

CANADA

**Plant Breeders' Rights Act<sup>\*</sup>**

SHORT TITLE

**Section 1**

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

INTERPRETATION

**Section 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;

“advisory committee” means such advisory committee as may be constituted pursuant to subsection 73(1);

“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;

“agreement country” means

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

that is prescribed as an agreement country with a view to the fulfilment of a bilateral agreement concerning the rights of plant breeders made between Canada and that country;

“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;

“breeder”, in respect of a plant variety, means

- (a) where any person acting within the scope of the person’s duties as an officer, servant or employee of another person originates or discovers the plant variety, that other person, and
- (b) where any person not acting as described in paragraph (a) originates or discovers the plant variety, that person;

“category” means a species or any class within a species;

“Commissioner” means the Commissioner of Plant Breeders’ Rights appointed pursuant to subsection 56(1) and, except in section 56, includes any person acting under a written authorization given pursuant to section 58;

“country of the Union” means

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

that is prescribed as a country of the Union with a view to the fulfilment of a convention constituting a Union for protecting new varieties of plants that includes Canada among its members;

“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;

“index” means the index prepared pursuant to section 62;

“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 exclusive right to do as provided in subsection 5(1);

“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;

“Minister” means the Minister of Agriculture;

“new variety” means a plant variety that complies with the requirements of section 4;

“plant breeder’s rights” means the rights referred to in subsection 5(1);

“plant variety” means any cultivar, clone, breeding line or hybrid of a prescribed category of plant that can be cultivated;

“prescribed” means prescribed by regulation;

“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;

“protective direction” means a protective direction under section 19;

“register” means the register kept pursuant to section 63;

“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.

(2) Notwithstanding anything in this Act, a country of the Union or an agreement country may be prescribed for all or any of the provisions of this Act or the regulations in so far as those provisions have reference, express or implied, to such a country.

HER MAJESTY

**Section 3**

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

APPLICATION

**Section 4**

(1) The varieties of plants in respect of which this Act provides for the granting of plant breeders’ rights are restricted to varieties belonging to prescribed categories and found, pursuant to subsection 27(1), to be new varieties.

(2) A plant variety is a new variety if it

- (a) is, by reason of one or more identifiable characteristics, clearly distinguishable from all varieties the existence of which is a matter of common knowledge at the effective date of application for the grant of the plant breeder's rights respecting that plant variety;
- (b) is stable in its essential characteristics in that after repeated reproduction or propagation or, where the applicant has defined a particular cycle of reproduction or multiplication, at the end of each cycle, remains true to its description; and
- (c) is, having regard to the particular features of its sexual reproduction or vegetative propagation, a sufficiently homogeneous variety.

(3) In paragraph (2)(c), "sufficiently homogeneous variety" means such a variety that, in the event of its sexual reproduction or vegetative propagation in substantial quantity, any variations in characteristics of plants so reproduced or propagated are predictable, capable of being described and commercially acceptable.

## PLANT BREEDER'S RIGHTS

### Section 5

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

- (a) to sell, and produce in Canada for the purpose of selling, propagating material, as such, of the plant variety;
- (b) to make repeated use of propagating material of the plant variety in order to produce commercially another plant variety if the repetition is necessary for that purpose;
- (c) where it is a plant variety to which ornamental plants or parts thereof normally marketed for purposes other than propagation belong, to use any such plants or parts commercially as propagating material in the production of ornamental plants or cut flowers; and
- (d) to authorize, conditionally or unconditionally, the doing of an act described in paragraphs (a) to (c).

(2) Paragraph (1)(a) does not apply in respect of the sale of propagating material that is not in Canada when it is sold but, if any such propagating material the sale of which to any person is exempted from that paragraph by this subsection is used as propagating material in Canada by that person, an infringement of the exclusive right conferred by virtue of that paragraph is constituted

by the purchase and subsequent use of the propagating material by that person, who shall be liable to be proceeded against in respect of that infringement.

(3) A sale of propagating material in the exercise of any exclusive right conferred by subsection (1) does not imply that the seller authorizes the purchaser to produce, for the purpose of selling, propagating material as such but, subject to any terms or conditions imposed by the seller, the sale implies that the seller authorizes the purchaser to sell anything sold, in that exercise of the exclusive right, to the purchaser.

