

Variety Deregistration Working Group - Summary Report



November 13, 2008 - Winnipeg, Manitoba

This Working Group, convened by the National Forum on Seed, brought together about 30 individuals representing seed growers, the seed trade, farm organizations, grain and oilseed processors and handlers, and government departments and agencies. (See list of participants attached as Appendix 1.)

The objectives for the meeting were:

- to clarify the current variety deregistration process in Canada;
- to identify any issues with the current process;
- to identify the next steps for moving forward on these issues.

Current Variety Deregistration Process

Following introductions, Cindy Pearson from the Canadian Food Inspection Agency (CFIA) made a brief presentation on the current variety registration system, roles and responsibilities within it, and the purpose and process for deregistering varieties.

- She explained that varieties of any crop kind listed in Schedule III of the *Seeds Regulations* have to be registered prior to sale, import or advertisement for sale of seed.
- CFIA administers and enforces the variety registration system and is responsible for maintaining an accurate list of all varieties registered in Canada.
- “Registrants” receive certificates of variety registration and are the point of contact for any actions taken with the respect to that variety. In the first instance, the Registrant is normally the person or entity who applied to have the variety registered, but the Registrant of a variety may be changed, with the permission of the Breeder of the variety.
- Varieties developed in other countries require a Canadian registrant in order to be registered in Canada.
- Varieties may be deregistered “for cause” in order to remove varieties that may cause adverse effects (e.g. be highly susceptible to disease, cause harmful environmental impacts, pose health and safety risks in foods or animal feeds) or that may be misleading in terms of purity or identity (e.g. registration based on false or misleading information, variety found to be indistinguishable from another existing variety).
- Varieties may also be deregistered at the request of the Registrant. Registrants may request deregistration for

any reason, but typically do so because they are no longer selling/maintaining pedigreed seed of the variety and no longer wish to be responsible for the variety.

- When a Registrant is requesting deregistration, they must first check on whether there is still pedigreed seed available in Canada and, if so, develop a disposal plan. The CFIA confirms whether there has been pedigreed seed production of the variety in recent years. If so, the deregistration is deferred pending resolution among interested parties.
- A list of any varieties proposed for deregistration is published quarterly by CFIA on its website. If objections to the deregistration of the variety are received, the Registrant will be notified and the deregistration deferred pending resolution among the interested parties.

Questions:

Working Group participants queried how deregistration affects common seed and farm-saved seed. They were advised that while farmers could still grow the variety and save its seed, they could not advertise or sell common seed of that variety. Where a variety is deregistered because of potential adverse consequences or lack of varietal purity, CFIA would advise the farm public that this has occurred, thus discouraging further growth of the variety, but there is nothing in the *Seeds Act* which authorizes the Agency to prohibit what farmers can grow. Other questions included:

Can deregistered Canadian varieties be sold and grown in another country? —*Only if they are registered in that country.*

Couldn't a registrant just put the variety out into the public domain for someone else to pick up? —*No. CFIA wouldn't continue to list a variety without a current registrant, though there are a few old varieties in the system (forages) for which there is no registrant.*

Are plant breeders/registrants responsible for common seed of a variety? —*No.*

Can Recommending Committees suggest deregistration? —*Variety Recommending Committees or other parties could request a deregistration, but any voluntary deregistration—i.e. one not “for cause”—couldn't proceed without the agreement of the Registrant.*

Is there a process for reinstatement of a variety? —*Where merit and purity are not in question and the deregistration is fairly recent, a variety can be reinstated by paying a \$200 fee; if it were an older registration, CFIA would likely want to consult the Recommending Committee before reinstatement.*

Issues Scan

Earlier in the fall, consultant Grant Watson was contracted to survey interested parties and prepare a paper scoping variety deregistration issues. Based on input from 19 of the 22 organizations contacted, he identified nine issues related to the deregistration process and seven potential impacts resulting from varieties being deregistered. Mr. Watson's paper was distributed to Working Group participants (see Appendix 2) and he presented a summary of his findings. The following are key points that were raised in this presentation and subsequent group discussion:

