnip / Pepper / Sage / Tomato	25 grams
Carrot / Celtnce / Dill / Endive / Lettuce / Parsley	50 grams
Artichoke / Asparagus / Broccoli / Brussel Sprouts / Cabbage / Cauliflower / Collards / Chives / Eggplant / Kale / Kohlrabi / Leek / Onion / Pak-choi / Pe-tsai / Spinach / Spinach Mustard / Turnip	75 grams
Beet / Mangel / Swiss Chard / Cantaloupe / Cucumber / Gerkin / Muskmelon / New Zealand Spinach / Okra / Radish / Rhubarb / Salsify	125 grams
Citron / Squash / Watermelon	250 grams
Pumpkin / Vegetable Marrow	500 grams
ORNAMENTAL CROP KINDS	QUANTITY OF SEED
Ornamental flowers *	1000 seeds

* not required for varieties that will be asexually reproduced

All reference samples submitted to the PBRO must meet the following requirements:

1. At the time of submitting the sample, the applicant must sign a statement certifying that the reference sample is representative of the variety.
2. The reference samples are legal samples which may be used in the event a holder's right is challenged. The submission of a non-representative sample for a variety could result in the loss of a right.
3. All reference samples originating from outside Canada must be sent via the Canadian agent.
4. The seed sample should be untreated. It is illegal to send treated seed in the mail and seed treatments may cause problems with certain types of laboratory analysis.
5. Samples submitted should be fastened in a tamper-proof manner. The container should be one of the following types of material:
 - a) Cotton or polyjute bags (most desirable)
 - b) Manilla seed envelopes
 - c) Paper bags (double bagged)
 - d) Plastic bags (least desirable)
6. Sample bags shall contain an inner and an outer label. The labels should contain the following information:
 - a) proposed denomination;
 - b) crop kind;
 - c) name of the applicant;
 - d) signature of the applicant or agent; and,
 - e) the date the sample was drawn.

APPENDIX V

COST OF PROTECTION:

The table below lists the fees and charges payable to the Plant Breeders' Rights Office for all purposes of the Act. All fees paid by cheque or money order are to be made payable to "Receiver General for Canada". All funds must be in Canadian dollars. Contact the PBRO regarding payment by VISA and MasterCard.

ITEM	SERVICE	FEES/CHARGES
1.	Filing an application	\$250.00
2.	Examination of an application	\$750.00
3.	Issuance of a Plant Breeders' Rights Certificate	\$500.00
4.	Annual Fee	\$300.00
5.	Protective Direction	\$50.00
6.	Claim for Priority from a preceding application outside of Canada	\$50.00
7.	Change of an approved denomination	\$100.00
8.	Objecting to an application for Plant Breeders' Rights	\$200.00
9.	Reinstatement of an abandoned application	\$100.00
10.	Reinstatement of an abandoned application on petition	\$200.00
11.	Application for compulsory licence	\$250.00
12.	Replacement of a lost/destroyed certificate	\$50.00
13.	Public inspection of the Register	\$5.00
14.	Copies of documents	\$0.50/page
15.	Purchase of Canadian test results by UPOV member country	\$350.00

APPENDIX VII
AUTHORIZATION OF AN AGENT

(Please submit a separate authorization for each variety)

The following may serve as a standard form to be completed for the authorization of agent. Please note that the agent will be the main contact person for the office and has the ability to change the status of the application. For example, the agent has the ability to withdraw the application for PBR.

I/We hereby authorize

.....

.....

.....

.....

(name and address of agent)

To act, for all purposes of the Plant Breeders' Rights Act, on behalf of me/us as my/our agent, for the

..... variety entitled.....

(common name of species) (variety denomination)

Name and address of applicant (or person signing on behalf of applicant):

.....

.....

.....

.....

Signature Date

APPENDIX VIII
ASSIGNMENT OF PLANT BREEDERS' RIGHTS
(Please submit a separate assignment for each variety)

The following letter may serve as a standard form to be completed when an assignment of a new variety occurs after the grant of rights. Assignments are covered under subsection 31(1) of the Plant Breeders' Rights Act and sections 12 and 26 of the Regulations. The assignee shall submit the following information within 30 days after the date of the assignment of plant breeders' rights.