(4) Without limiting the generality of paragraph (1)(d) and without prejudice to any rights or privileges of the Crown, where authority is conferred subject to conditions pursuant to that paragraph, whether or not the holder of the plant breeder's rights is Her Majesty in right of Canada or a province, the conditions may include a requirement to pay royalty to the holder.

## **Section 6**

(1) The term of the grant of plant breeder's rights shall, subject to earlier termination pursuant to this Act, be a period of eighteen years, commencing on the day the certificate of registration is issued under paragraph 27(3)(b).

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

## **APPLICATIONS FOR PLANT BREEDER'S RIGHTS**

### **Section 7**

(1) Subject to section 8, a breeder of a new variety or a legal representative of the breeder may make an application to the Commissioner for the grant of plant breeder's rights respecting that variety if

(a) in the case of a new variety of a recently prescribed category, neither the breeder nor a legal representative of the breeder sold or concurred in the sale of that variety in Canada before the commencement of such period prior to the date of receipt, by the Commissioner, of the application as is prescribed for the purposes of this paragraph;

(b) in any other case, neither the breeder nor a legal representative of the breeder sold or concurred in the sale of that variety in Canada before the effective date of the application; and

(c) subject to any prescribed exemptions, neither the breeder nor a legal representative of the breeder sold or concurred in the sale of that variety outside Canada before the

commencement of such period prior to the date described in paragraph (a) as is prescribed for the purposes of this paragraph.

(2) Where

(a) a new variety is bred by two or more breeders otherwise than independently of each other, and

(b) either or any of the persons entitled to make an application for the grant of the plant breeder's rights respecting that variety refuses to do so or information of the whereabouts of either or any of those persons cannot be obtained through diligent inquiry on the part of the remainder of them,

the remainder of those persons may make an application for that grant.

### **Section 8**

A person is only eligible to apply for the grant of plant breeder's rights if the person is a citizen of, or is resident or has a registered office in, Canada or a country of the Union or an agreement country.

### **Section 9**

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

(a) be made in the prescribed manner;

(b) be accompanied by the prescribed fee;

(c) be supported by the documents and any other material prescribed; and

(d) include any request referred to in subparagraph 75(1)(k)(i) that the applicant makes.

(2) An applicant who, in the case of an individual, is not resident in Canada or that, in the case of a corporation, does not have its registered office in Canada shall submit the application through an agent resident in Canada.

### **Section 10**

(1) Subject to subsections (2) and 11(1), the effective date of an application is the date on which the application is received by the Commissioner and, in the case of receipt by the Commissioner

of two or more applications respecting a new variety the breeders of which bred it independently of each other, priority shall be given to the application first received by the Commissioner.

(2) Where the effective dates of applications described in subsection (1) are the same, priority shall be given to the application pertaining to the breeder who was first in a position to apply for the plant breeder's rights respecting the new variety or who would have been first in the position to do so if the provision made by or under this Act for so doing had always been in force.

### **Section 11**

(1) Where an application made under section 7 is preceded by an application made, in the appropriate manner, in a country of the Union or an agreement country, for protection pursuant to the breeding of the same new variety by the same breeder as in the case of the application made under section 7, the date that is the effective date of the application made in that country shall be deemed to be the effective date of the application made under section 7 and the applicant is entitled to priority in Canada accordingly, notwithstanding any intervening use, publication or application respecting the new variety, if

(a) the application is made under section 7 in the prescribed form within twelve months after the date on which the application was made in that country; and

(b) the application made under section 7 includes or is accompanied by a claim respecting the priority and is accompanied by the prescribed fee.

(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 on which the claim is submitted to the Commissioner, it is confirmed by filing with the Commissioner a copy, certified as correct by the appropriate authority in that 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.

(3) An application given priority under subsection (1) shall be supported by the required material furnished pursuant to this Act and the regulations before the expiration of the prescribed period, not exceeding four years, after the last day of the twelve months within which the application is submitted in accordance with paragraph (1)(a).

(4) Where an application made under section 7 is preceded by two or more applications made, in the appropriate manner, in different countries of the Union or agreement countries, for protection pursuant to the breeding of the same new variety by the same breeder as in the case of the application made under section 7, reference in subsection (1) to an application made in any such country shall be construed as reference to whichever of those applications was first made.

### **Section 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 a citizen of, or a person resident or having a registered office in, Canada or a country of the Union or an agreement country.

(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.

### **Section 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 OF NEW VARIETIES

### **Section 14**

(1) A new 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.