- More communications and transparency are needed to ensure adequate notification and consultation with seed sellers and others, and so it is clear what may be sold or imported into Canada.
- The deregistration process is important to assure export buyers and foreign regulatory agencies that certain varieties (of lower quality or with potential adverse effects) are being removed from the Canadian seed system.
- The disconnect between deregistration of varieties and farmers still growing them may pose risks to Canada's export markets. Continued production of varieties with genetically modified novel traits which are no longer approved in export markets is a particular concern.
- There is some uncertainty around responsibility and liability for determining if grain has been grown from deregistered varieties and this could cause problems for commodity buyers and processors.
Deregistration of cereal varieties can have a direct impact on producers since they must declare if they are delivering ineligible varieties and this results in shipments being dropped to the lowest grade (i.e. feed). Awareness of this issue has been heightened since the removal of Kernel Visual Distinguishability (KVD) requirements.
- There is concern that varieties not be deregistered just because they have been around for a long time. Many older varieties, especially forages, are still in demand because of farmer preferences or special traits. Even though some varieties may be lower yielding or more susceptible to certain diseases, they may be in demand for other quality traits (e.g. bread baking). They may also be good agronomic choices for silage, cover crops or green manure.
- Voluntary deregistration can negatively affect seed growers and others in the value chain who have found an ongoing niche market (e.g. organic) for the variety.
- The deregistration process is generally well accepted by private plant breeders, though they would like to know more about it, including how to present their case in the event of a dispute over a proposed deregistration. It is also less of an issue for certain crops—e.g. canola where 90% of current acreage is planted with pedigreed seed and most growers buy new seed each year.
- For publicly bred varieties, decisions to seek deregistration are more complicated since there is greater sensitivity to the economic interests of seed growers and farmers who may be affected. This results in costs for holding varieties in the system—currently, 21% of wheat varieties maintained by the Seed Increase Unit of Agriculture and Agri-Food Canada (AAFC) are obsolete or inactive varieties (i.e. with no pedigreed seed being produced). When an AAFC variety is deregistered, it is removed from the breeder seed inventory, but a sample is offered to Plant Gene Resources of Canada and a small amount of seed is retained by departmental researchers for future experimental purposes.
- There is a desire for a mechanism to continue seed production of "Heritage" varieties, or at least have someone maintain the germplasm for these varieties in case there is future interest.
- Deregistration of a variety does not affect protection/ rights of that variety under the Plant Breeders' Rights (PBR) Act unless it's found indistinguishable from an existing variety; however, maintenance of PBR status

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requires the rights holder to be able to provide reproductive material (breeder or pedigreed seed).

- In some provinces (e.g. Quebec), crop insurance is dependent on planting seed of a variety that is on a recommended list, so once a variety is deregistered it is no longer eligible for crop insurance.

Working Group participants commended Mr. Watson for his efforts and agreed that the paper had drawn out the main issues for consideration.

Panel Presentations

To put these issues into perspective, six panelists elaborated on how variety deregistration is viewed by different stakeholder interests.

1. Variety Developers—Doug Brown, AAFC Plant Breeder:

- Plant breeders agree a deregistration process is needed. The usual reasons for deregistration are that the developer/owner no longer wants to maintain breeder seed or there is no longer farmer demand for pedigreed seed of the variety.
- Sometimes deregistration follows the evolution of new varieties (e.g. HY320 wheat being superseded by higher quality 3M wheat varieties); other times varieties need to be pulled because they may become “Typhoid Marys”—hosts for pests or diseases (e.g. only a few western wheat varieties are resistant to a new stem rust from Uganda that is spreading around the globe).
- Even if removal of a variety might seem undesirable to some, there are times when it’s necessary.
- Plant breeders want to be part of consultations before a variety is deregistered and this implies reasonable lead time. As a “marketplace warning” system, the quarterly postings on the CFIA website could be improved upon.

- At the same time, plant breeders aren’t fond of taking time to defend their deregistration requests (people contact Minister or MPs to object).
- It’s a question of how to balance different interests — giving growers freedom of what they can grow, without potentially harming others.

