

# **A Seed Act for Farmers, Not Corporations – Stop Bill C-18**



**A Seed Act for Farmers, not Corporations – Stop Bill C-18,**  
National Farmers Union, January, 2014

“At the end of the day (it) ... will either be an IP(Intellectual Property) cost up front ... or an end-use royalty as you sell off the seed.” *Hon. Gerry Ritz, Federal Minister of Agriculture and Agri-Food*



# Overview

- 1. What is Bill C-18 “*The Agricultural Growth Act*”?**
- 2. What is the relationship between Bill C-18 and UPOV '91?**
- 3. How does Bill C-18 fit in the big picture of corporate control?**
- 4. Table Discussions**
- 5. What can you do?**

# What is Bill C-18?

## *“The Agricultural Growth Act”*

- Introduced in Parliament December 9, 2013.
- An omnibus agriculture bill.
- Amends several federal agricultural laws including the Plant Breeders Rights (PBR), Seeds, Fertilizer, Health of Animals, Marketing Programs Acts.
- PBR Act amendments would bring Canada under UPOV '91.

# What is UPOV?

Union Internationale Pour la Protection des Obtentions Vegetales

International Union for the Protection of [ownership of] New Varieties of Plants

**UPOV**

INTERNATIONAL UNION FOR  
THE PROTECTION OF NEW VARIETIES OF PLANTS

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## Mission Statement

To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

- UPOV established 1968, revised 1978 and 1991.
- Mechanism to define seed varieties as a form of property and to confer ownership rights over seed varieties from cereals to vegetables.
- 1990 - Canada's first PBR Act, conforms to 1978 rules.
- Since 2004 seed companies have lobbied the federal government to adopt UPOV '91.
- NFU campaign since 2004 to stop its introduction.

# Bill C-18 and UPOV '91

- Introduces “End-Point Royalties” (EPR).
- Royalties can be collected on the whole crop following harvest instead of just on seed.
- Royalties extended from 18 to 20 years for seed.
- PBR extended to reproduction, selling, exporting, importing, stocking, and conditioning of seed.

Conditioning – cleaning and treating  
• Stocking – bagging, binning and storing



## “Nature of plant breeder’s rights

5. (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder’s rights respecting a plant variety has the exclusive right
- (a) to produce and reproduce propagating material of the variety;
  - (b) to condition propagating material of the variety for the purposes of propagating the variety;
  - (c) to sell propagating material of the variety;
  - (d) to export or import propagating material of the variety;
  - (e) to make repeated use of propagating material of the variety to produce commercially another plant variety if the repetition is necessary for that purpose;
  - (f) in the case of a variety to which ornamental plants belong, if those plants are normally marketed for purposes other than propagation, to use any such plants or parts of those plants as propagating material for the production of ornamental plants or cut flowers;
  - (g) to stock propagating material of the variety for the purpose of doing any act described in any of paragraphs (a) to (f); and
  - (h) to authorize, conditionally or unconditionally, the doing of any act described in any of paragraphs (a) to (g).”

*[from Bill C-18 An Act to amend Acts related to agriculture and agri-food]*



## “Farmers Privilege

5.3 (2) The rights referred to in paragraphs 5(1)(a) and (b) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer’s holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety. “

*Yet by amending the power to regulate (Section 75) as follows, Bill C-18 empowers the government to strip away Farmers Privilege:*

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 ....

“(1.1) respecting any classes of farmers or plant varieties to which subsection 5.3(2) is not to apply;

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

*[from Bill C-18 An Act to amend Acts related to agriculture and agri-food]*

# What about Farmers' Privilege?

Bill C-18 PBR Amendments:

- Farmers are allowed to produce, reproduce and condition seed to use on their own holdings. (note no mention of stocking)
- The Governor in Council (ie Cabinet) has the power to pass regulations that would remove classes of farmers, plant varieties or entire crop kinds from the “Farmers' Privilege” and to restrict, prohibit or put conditions on the use of harvested material.

# **UPOV ' 91 Explanatory Notes**

## **re. Farmers' Privilege**

- The exception is “aimed at those crops where ... there was (is) a common practice of farmers saving harvested material (seed) for further propagation.” Example: small-grained cereals
- “may be considered inappropriate to introduce optional exemption for ... fruit, ornamentals and vegetables”.
- Other considerations – size of holding, crop area, crop value, percentage of harvested crop, only on own farm, make decisions on a crop-by-crop basis.