(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.

(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.

(4) A denomination that the Commissioner approves for any new 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 any denomination with reference to which that protection has been granted or that application submitted.

(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.

(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.

### **Section 15**

After the grant of the plant breeder's rights respecting any new variety, every person designating the variety for the purposes of the sale of propagating material thereof by that person, whether before or after the expiration of the term of the grant of those rights, shall only use the denomination approved by the Commissioner pursuant to section 14.

### **Section 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.

## SUMMARY DISPOSITION OF APPLICATIONS

### **Section 17**

(1) The Commissioner may reject an application for the grant of plant breeder's rights if any incompatibility with this Act or the regulations appears with regard to the application and, without limiting the generality of the foregoing, the Commissioner may reject an application if it appears

(a) that the variety in respect of which the application is made is not a new variety; or

(b) that the person making the application is not entitled in accordance with section 7 or 8 to do so.

(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.

### **Section 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 expiration of that period, add to or alter the denomination proposed by that applicant pursuant to section 14 or the description of the new variety for the purposes of the application.

## PROTECTIVE DIRECTIONS

### **Section 19**

- (1) An application for the grant of plant breeder's rights may include an application, accompanied by the fee prescribed in respect thereof, to the Commissioner for a protective direction respecting the plant variety in relation to which the application is made.
- (2) Every person applying for a protective direction in accordance with subsection (1) shall undertake not to sell during the subsistence thereof propagating material of the plant variety unless the sale is made in good faith for purposes of scientific research, is part of a transaction involving the sale of the plant breeder's rights or consists of the sale of propagating material for the purpose of accumulating stock for subsequent resale to that person.
- (3) Subject to subsection (4), where the undertaking required by subsection (2) is given, the Commissioner shall grant a protective direction to the person giving the undertaking and anything done while the protective direction is in force that, if the plant breeder's rights respecting the plant variety were granted, would constitute an infringement of those rights is actionable pursuant to this section as if it were such an infringement.
- (4) Where the Commissioner has reason to suspect that a person whose application for the grant of plant breeder's rights includes an application for a protective direction is not entitled in accordance with section 7 or 8 to make the application for that grant, the Commissioner shall refuse to grant the protective direction.
- (5) The Commissioner shall not refuse to grant a protective direction to a person 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.

### **Section 20**

- (1) The Commissioner may withdraw a protective direction if the person to whom it was granted so requests and, notwithstanding the absence of any such request, the Commissioner shall withdraw a protective direction if the Commissioner is satisfied that
  - (a) the person to whom it was granted has given an undertaking, whether or not for consideration, not to institute proceedings pursuant to section 19; or
  - (b) a breach of the undertaking given by the person pursuant to subsection 19(2) has occurred.

(2) Section 36 applies, with such modifications as the circumstances require, in respect of the withdrawal of a protective direction as that section applies in respect of the revocation of plant breeder's rights.

### **Section 21**

As soon as an application for the grant of plant breeder's rights that includes an application for a protective direction is disposed of, whether by grant or refusal to grant those rights or otherwise, the protective direction lapses if it is in force at the time of that disposal.

## CONSIDERATION AND DISPOSITION OF APPLICATIONS

### **Section 22**

(1) A person who considers that an application of which particulars have been published pursuant to section 70 ought to be refused

(a) on any ground that constitutes a basis for rejection pursuant to section 17, or

(b) in so far as an exemption referred to in subparagraph 75(1)(k)(i) is requested in the application,

may, on payment of the prescribed fee, except in the case of an objection made for the purpose of this subsection under the authority of the Minister of Consumer and Corporate Affairs after notice under subsection 70(2), file with the Commissioner, within the prescribed period after the date of publication, an objection specifying that person's reasons for so considering.

(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).

(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.

(4) Where an objection to an application is filed with the Commissioner and is not rejected in accordance with subsection (3), the Commissioner shall not make or refuse the grant of plant breeder's rights on the application until the Commissioner has considered the objection and given the persons making the objection and application a reasonable opportunity to make representations with respect thereto.

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

### **Section 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.

(2) For the purpose of determining whether the plant variety to which an application under consideration pursuant to subsection (1) relates is a new variety, the Commissioner shall require such tests and trials with the plant variety, under such conditions, as the Commissioner deems necessary or expedient.

