



Plant Breeders' Rights Office
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May 3rd, 2024

Ms. Yolanda Huerta
Vice Secretary-General
UPOV
34, chemin des Colombettes
CH-1211 Geneva

Dear Ms. Huerta;

Re: Canada's Response to UPOV Circular E-24/047 of the SHF-WG

Thank you for the opportunity to share Canada's experience in the implementation of Article 15 (1) (ii) of the *1991 Act of the UPOV Convention*, otherwise known as the "private and non-commercial" exception to the breeder's right. Please see below for Canada's responses to the questions posed in the circular:

1. Is your country/intergovernmental organization implementing the exception "acts done privately and for non-commercial purposes"? If so, how is it implemented?

Yes. Canada has implemented the benefit sharing provision known as the "private and non-commercial" exception as a compulsory requirement, in keeping with our obligations as a contracting party to the *1991 Act of the UPOV Convention*. This provision is implemented through our federal law, the *Plant Breeders' Rights (PBR) Act*.

2. Concerning this exception, are there definitions for the following term: "acts done privately and for non-commercial purposes"?

In Canadian federal law, there are no specific definitions for "acts done privately and for non-commercial purposes." Rather, the text of the provision itself can be found in subsection 5.3 (1) (a) of the *PBR Act*, under the Marginal Note "Non-application of rights", and reads as follows:

5.3 (1) The rights referred to in sections 5 to 5.2 do not apply to any act done (a) privately and for non-commercial purposes.

<https://laws-lois.justice.gc.ca/eng/acts/p-14.6/page-1.html#h-393049>

The rights referred to in sections 5 to 5.2, are the exclusive rights' of the breeder. It is Canada's view that no additional clarification of the wording in our *PBR Act* is required. Canada has adopted a modern "textual, contextual and purposeful" approach to statutory interpretation. Meaning the



language, intent, context, history, and objective of the statute are all taken into consideration when interpreting any provision. Canada finds the current *Explanatory Note on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention* (UPOV/EXN/EXC/1 of Oct 22, 2009) sufficiently clear in explaining acts that fall both within and outside the scope of the “private and non-commercial” exception. However, Canada fully recognizes that other UPOV members may require additional clarification of the provision.

3. Please specify legislation/regulation and jurisprudence concerning this exception.

As stated in the response to question #2, the relevant legislation in Canada is the *PBR Act*, subsection 5.3 (1) (a). At this time, there is no jurisprudence or case law in Canada concerning the “private and non-commercial” exception.

4. Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.

Canada does not experience any challenges in implementing the current UPOV explanation of the “private and non-commercial” exception. For context, the overwhelming majority of farming in Canada is large scale and for commercial purposes. In light of this, farmers have access to a wide range of plant varieties in the marketplace, including those protected by intellectual property rights and those in the public domain, from which to choose. Canada does not experience subsistence farming in the traditional economic sense. However, some northern and remote communities, indigenous peoples, and urban gardeners do grow food for their own family consumption, as an augmentation to purchasing food products through retailers (e.g. grocers, restaurants, etc.). As such, there is an opportunity to further promote the existing interpretation of the UPOV “private and non-commercial” exemption. This would provide assurances to the aforementioned groups above, that the propagation of PBR protected varieties for the purposes of feeding one's own family clearly falls within the scope of this benefit sharing provision.

Thank you for providing the opportunity to share Canada's views on this matter, and we look forward to seeing the perspectives of our fellow UPOV members.

Yours sincerely,

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