- Changing situations - “evolution of farming practices ... economic development ... a member of the Union could ...limit the level of farm-saved seed to those levels which had been common practice before the introduction of plant variety protection”.
- In laying out exceptions (farmers' privilege regulations) “ensure that optimal benefits from plant variety protection are obtained”. (emphasis added)
- **Farmers' Privilege - given in the Act, taken away in regulations?**

(quotes from Explanatory Notes on Exceptions to the Breeder's Right Under the 1991 Act of the UPOV Convention, adopted by the Council on October 22, 2009)

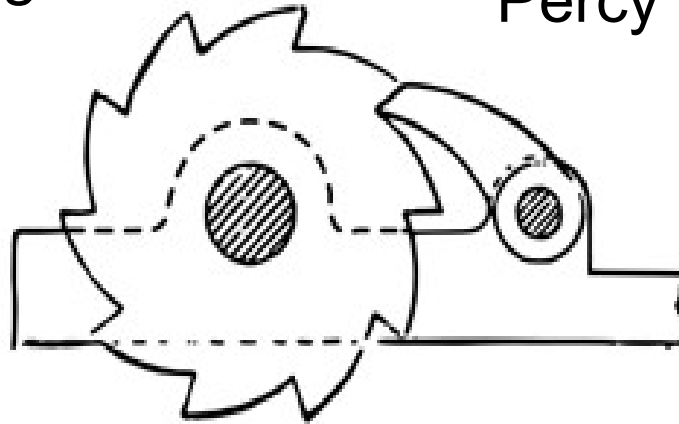
How does Bill C-18 fit  
in the big picture of  
corporate control?

Dismantling  
CWB

Dismantling of  
public breeding

Monsanto vs  
Percy Schmeiser

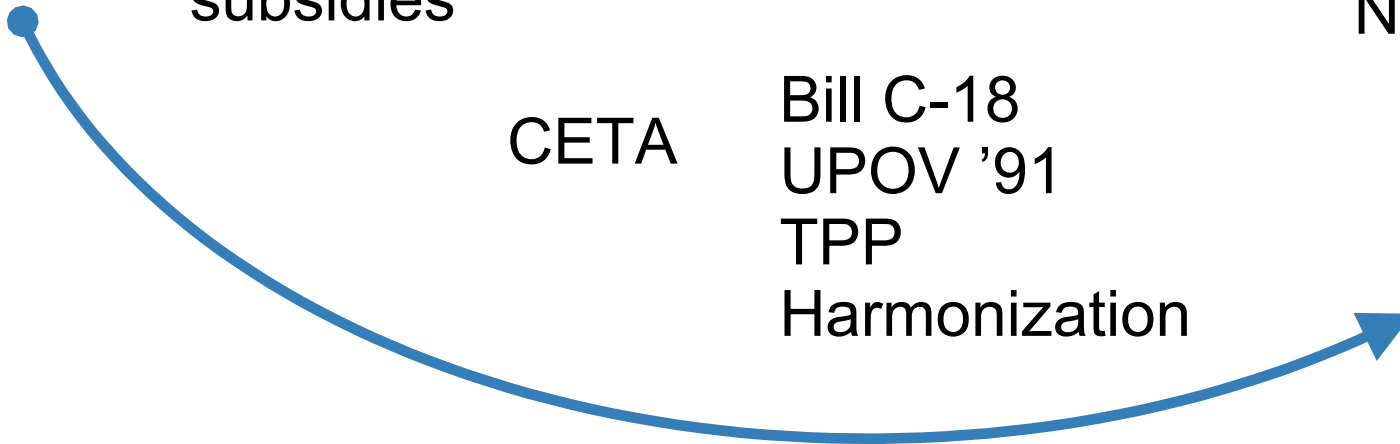
Vertical integration



Corporate  
subsidiaries

Next???

CETA  
Bill C-18  
UPOV '91  
TPP  
Harmonization



# **“Incorporation by reference”**

- Included in amendments to the Feed, Fertilizers, Seeds, and Health of Animals Acts.
- A mechanism to allow regulations to reference a document or list from a third-party (e.g. government, industry association, foreign or Canadian).
- Such documents are controlled by and may be changed by the third party.
- A tool to facilitate regulatory harmonization.
- Changes do not have to be published in the Canada Gazette, where all regulations must be posted.

# Accepting Foreign Reviews

- Amends Feeds, Seeds, Health of Animals and Plant Protection Acts – laws that cover matters such as veterinary vaccines, seed quality, feed ingredients.
- Bill C-18 amends these acts to allow the Minister to consider test results, assessments and studies done by foreign governments or organizations of foreign government instead of using Canada's own science to support approvals and/or licensing of products in Canada.
- Amends the PBR Act to allow the use of results from tests and trials from other countries who are signatories of UPOV.



# Bill C-18 will lead to the Loss of .....



“Those who control  
the seed, control the food system. Those who  
control the food system control people. Do we  
want to entrust Monsanto and their like with  
this power?”

*Terry Boehm, 2012*



## **As a signatory to the UN International Treaty on Plant Genetic Resources for Food and Agriculture Canada:**

- recognizes the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of genetic resources which constitute the basis of food and agriculture production throughout the world.
- agrees not to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

Ratified by Canada in 2002.