(3) The person on whose part material is submitted for consideration pursuant to subsection (1) shall, for the purposes of tests and trials with the plant variety in question, without prejudice to the requirements of subsection 9(1) and at such time and place as the Commissioner directs,

(a) pay the appropriate prescribed examination fee; and

(b) furnish any

(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

that the Commissioner considers necessary for those purposes.

### **Section 24**

(1) Where the Commissioner is able to obtain from an appropriate authority in any country such official results of tests and trials with the plant variety referred to in subsection 23(2) as the Commissioner considers acceptable, the Commissioner may rely on those results and the costs incurred in obtaining them pursuant to this subsection shall be paid to the Commissioner by the person to whom the Commissioner is authorized by subsection 23(3) to give directions for payment of such examination fee as may be payable for the purposes of tests and trials with the plant variety.

(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.

### **Section 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.

### **Section 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.

(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.

## **GRANT, REFUSAL AND DISPOSAL OF PLANT BREEDER'S RIGHTS**

### **Section 27**

(1) Where the Commissioner approves a denomination proposed by an applicant pursuant to 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 application

(a) is made by the applicant with respect to a new variety, and

(b) otherwise conforms to this Act,

the Commissioner shall, except in the circumstances described in paragraph (2)(b), grant plant breeder's rights respecting that new variety to the applicant in accordance with subsection (3).

(2) Where the Commissioner

(a) is not satisfied, after consideration of an application and evaluation of results, as described in subsection (1), or

(b) has, pursuant to paragraph 20(1)(b), withdrawn a protective direction and finds no reason considered by the Commissioner to be sufficient for nevertheless granting the plant breeder's rights to the applicant to whom the protective direction was granted,

the Commissioner shall refuse the application.

(3) The Commissioner shall, on payment of the prescribed fee in respect of the grant under subsection (1) of plant breeder's rights,

(a) enter in the register the particulars required by section 63 in relation to the new variety in respect of which the rights are granted; and

(b) make the grant by issuing a certificate of registration in respect thereof to the applicant.

(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.

(5) Where a certificate of registration issued pursuant to paragraph (3)(b) is destroyed or lost, a certified copy may be issued in lieu thereof on payment of the prescribed fee.

### **Section 28**

Where the Commissioner grants plant breeder's rights to persons constituting a remainder mentioned in subsection 7(2) or to other joint applicants, the grant shall be in the names of all those persons or other joint applicants.

### **Section 29**

The grant of the plant breeder's rights respecting a plant variety is subject to any conditions related to its category that are prescribed for the purpose of requiring the holder of those rights to authorize, pursuant to paragraph 5(1)(d), the doing of an act described in paragraphs 5(1)(a) to (c).

## MAINTENANCE OF PROPAGATING MATERIAL

### **Section 30**

- (1) A holder of the plant breeder's rights respecting a plant variety shall
  - (a) ensure that the holder is in a position, throughout the period of registration of the holder as such, to furnish the Commissioner at the Commissioner's request with such propagating material of that variety as is capable of so producing it 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).
- (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.

## ASSIGNMENT OF PLANT BREEDER'S RIGHTS

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

### **Section 32**

- (1) Subject to this section and the regulations, the Commissioner shall, on application by any person, where the Commissioner considers that it is appropriate to do so, confer on the person in the form of a compulsory licence rights to do any thing that the holder might authorize another person to do pursuant to paragraph 5(1)(d).
- (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.
- (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.
- (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.
- (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.
- (6) No compulsory licence that is an exclusive licence shall be granted pursuant to this section.

### **Section 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.
- (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

### **Section 34**

The Commissioner may, prior to 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 the requirements specified in paragraph 4(2)(a) or the conditions specified in subsection 7(1) were not fulfilled.

### **Section 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) the applicant for the grant of those rights committed a breach of an undertaking given by the applicant under subsection 19(2);
  - (d) their holder has failed, within the prescribed period, to pay the fee required under subsection 6(2); or
  - (e) there has been a failure to meet any obligation imposed by, and for the benefit of the holder of, a compulsory licence affecting any such rights by virtue of section 32.
- (2) Nothing in paragraph (1)(e) prejudices any remedies lawfully available, apart from subsection (1), to a holder of a compulsory licence.

### **Section 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.
- (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.

(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.

(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).

### **Section 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

### **Subsection 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.

(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.

## AGENTS

### **Section 39**

(1) Where a holder of plant breeder's rights, in the case of an individual, is not resident in Canada or, in the case of a corporation, does not have its registered office in Canada, the holder shall have an agent in respect of those rights who is resident in Canada.