I, (assignor)..... whose full post office address is
.....
.....
.....

in consideration of \$..... the receipt of which is hereby acknowledged, do hereby sell and assign,
effective the day of 20..... ,

to (assignee)..... whose full post office address is
.....
.....
.....

the full and exclusive right, title and interest in Canada and to the Plant Breeders' Rights Certificate

Number for the variety entitled
(common name of species) (variety denomination)

granted on the day of, to be held and enjoyed by the said assignee to the full end of the term for which the Plant Breeders' Rights are granted, as fully and entirely as the same could have been held and enjoyed by me if this assignment and sale had not been made.

Signed at (City or town and Country)

this day of 20.....

Witness Assignor.....

Signed at (City or town and Country).....

this day of 20.....

Witness Assignee

APPENDIX IX
ADDRESSES OF PLANT BREEDERS' RIGHTS OFFICES
IN UPOV MEMBER COUNTRIES

UPOV

International Union for the Protection of New Varieties of
Plants
34, chemin des Colombettes
CH-1211 Geneva 20 (POB 18)
Switzerland

Telephone: (41-22) 338 9111
Facsimile: (41-22) 733 0336
Website: <http://www.upov.int>

ARGENTINA

Área Semillas
Secretaría de Agricultura, Ganadería, Pesca
y Alimentación (SAGPYA)
Ministerio de Economía y Obras y Servicios Públicos
Paseo Colón 922 - 3. Piso
1063 Buenos Aires

Telephone: +54-11-4349 2497
Facsimile: +54-11-4349 2417
e-mail: inase@sagyp.mecon.gov.ar
Website: <http://www.sagpya.mecon.gov.ar>

AUSTRALIA

Plant Breeders' Rights Office
Department of Agriculture, Fisheries and
Forestry (DAFF)
P.O. Box 858
Canberra, A.C.T. 2601

Telephone: +61-2-6272 3888
Telex 61 289
Facsimile: +61-2-6272 3650
e-mail: doug.waterhouse@daff.gov.au
Website: <http://www.affa.gov.au/pbr>

AUSTRIA

Bundesamt für Ernährungssicherheit
Institut für Sortenwesen
Postfach 400
Spargelfeldstrasse 191
A-1226 Wien

Telephone: +43-1-732 16 40 00
Facsimile: +43-1-732 16 42 11
e-mail: sortenwesen@ages.at
Website: <http://www.lwvie.ages.at>

BELARUS

Committee for State Testing and Protection
of Plant Varieties of Belarus
90, Kazintza str.
Minsk 220108

Telephone: +375-172-770421 / 777051
Facsimile: +375-172-783530
e-mail: sortr@mshp.minsk.by

BELGIUM

Office de la Propriété Intellectuelle
Service public fédéral Économie, P.M.E.,
Classes moyennes & Énergie
North Gate III, 5ème étage
16, blvd. Du Roi Albert II
B-1000 Bruxelles

Telephone: +32-2-206 5158
Facsimile: +32-2-206 5750
e-mail: camille.vanslebrouck@mineco.fgov.be
Website: <http://mineco.fgov.be/opri-die.htm>

BOLIVIA

Dirección Nacional de Semillas
Secretaría Nacional de Agricultura y Ganadería
Ministerio de Desarrollo Económico
Avda. 6 de Agosto 2006, Edif. V. Centenario
Casilla 4793, La Paz

Telephone: +591-2-441 153 / 441 608
Facsimile: +591-2-441 153 / 441 608
e-mail: semillas@ceibo.entelnet.bo
Website: <http://www.semillas.org>

BRAZIL

Serviço Nacional de Proteção de Cultivares (SNPC)
Ministério da Agricultura, Pecuária e Abastecimento
Esplanada dos Ministérios, Bloco D, Anexo A,
Térreo, salas 1-12
CEP 70043-900, Brasília, DF

