



Protecting Plant Varieties

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Plant protection in Canada

Tools for plant protection in Canada:

- > **Patents**
- > **Plant Breeders' Rights**
- > **Trade-Marks**



Plant Breeders Rights (PBRs) - Protectable subject matter

- > New plant varieties (including genetically modified variety)
- > Continuous developpement and identification of new varieties
- > **Drug type cannabis and Hemp** varieties (used for various industrial applications) are derived from same species including *Cannabis sativa* and *Cannabis indica*



PBRs - Requirements

- > **New:** Not “sold” by breeder or with its consent
 - >1 year in Canada or > 4 or 6 years elsewhere, prior to filing (or priority date)
- > **Distinct:** clearly distinguishable from all varieties of « common knowledge » by reason of one or more identifiable characteristics
- > **Uniform:** « sufficiently homogenous » having regard to particular features of its sexual reproduction i.e. *certain variation acceptable between individual plants of the variety*
- > **Stable:** in its essential characteristics : after « repeated » reproduction, remains true to its description



PBRs- Demonstrating DUS

Either:

- (1) **Field/Greenhouse testing** in Canada following UPOV guidelines, for number of growing cycles necessary for DUS characters to be observable; or
- (2) **Using foreign DUS trial results** (asexually reproduced variety)



PBRs - Protection

- > **Protection term: 20 or 25 years from issuance**

PBRs - Protection

Scope:

- > Newly identified/created variety
- > Any other variety essentially derived* from the plant variety *if the plant variety is not itself essentially derived from another plant variety*

* No definition in Act. Regulations not yet published. Potentially includes natural or induced mutants, selected variants, back crossing varieties and genetically engineered varieties

PBRs - Protection - Scope

- > Any other variety not clearly distinguishable from new variety.
- > Any other variety whose production requires repeated use of variety

e.g., backcrossing i.e. crossing of a hybrid with one of its parent to recover characteristics of parent



PBRs - Protection

Exclusive rights to:

- > **Sell, produce, reproduce, condition** (for the purpose of propagating), **export or import, make repeated use of** (to produce another variety) propagating material (e.g., seeds for sexual reproduction, branch for cloning) of the plant variety
- > **Stock** propagating material of the variety for any of above acts
- > Authorize any of above acts
- > Any of the above act in relation to **harvested material (not defined in Act) of variety** (e.g., dried flowers, oil) if no opportunity to exercise right on propagating material.



PBRs - Exceptions to infringement

Third parties can do any act:

- > Privately and for non-commercial purposes (subsistence farmers); (home-growing plants)
- > for **experimental** purposes
- > for the purpose of **breeding other plant varieties (breeder's exemption)**
- > **Produce, reproduce, condition** (for the purpose of propagating) and stock harvested material of the plant variety grown by the farmer on farmer's holdings if used for the sole purpose of propagating the variety (Commercial farmer) (5.3(2)). No right to sell. *Regulations may significantly reduce exception.*
- > **Exhaustion principle:** Any act performed after propagating material or harvested material has been sold in Canada (exceptions exist)

Contact



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Julie Gauvreau is part of Lavery's intellectual property (IP) group (previously a senior partner of Goudreau Gage Dubuc since January 2008). She holds a degree in microbiology from University of Montreal and began her practice in 1998. She is a lawyer, a registered patent agent in Canada and in the United States, and a trade-mark agent.

Julie Gauvreau has developed a successful patent practice with a full range of clients in the biotechnology, plant protection and pharmaceutical fields. Her specialty resides in helping clients develop effective IP protection strategies to meet clear business objectives including the development and launch of new products.

Her clients include universities, hospitals, government laboratories and research institutes, as well as small and medium sized businesses, and large pharmaceutical companies. She works closely with IP practitioners in other countries to obtain protection of Canadian technologies abroad, and represents many foreign clients seeking patent and PBR protection in Canada.