(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.

(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).

#### **Section 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

#### **Section 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.

(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.

(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.

#### **Section 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.

(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.

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

#### **Section 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.

(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.

(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 requirement specified in paragraph 4(2)(a) was not fulfilled;
- (b) a condition specified in paragraph 7(1)(a), (b) or (c) was not fulfilled; or
- (c) the holder has not complied with paragraph 30(1)(a).

(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.

(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.

(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).

#### **Section 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.

#### **Section 45**

(1) A person authorized pursuant to paragraph 5(1)(d) or licensed to exercise plant breeder's rights may, subject to any agreement between the holder of the rights and that person,

- (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.

(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.

#### **Section 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 requirement specified in paragraph 4(2)(a) was not fulfilled;
- (b) that a condition specified in paragraph 7(1)(a), (b) or (c) was not fulfilled; or
- (c) that the holder has not complied with paragraph 30(1)(a).

#### **Section 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.

#### **Section 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.

#### **Section 49**

(1) A certificate of a decision of the Federal Court 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.

(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.

### **Section 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

(i) annulment of the grant of plant breeder's rights is required by section 13,

(ii) the grant of a protective direction is to be refused, or

(iii) any condition described in paragraph 20(1)(a) or (b) is fulfilled;

(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.

(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.

### **Section 51**

(1) Subject to subsection 67(4), where any appeal or other proceedings have been instituted in the Federal Court under any provision of 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.

(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).

### **Section 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.

## OFFENCES

### **Section 53**

(1) Every person commits an offence who wilfully 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 where 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.

(2) Every person commits an offence who

(a) wilfully contravenes section 15;

(b) for the purposes of selling any propagating material for propagation or multiplication, wilfully 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 for propagation or multiplication, 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.

(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.

(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.

(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.

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

## **Section 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.

## PLANT BREEDERS' RIGHTS OFFICE

### **Section 55**

- (1) This Act shall be administered by the Minister.
- (2) There shall be attached to the Department of Agriculture an office to be called the Plant Breeders' Rights Office and to be staffed pursuant to subsection (3) and section 56.
- (3) Such officers and employees as are necessary for the administration of this Act shall be appointed in accordance with the Public Service Employment Act.

### **Section 56**

- (1) A Commissioner of Plant Breeders' Rights shall be appointed in accordance with the Public Service Employment Act.
- (2) Subject to section 58, the Commissioner shall receive all applications, fees, papers, 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 by or pursuant to this Act or the regulations and shall have the charge and custody of the register, books, records, papers and other things belonging to the Plant Breeders' Rights Office.
- (3) 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 Minister shall, in the capacity of Acting Commissioner, exercise the powers and perform the duties of the Commissioner.

### **Section 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.

### **Section 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.

(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.

### **Section 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 officers or employees appointed pursuant to section 55 or 56 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, whether appointed or engaged pursuant to section 55 or 56 or 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.

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

### **Section 60**

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

(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.

### **Section 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**

### **Section 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.

### **Section 63**

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

- (a) the prescribed category to which each new variety belongs;
- (b) the denomination of the variety, and any change thereof approved pursuant to subsection 14(5);
- (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, where a protective direction is granted, a statement to that effect; 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.

#### **Section 64**

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

(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.

#### **Section 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.

#### **Section 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 registration issued pursuant to 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.

(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.

(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.

### **Section 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.

(2) Subject to subsection (4),

(a) the register,

(b) the index, and

(c) any documents referred to in subsection (1) that are prescribed for the purposes of this subsection or that may properly, in the opinion of the Commissioner, be open for inspection by the public,

shall be open for inspection, on payment of the prescribed fees, during business hours at the Plant Breeders' Rights Office and the Commissioner shall, on request and on payment of the prescribed fee, furnish any person with a copy of, or certificate with regard to, an entry in the register or index or with a copy of any such document.

(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) An application for plant breeder's rights and any document or instrument that accompanies it shall not, except with the consent of the applicant or by order of a court for the purposes of proceedings before it, be published by the Commissioner or be open to public inspection at any time before particulars of the application are published in the "Canada Gazette" pursuant to section 70.

### **Section 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.

(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.

### **Section 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**

### **Section 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) every application for a protective direction;

(d) every grant or withdrawal of a protective direction;

(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.