2. Seed Savers—Terry Boehm, National Farmer’s Union (NFU) Vice-President:

- The NFU supports deregistration decisions based on potential for harm. However, voluntary deregistration can have serious consequences for farmers, especially those who save seed.
- The current system is creating a “variety treadmill”—i.e. a rapid cycle of registration and deregistration—which limits choice and makes it difficult for farmers to profit from farm-saved seed.
- Plant Breeder’s Rights (PBR) and recent changes in the grain handling system have compounded this trend, contributing to more concentration of plant breeding, less long-term information on variety performance, more higher-cost hybrid and genetically modified (GM) varieties and loss of farmer autonomy.
- The NFU opposes any changes that go in that direction and, with respect to deregistration, wants to see no removal of varieties for purely commercial reasons, approvals from Recommending Committees as part of the decision process, a public appeal mechanism, and expiration of PBR rights coinciding with variety deregistration (with variety continuing on in the public domain after that, if possible.)

3. Grain Handlers—Trevor Letkeman, Western Grain Elevators:

- The following comments relate mostly to wheat and durum produced and delivered in the Canadian Wheat Board (CWB) area.

- Our #1 concern is communications. Not everyone understands the variety registration/deregistration system and what it implies for them. The change in KVD requirements didn't create a new problem, but may exacerbate the dilemma associated with delivery of ineligible varieties.
- The CWB accepts liability when it accepts deliveries, but neither the Board nor elevator agents can tell if they're receiving ineligible varieties. Producers have to declare if they're delivering ineligible varieties, but the system is not perfect and so there are risks for all.
- A coordinated, timely and more structured approach is needed. It could be tied to the Recommending Committee system. For instance, if a Recommending Committee approved a deregistration in February, farmers could grow and deliver it for a further set period—e.g. 18 months. (Some Working Group participants suggested 1½ years was not long enough to clear a popular variety out of the system.) Whatever the process and time-frame, more channels should be used to inform and educate crop producers—e.g. mail outs, seed guides, and grain company websites.
- The downstream question of liability is a complicating issue. The Canola Council communicates to canola growers, advising them not to grow deregistered varieties. Sometimes it gets pushback from growers. But, stewardship and market protection are critical for the canola industry, so it supports the current deregistration process.
- Which is not to say improvements can't be made to that process. For example, there needs to be more communications so everyone knows what's happening.
- In response to a question about club root and whether deregistration would be useful in controlling its future spread, Mr. Anderson said that, as this disease is soil-borne, it doesn't spread quickly in a single season. However, at some point, the infected area could become extensive enough that one would want to deregister susceptible varieties. Unfortunately, there are currently no varieties which are resistant to clubroot.

4. Marketing and Trade—Chris Anderson, Canola Council of Canada:

- The canola industry has an economic interest in getting varieties to move out of the system quickly if they have any weaknesses (e.g. susceptibility to disease, inferior end-use quality). It's seldom a variety is deregistered "for cause" and that's a good sign that those controlling Canadian seed varieties are exercising good stewardship.
- Canada's science-based Variety Registration approval system includes a risk assessment for GM (genetically modified) traits. However, approval for these traits may lapse in other countries while it is still in force in Canada. This doesn't mean a variety with this trait is suddenly unsafe — nor does deregistering a variety. But Canadian crop producers need to respond to market needs and signals, and demonstrate that we are doing so through actions like variety deregistration.

5. Organic Growers—Janine Gibson, Canadian Organic Growers:

- Organic production is market driven, and consumers are seeking product that is certified organic. Most of the current certification requirements for organic production in Canada parallel those for certified seed—e.g. rules about previous land use, buffer zones, protecting crop integrity.
- Organic producers cherish the right to save seed and do so because it is meeting their needs. They feel genetic diversity is important and having seen the narrowing of varieties in crops such as potatoes, organic farmers don't want that to see the same thing happen in the grain sector. They want access to heritage varieties like Red Fife wheat that have stood the test of time. Proven performance under local conditions, natural disease and pest resistance, and utility in crop rotations or as cultural control practices are other reasons organic growers want the freedom to choose varieties which others may consider inferior.

