



In October 2021, a New Brunswick-based produce retailer **declared bankruptcy with more than \$3 million left owing to creditors**, including farms and produce wholesalers. This recent, real world example reinforces the need for a **financial protection mechanism** for fresh produce sellers.

## BACKGROUND – WHY IT MATTERS

- Growing, harvesting, packing, and marketing fruits and vegetables comes with a number of risks and additional costs that are unique to the production of perishable goods. Returns on these investments are delayed until the product is sold and payment is collected down the supply chain – usually long after the farmer or other seller has passed on their product. This leaves them in a highly vulnerable position.
- Unfortunately, the impacts of the COVID-19 pandemic, ongoing supply chain disruptions and substantial increases in costs further threaten our food security and the long-term economic viability of the North American fresh produce sector.
- The *Bankruptcy and Insolvency Act* (BIA) does not provide a workable mechanism for cases in which buyers of fresh produce become insolvent. While the *Act* allows suppliers to recover their product following a bankruptcy, it provides no rights when the product has been resold or is no longer identifiable or in the same state. Given how quickly produce spoils, it would be very rare that fresh fruits and vegetables would be available for repossession.
- The “super priority” provision for farmers in the *Act* also fails to address the needs of fruits and vegetable suppliers, who regularly receive payment 30 days (or more) after product is delivered. The requirement that product must have been delivered within 15 days of the bankruptcy to be covered under the super priority means most fresh produce is unprotected.
- In addition to a lack of domestic protection mechanisms, Canadian produce sellers are now at even more risk when selling to our major trading partner, the United States. At one time, our Canadian grower/shippers would have had preferential treatment in the U.S. under the *Perishable Agricultural Commodities Act* (PACA), which would have provided much needed access to prompt payment tools in the case of a buyer bankruptcy. Canadian sellers are now required to post a bond worth double the value of the shipment just to initiate a formal claim through *PACA*. Given the high volume of produce sold to U.S. buyers, this situation puts many Canadian businesses at a distinct disadvantage.
- A Canadian limited statutory deemed trust, which would operate similar to the U.S. *PACA* and protect produce sellers during bankruptcy in Canada, would reduce potential costs imposed on Canadian consumers, remove complications in cross-border trade with the United States, and eliminate an unnecessary risk for Canadian fruit and vegetable sellers.

## ACTION REQUIRED

- Take immediate steps to establish a limited statutory deemed trust that protects produce growers and sellers during bankruptcy in Canada, including by supporting any Private Member’s legislation tabled in the House of Commons to establish such a mechanism.
- Upon introduction of the legislation, request the reinstatement of Canadian preferential access to *PACA* by the U.S. Department of Agriculture.