



## Providing Financial Protection for Produce Sellers

### Federal Election 2021

#### TALKING POINTS:

*When in doubt, think Connect (why is it important to YOU?), Contrast (what's missing?), Solve (how can the government/candidate help?)*

- **Connect:** Growing, harvesting, packing and marketing fruits and vegetables come with high overhead and capital costs – and Canada's fruit and vegetable growers and sellers face additional financial risk due to a lack of financial protection from losses from insolvent buyers.
- **Contrast:** Due to the high perishability of produce and the industry's longer payment terms, the *Bankruptcy and Insolvency Act* does not provide a workable mechanism for when buyers of fresh produce become insolvent. Unfortunately, the COVID-19 business environment has and will drive businesses into bankruptcy, with financial impacts along the supply chain, and ultimately for fruit and vegetable growers. To make matters worse, the lack of protection for produce sellers in Canada also means they can't access this protection in the United States without incurring significant financial costs.
- **Solve:** A Canadian limited statutory deemed trust would protect produce sellers during bankruptcy in Canada *with no cost to government*. This proposal has broad political support and will be a win for rural farming communities, as well as for the food security of urban and suburban centres. It is crucial that the government provides all possible safeguards for the food supply chain, including a deemed trust mechanism in Canada.

#### OUR ASK:

- Will your party commit to support the creation of a limited statutory deemed trust, similar to the U.S. *Perishable Agricultural Commodities Act*, to support needed liquidity and provide financial protection to produce sellers?

## ADDITIONAL BACKGROUND:

- **COVID-19 has made the problem worse.** Businesses across the fresh fruit and vegetable supply chain have incurred unprecedented costs to develop COVID-related plans and new procedures to address the spread of COVID-19, and to mitigate the impact of the pandemic on their business and community.
- As multiple waves of the pandemic have rolled across the country, rotating lockdowns and business closures have dramatically impacted produce buyers in the restaurant and hospitality sector in Canada.
- According to Restaurants Canada, more than 10,000 restaurants across the country have permanently closed their doors since the start of the pandemic.
- We know that many more businesses are currently being held afloat by government support programs. With those programs set to wind down over the coming months, we can anticipate that many businesses will be driven into bankruptcy, with impacts along the supply chain and, ultimately, to fruit and vegetable growers who supply these businesses.
- **Existing bankruptcy protections don't work for our sector.** While the *Bankruptcy and Insolvency 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 existing "super priority" provision for farmers also requires that product must have been delivered within 15 days of the bankruptcy, failing to address the needs of fruits and vegetable suppliers, who regularly receive payment 30 days (or more) after product is delivered.
- **Lack of financial protection puts Canadian produce sellers at a competitive disadvantage.** At one time, our Canadian growers and shippers had preferential treatment in the U.S. under the *Perishable Agricultural Commodities Act (PACA)*, which provided much needed access to prompt payment tools in the case of disputes. The lack of comparable insolvency protection in Canada led to the loss of our preferential treatment for disputes, but the commitment exists from the U.S. to reinstate this treatment when Canada has similar insolvency protection in place.
- In the interim, Canadian sellers are now required to post a bond worth double the value of the shipment just to initiate a formal dispute claim through *PACA* making this cost prohibitive and forcing Canadian exporters to walk away from these lost sales.
- **There is broad support for the creation of a financial protection mechanism for produce sellers.** In July 2021, 22 agri-food organizations from across Canada sent a joint letter to Prime Minister Justin Trudeau voicing their support for the creation of a deemed trust.
- This recommendation has also been endorsed by the House of Commons Standing Committees on Finance and Agriculture and Agri-food in the last two Parliaments.