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- Organic grain production appears to work best with older varieties that were not bred for production using commercial fertilizers and pesticides. This is one of the areas requiring further research currently being considered by the Organic Agriculture Centre of Canada.
- For wheat and barley being delivered to the CWB, there should be recognition that there may be a market for deregistered variety that places its value well above its relegation to “feed” grade. (Another participant pointed out that there is some leeway in the CWB system for organic grain and suggested that would get around the problem of having to deliver it as feed grade.)
- A seed trade representative asked whether organic growers would be willing to take on a variety reservation role for plant material in which they had an interest if it were about to be deregistered. Ms. Gibson said this was something that might be worth looking at for certain heritage varieties.

6. Commercial Crop Producers—Leo Meyer, Grain Growers of Canada:

- Mr. Meyer farms 14,500 acres in the Spirit River area on the border between northern Alberta and British Columbia; he and his family grow a mix of crops including spring wheat, barley, yellow and green peas, fall rye and triticale. Most of their crops are grown for specific markets, meaning that they must be conscious of quality demands and sensitive to biosafety issues.
 - To stay globally competitive growers need access to new varieties. Oilseed and pulse growers, in particular, are always pressing for faster access. But, by the same token, familiarity with current variety names and characteristics does prolong demand among some buyers and crop producers.
 - Having good seed is crucial to crop production, but input costs are a big consideration, so the ability to clean your own seed and have it available is critical for many grain growers.
- PBR protection is necessary to stimulate crop advances and private plant breeding is important alongside a strong public breeding sector. Where farmers make levy payments which support new variety development, they should share in the IP (intellectual property) revenues that may result.

Discussion Groups

Participants were divided into six table groups to assess the benefits of the current deregistration process and to identify major issues and opportunities to improve that process. The results of these discussions were then summarized in plenary. Key points, as reported, were as follows.

Benefits of Current Variety Deregistration System

- The current system is not onerous or complicated, and is working in a prompt, orderly manner.
- It allows for removal of harmful products.
- It can react promptly to changing global demands, disease risks and biosafety issues.
- As a formalized government process, it is recognized internationally.
- It provides the option of registrant-initiated deregistration.
- The opportunity exists to reinstate varieties that have been slow to develop a market (e.g. Walton wheat).

Issues/Opportunities for Improvement

1. Improve communication.

The need for more communication is widely supported, especially using more means to notify the seed sector, farmers and other potentially interested parties when a variety is suspended or a voluntary deregistration is being sought. Examples offered included farm publications, farm radio broadcasts, and industry newsletters, posting notices in grain elevators, and sending letters to parties likely to be directly affected.

2. Introduce more transparency into the deregistration process.

Should Recommending Committees, which have to consider candidates for variety registration, not play a role in vetting possible deregistrations?

Alternatively, it may be desirable to have a minimum consultation requirement, such as a specific comment period or appeal process to ensure fairness and transparency when a variety deregistration is being considered. (It was noted that some private seed companies do already consult prospective interested parties before proceeding with deregistration.)

The downside of these suggestions is that they may complicate and prolong the process—see first benefit identified for current system.

3. Have flexibility to allow varieties to continue without a registrant or to allow other interested parties to adopt a variety that is being voluntarily deregistered.

Registrants should continue to be able to request deregistrations. Otherwise, the system would be holding them “ransom”—i.e. they would be forced to bear the cost of maintaining breeder seed. (It was clarified that breeder seed maintenance is a requirement in the seed certification system, but not for variety registration purposes.)

If someone else is interested in keeping the variety in the system, there may need to be flexibility to allow continued registration, while still assuring that varietal integrity is maintained.

There is already an issue around continued registration and maintenance of some older forage varieties (e.g. Climax Timothy).

4. Accommodate organic/heritage/artisan needs through special contract registration or a creation of a “restricted registration” category.

5. Resolve issues around use of variety names in grain vs. seed.

The National Forum on Seed is convening a Working Group on this subject.

6. Decouple eligibility for top wheat and durum grades (under the Canadian Grain Commission’s Class Eligibility List) from the registered variety list.

Farmers could continue to save seed and delisting of a variety for grain grading purposes would be a market-based decision.