Telephone: +55-61-218 2163 / 2557 / 2549
Facsimile: +55-61-224 2842 / 5647
e-mail: snpc@agricultura.gov.br
Website: <http://www.agricultura.gov.br>

BULGARIA

State Patent Office of the Republic of Bulgaria
52B, Dr. G.M. Dimitrov Blvd.
BG-1040 Sofia

Telephone: +359-2-873 51 75
Facsimile: +359-2-873 51 78
e-mail: bpo@bpo.bg
Website: <http://www.bpo.bg>

CHILE

Departamento de Semillas
Servicio Agrícola y Ganadero (SAG)
Ministerio de Agricultura
Avda. Bulnes 140
Casilla 1167-21
Santiago de Chile

Telephone: +56-2-696 2996 / 698 2244
Facsimile: +56-2-697 2179 / 696 6480
e-mail: semillas@sag.gob.cl
Website: <http://www.sag.gob.cl>

CHINA

Plant Variety Protection Office
Ministry of Agriculture
Building 20
Maizidian Street
Beijing 100026

Telephone: +86-10-641 93029 / 641 91677 / 659 23176
Facsimile: +86-10-641 93082 / 641 91678 / 659 12176
e-mail: cnpvp@agri.gov.cn

Department of Science and Technology
Office for the Protection of New Varieties
of Forest Plants
State Forestry Administration
No. 18 Hepingli East Street
Beijing 100714

Telephone: +86-10-642 14714 / 6423 8715
Facsimile: +86-10-642 13084 / 6421 4904
e-mail: lybxpz@ihw.com.cn /
lyjxpz@public.east.cn.net
Website: <http://www.forestry.gov.cn>

COLOMBIA

División de Semillas
Instituto Colombiano Agropecuario (ICA)
Ministerio de Agricultura
Calle 37 No. 8-43
Santa Fe de Bogotá, D.F.

Telephone: +57-1-288 4800 / 232 8643
Facsimile: +57-1-288 4037 / 232 4695
e-mail: semillas@ica.gov.co
Website: <http://www.ica.gov.co>

CROATIA

Institute for Seed and Seedlings
Vinkovacka cesta 63c
31000 Osijek

Telephone: +385-31-275 206
Facsimile: +385-31-275 193
e-mail: r.ore@zsr.hr
Website: <http://www.zsr.hr/main.htm>

CZECH REPUBLIC

Central Institute for Supervising and Testing in
Agriculture (ÚKZÚZ)
Department of Plant Variety Rights and DUS Tests
Za opravnou 4
150 06 Prague 5 – Motol

Telephone: +420-2-57 211 755
+420-2-57 211 752
e-mail: jiri.soucek@ukzuz.cz
Website: <http://www.ukzuz.cz>

DENMARK

Department of Variety Testing
Danish Institute of Agricultural Sciences
Ministry of Food, Agriculture and Fisheries
Teglværksvej 10
Tystofte, Box 7
DK-4230 Skælskør

Telephone: +45-5816 0600
Facsimile: +45-5816 0606
E-mail: afs.djf@agrsci.dk
Website: <http://eng.agrsci.dk>

ECUADOR

Instituto Ecuatoriano de la Propiedad Intelectual
Dirección Nacional de Obtenciones Vegetales
Avenida República 396 y Diego de Almagro
Edificio FORUM 300, 1er piso
Quito

Telephone: +593-2-2508 000, ext. 340
Facsimile: +593-2-2508 026
e-mail: iepi@interactive.net.ec

ESTONIA

Estonian Plant Production Inspectorate
Variety Control Department
EE-71024 Viljandi

Tel +372-4-334 650
Facsimile: +372-4-334 650
e-mail: plant@plant.agri.ee
Website: <http://www.plant.agri.ee>

EUROPEAN COMMUNITY

Community Plant Variety Office (CPVO)
P.O. Box 2141
F-49021 Angers Cedex 02
France

Telephone: +33-2-41 25 64 00
Facsimile: +33-2-41 25 64 10
Website: <http://www.cpvo.eu.int>