(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 Consumer and Corporate Affairs.

(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 refusal to grant a protective direction and of every annulment under section 34 or revocation under section 35.

### **Section 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.

(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.

(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.

(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.

### **Section 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”.

(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

### **Section 73**

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

(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.

(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.

(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.

### **Section 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

### Section 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) determining the nature of any charges that a person may be required to pay in respect of any services provided in the execution of any functions by or under the authority of the Commissioner;
  - (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”, “recently prescribed category”, “representations”, “reasonably priced” and “widely distributed” for the purposes of this Act;
  - (d) requiring
    - (i) the publication in the “Trade Marks Journal” of prescribed particulars respecting proposals, approvals and changes of denominations pursuant to section 14, and
    - (ii) notwithstanding anything in subsection 73(1), the advisory committee’s advice as a prerequisite for the execution of any functions by the Minister or the Commissioner;
  - (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) giving effect to the terms of
    - (i) any convention with a view to the fulfilment of which any country is prescribed as a country of the Union, and
    - (ii) any agreement with a view to the fulfilment of which any country is prescribed as an agreement country,
- and, notwithstanding anything in this Act, qualifying or curtailing any rights, protection or other benefits under this Act to any extent conducive to reciprocity between Canada and any such country;
- (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 appointed or engaged pursuant to subsection 55(3), 56(1) or 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) providing

(i) in relation to any category of plant, for any of the grants of plant breeder's rights respecting new varieties of that category to be made, at the applicant's request, on terms allowing an exemption, revocable by the Commissioner, from compulsory licensing under section 32 or from the requirements of any conditions described in section 29 or from both,

(ii) for the inclusion, in the terms of a grant referred to in section 29 or subparagraph (i), of any terms in, on or subject to which any conditions described in that section shall be imposed or complied with or any exemption may, pursuant to that subparagraph, be allowed or revoked, and

(iii) for paragraph 35(1)(e) to apply to any obligations under any of those conditions as that paragraph applies to an obligation under the terms of a compulsory licence, and for the extended application of subsection 35(1) and sections 36 and 37 accordingly;

(l) prescribing

(i) matters 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 pursuant to or for the purposes of this Act,

(ii) all or any of the means by which or the factors or criteria by reference to which, whether they are found in Canada or elsewhere, common knowledge or the absence thereof may or shall be or ought not to be regarded as established for the purposes of paragraph 4(2)(a) or section 62,

(iii) the fees payable by a person in respect of any facilities afforded by the Plant Breeders' Rights Office,

(iv) the time at or within which and the manner in which any charge, the nature of which is determined under paragraph (a), or any prescribed fee shall be paid,

(v) the circumstances in which any charge or fee referred to in subparagraph (iv) may or shall be refunded in whole or in part, and

(vi) matters in respect of which the Commissioner is to be satisfied before an exemption referred to in subparagraph (k)(i) may be revoked;

(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.

(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.

(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.

## SEEDS ACT

### **Section 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.

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

## REVIEW OF ACT

### **Section 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.

(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.

### **Section 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.

## CONSEQUENTIAL AMENDMENTS

### Trade-marks Act

#### **Section 79**

The Trade-marks Act is amended by adding thereto, immediately after section 10 thereof, the following section:

“10.1 Where a denomination must, under the Plant Breeders’ Rights Act, be used to designate a plant variety, no person shall adopt it as a trade-mark in association with the plant variety or another plant variety of the same species or use it in a way likely to mislead, nor shall any person so adopt or so use any mark so nearly resembling that denomination as to be likely to be mistaken therefor.”

#### **Section 80**

The said Act is further amended by adding thereto, immediately after section 11 thereof, the following section:

“11.1 No person shall use in connection with a business, as a trade-mark or otherwise, any denomination adopted contrary to section 10.1.”

#### **Section 81**

Subsection 12(1) of the said Act is amended by striking out the word “or” at the end of paragraph (d) thereof, by adding the word “or” at the end of paragraph (e) thereof and by adding thereto the following paragraph:

“(f) a denomination the adoption of which is prohibited by section 10.1.”

## COMING INTO FORCE

#### **Section 82**

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

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\* Long title: An Act respecting plant breeders' rights [Assented to 19th June, 1990]  
French long title: Loi concernant la protection des obtentions végétales [sanctionnée le 19 juin 1990]  
French short title: Loi sur la protection des obtentions végétales

