

Client Alert

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New Canadian Law Strengthens Plant Breeders' Rights

By Michael R. Ward and Matthew Alan Chivvis

On February 26, 2015, Canada amended its Plant Breeders' Rights Act to bring the country's laws into conformity with the 1991 Act of the Convention of the International Union for the Protection of New Varieties of Plants ("UPOV Convention")—the Convention's most recent revision. The new features of Canada's strengthened Plant Breeders' Rights Act include the following:

- New rights that allow the Plant Breeders' Rights holder to exclude others from (1) reproducing or propagating the variety, (2) conditioning the variety for purposes of propagation, (3) importing or exporting the variety, and (4) stocking the variety for any of the previously mentioned purposes;
- Expanded enforcement opportunities against material, such as fruit, harvested from the variety;
- Protection for essentially derived varieties, which are varieties that are predominantly derived from the protected variety and maintain the characteristics of the protected variety;
- A one year grace period that allows for sales of a variety within Canada without affecting eligibility for protection;
- Extended protection, from 18 to 20 years for most varieties and up to 25 years for trees and vines; and
- Provisional protection that will automatically apply to new applications.

These amendments should make Plant Breeders' Rights an increasingly valuable option for plant breeders seeking to commercialize their varieties in Canada and to prevent others from doing so.

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