# Fundamental Principles of a Farmers' Seed Act

- The right of farmers to exchange and sell seed, including through farmer-owned organizations such as cooperatives, non-profit organizations and associations.
- The unrestricted right of farmers to grow, save and use seed for planting which cannot be negated by any contract. This right would be supported by:
  - unrestricted right to clean seed
  - unrestricted right to store seed
  - unrestricted right to prepare seed for planting, including applying seed treatments
  - unrestricted establishment of new seed cleaning plants
  - unrestricted access to seed cleaning equipment and parts

- Seed cleaning operations are an integral part of the seed system and thus
  - shall not be prosecuted for the cleaning of protected varieties for a third party
  - cannot be compelled to give out their client lists
- Plant breeders rights legislation that would confer the right to claim royalties only at the time of seed sale (i.e. no endpoint royalties or cascading rights).
- Following expiration of plant breeders rights, varieties would be in the public domain allowing for unrestricted use and/or made available under a general public license.
- The opportunity for farmers and other non-accredited plant breeders to register new varieties.

Note: A general public license is a binding legal agreement that makes germplasm available to plant breeders on the condition that it must likewise be made available to other breeders under a general public license, and without further restriction.

- **A variety registration system** that would protect farmers and our food system by ensuring seed that meets farmers' needs for quality, reliability and agronomic performance under local conditions across Canada is available. This system would make distinctions in requirements for varieties to be used in conventional or organic production when necessary. Such a system would:
  - ensure that varieties remain in the public domain following the expiration of plant breeders' rights;
  - allow new varieties to be registered under a general public license to ensure that such varieties remain freely available to farmers and public plant breeders;
  - prohibit cancelling of varieties by variety registrant;
  - allow the cancelling of registration for varieties only if evidence, including input from Recommending Committees, supported the cancellation;
  - have an accessible public appeal mechanism regarding registration and deregistration of varieties to support the public interest;
  - require robust, independent third-party merit testing for new varieties to ensure they are as good as or better than existing varieties, which takes into account market harm, ecological impacts, and other relevant factors;
  - formally recognize the value of land races that are not intended to have uniformity and stability as defining characteristics, establishing mechanisms to allow heritage varieties such as Red Fife Wheat to be utilized in appropriate rotations and markets

- A dispute settlement process that uses due process that would ensure:
  - inspection and sampling would be done only with the farmers' explicit permission and in the presence of, and verified by, a qualified neutral third party.
  - binding arbitration carried out by a public commission would settle questions of infringement, etc. between farmers and companies.
- No possibility that the production of seed could ever be considered counterfeiting or a violation of trademark.
- Prohibition of Genetic Use Restriction Technologies (GURTs), sometimes referred to as Terminator Technology.
- No gene patents or other patent mechanisms on seed.

# Public Plant Breeding vs Private

## Public Plant Breeding wins the yield contest

1981/82 to 1999/00

- Average spring wheat yield increase = 1.25%/year
- Average canola yield increase = .92%/year

2001/01 to 2012/13

- Average spring wheat yield increase = 2.94%/year
- Average canola yield increase = 2.62%/year

Plant breeding investment required to keep the current rate of yield increase

- Wheat: \$25 Million/year (Public Plant Breeding)
- Canola: \$80 Million/year (Private Company Plant Breeding)

*Data from: Dr. R. Graf, "Crop Yield and Production Trends in Western Canada" - March 2013*

*Compiled by: <http://www.cwbfacts.ca/saskatchewan-wheat-and-barley-commission-elections/>*



Why do the changes proposed in Bill C-18 matter to us?



# Table discussions

(Choose 2 of 3 to address)

- 1- Tell a story about a time in which you understood the importance of seed on your farm.
- 2- How do you see the introduction of UPOV' 91 and the other proposed amendments in Bill C-18 affecting your local food system?
- 3- How do you think we can better keep control of our seeds and our food?

# What Can You Do?

Meet your MP

**A Seed Act for Farmers, not Corporations –  
Stop Bill C-18!**



Contact (or visit) your MP and other government representatives and tell them not to support Bill C-18.

# What Can You Do?

**SAVE  
OUR  
SEED**

Farmers' age-old practices of saving, reusing, exchanging, and selling seed are in jeopardy.

**STOP BILL C-18!**

More information: [www.nfu.ca](http://www.nfu.ca)



**Send the NFU *Save Our Seeds* Postcard to  
your MP**



# What Can You Do?



- Host a kitchen table meeting or public meeting.
- Talk to your friends, family, neighbours and co-workers.
- Leave copies of the petition and the postcards with supportive local businesses and organizations.
- Write letters to the editor.

# Join the National Farmers Union



- Talk to meeting organizers to find out to join in your province.
- If you are not a farmer but would like to support the NFU's work, you may join as an Associate Member.
- Farm Membership - \$195
- Youth Membership - \$98
- Associate Membership - \$65

**Make a Donation to the NFU's  
“A Seed Act for Farmers, not  
Corporations – Stop Bill C-18”  
Campaign**



Send donations to:

National Farmers Union

2717 Wentz Avenue,

Saskatchewan, SK

S7K 4B6

Or to donate online, go to  
[www.nfu.ca](http://www.nfu.ca).



**For more information:**

**[ww.nfu.ca](http://ww.nfu.ca)**

**The Stop Bill C-18 Toolkit is available at:**

**[ww.nfu.ca/issue/stop-bill-c-18](http://ww.nfu.ca/issue/stop-bill-c-18)**