FINLAND

Plant Variety Board
Plant Variety Rights Office
Ministry of Agriculture and Forestry
Hallituskatu 3 a, Helsinki
P.O. Box 30
FIN-00023 Government

Telephone: +358-9-160 3301/ 160 3316
Facsimile: +358-9-160 88 663
Website: <http://www.mmm.fi>

FRANCE

Comité de la protection des obtentions végétales
11, rue Jean Nicot
F-75007 Paris

Telephone: +33-1-42 75 93 14
Telex 250 648
Facsimile: +33-1-42 75 94 25
Website: <http://www.geves.zarcrom.fr>

GERMANY

Postal address
Bundessortenamt
Postfach 61 04 40
D-30604 Hannover

Telephone: +49-511-956 6603 / 956 66 02
Facsimile: +49-511-956 6904 / 956 3362
e-mail: bsa@bundessortenamt.de
Website: <http://www.bundessortenamt.de>

Visitors' address

Bundessortenamt
Osterfelddamm 80
D-30627 Hannover

HUNGARY

Hungarian Patent Office
Magyar Szabadalmi Hivatal
Garibaldi-u.2 – B.P. 552
H-1370 Budapest

Telephone: +36-1-331 3992 / 312 44 00
Facsimile: +36-1-331 2596 / 474 5899
e-mail: mszh@hungary.com
Website: <http://www.hpo.hu>

IRELAND

Controller of Plant Breeders' Rights
National Crop Variety Testing Centre
Department of Agriculture and Food
Backweston
Leixlip
Co. Kildare

Telephone: +353-1-628 0608
Facsimile: +353-1-628 0634
e-mail: backwest@agriculture.gov.ie
Website: <http://www.gov.ie/daff>

ISRAEL

Agricultural Research Organisation
Plant Breeders' Rights Council
The Volcani Center
P.O. Box 6
Bet-Dagan 50250

Telephone: +972-3-968 3450 / 968 3669
Facsimile: +972-3-968 3492
e-mail: ilpbr-tu@int.gov.il
Website: <http://www.moag.il>

ITALY

Ufficio Italiano Brevetti e Marchi (UIBM)
Direzione generale per lo sviluppo produttivo
e competitività (DGSPC)
Ministero delle attività produttive
19, via Molise
I-00187 Roma

Telephone: +39-06-47051 / 488 4354
Facsimile: +39-06-47053035
e-mail: segreteria.dgspc@minindustria.it
Website: <http://www.minindustria.it>

JAPAN

Seeds and Seedlings Division
Agricultural Production Bureau
Ministry of Agriculture, Forestry and Fisheries
1-2-1 Kasumigaseki - Chiyoda-ku
Tokyo 100

Telephone: +81-3-35 91 05 24
Facsimile: +81-3-35 02 65 72
Website: <http://www.maff.go.jp/eindex.html>

KENYA

Plant Breeders' Rights Office
Kenya Plant Health Inspectorate Service (KEPHIS)
Headquarters
Waiyaki Way
P.O. Box 49592
Nairobi

Telephone: +254-2-4440087 / 4441804
Facsimile: +254-2-4448940
e-mail: pvpo@kephis.org
Website: <http://www.kephis.org>

KYRGYZSTAN

State Agency of Science and Intellectual Property
Moskovskaya St. 62
720021 Bishkek
House 10/1, Microregion 11
720049 Bishkek

Telephone: +996-(3)312-680819 / 510810
Facsimile: +996-(3)312-681703 / 510813
e-mail: kyrgyzpatent@infoTelephone:kg
Website: <http://www.kyrgyzpatent.kg>

LATVIA

Plant Variety Testing Department
State Plant Protection Service
Lubanas iela, 49
1073 Riga

Telephone: +371-736 5567
Facsimile: +371-736 5571
e-mail: info@vaad.gov.lv
Website: <http://www.vaad.gov.lv>

MEXICO

Servicio Nacional de Inspección y
Certificación de Semillas (SNICS)
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