Varieties deregistered because of potential harm would still be delisted for delivery. And this shouldn’t become a backdoor

for unregistered varieties, only ones that have been approved and registered in the past.

Wheat and durum are the only crops affected by this issue as there are no similar delivery “classes” for other crop kinds.

7. Free up resources being used to maintain inactive varieties and put these towards new variety development.

As an incentive to de-register inactive varieties, perhaps there should be an annual maintenance fee to retain registration status. This could be scaled in relation to the expected life of a variety for each crop kind.

8. Put more structure into the process—e.g. fixed timelines for advance notice to seed growers, crop producers and handlers/marketers/end users.

Timelines might vary depending on reasons for deregistration, crop kind, and popularity of a variety.

9. Consider having a fixed registration life for varieties.

What about changing the variety registration system so varieties had a fixed life, with a process to justify extensions, rather than granting “variety immortality” subject only to deregistration?

A fixed variety registration period could vary by crop kind and might or might not be tied to the period of Plant Breeders’ Rights. (It was noted that PBRs are actually granted on an annual basis, with renewals possible up to 18 years.)

Broader Discussion of Variety Registration Purpose and Linkages

In the course of discussing the identified deregistration issues and possible ways to address them, Working Group participants also raised questions about the wider context within which variety deregistration decisions reside. For example, the following points were made:

- The Variety Registration system has historically been a key tool in the crop improvement process, and deregistration has been there in the context of ever-increasing quality attributes—i.e. the notion of “raising all boats”. The transformation of Canadian rapeseed production into today’s \$14 billion canola industry is a clear example of the variety registration and deregistration processes working to the advantage of

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Canadian farmers and processors. But as markets become more specialized, different regulatory approaches and flexibilities may be needed to serve farmer and food/feed industry needs.

The current reality is that “some boats don’t want to be lifted”. Performance of some new varieties is predicated on commercial scale agronomic practices, and some older, “inferior” varieties may be a better choice in the chemical-free environment of organic production. Also, it is not always the highest yielding or highest quality varieties that give farmers the best returns. So, there’s demand for more choice and more flexibility in the registration and deregistration of varieties.

- On the other side of that coin, there is a need to respect the rights of those who have invested in the development of plant varieties, including farmers and public institutions.
- At the outset, crop producers were surely the primary intended beneficiary of the variety registration system, but now the interest in seed extends well down the value chain, even to consumers and their concerns about food safety. The government regulators have to consider that wider clientele. There were only four or five classes of wheat (under CGC regulations) 30 years ago; now there are 10. In effect, there has been a “de-commodification” of wheat and some other crop kinds (e.g. soybeans) based on the proliferation of end uses. This makes variety registration and deregistration decisions more difficult. Market signals have to be weighed as well as agronomic characteristics.
- Going forward, Canadian farmers may need even more variety choices in order to find markets that will cover the often higher costs of Canadian production.
- Another major consideration is the need for strong linkages between the seed and grain regulatory frameworks. Changes in one have to take account of the impact they will have on the other. It’s also important to deal with issues in the most appropriate framework—for instance, is the issue of farm-saved seed more a function of the Canada Grain Act than the seed certification system and the variety registration list?

Next Steps

1. Draft session report and send to all Working Group participants:
 - within 2-3 weeks;
 - final report to be completed and available before Christmas.
2. The CFIA will develop a proposal /options for changes to deregistration process:
 - to be discussed at March 2009 meeting of National Forum on Seed;
 - focus on “low hanging fruit”—i.e. areas of apparent consensus where short-term action appears feasible, such as improving communications;
 - recommend a process to advance thinking on other issues raised by the Working Group, such as introducing flexibility to meet the needs of organic producers.

There does not appear to be a need for the Working Group to meet again at this point.

On behalf of CFIA, Cindy Pearson thanked Working Group participants for sharing their concerns and suggestions which will help the Agency as it considers possible improvements to the variety deregistration process.

Meeting facilitator Warren Wilson encouraged Working Group participants to attend the Working Group on Use of Variety Names which will be tackling challenges and issues arising from the use of variety names on common seed and on grain deliveries and sales. That Working Group is scheduled to meet at the Delta Hotel in Winnipeg on December 16, 2008.