



July 14, 2014.

Mr. Paul Halucha
Director-General, Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario
K1A 0H5

Dear Mr. Halucha,

The Ontario Produce Marketing Association (OPMA) is an organization of members involved in the distribution and marketing of fresh fruit and vegetables in the province of Ontario. We represent growers, shippers, packers, wholesalers, retailers and foodservice companies who deal in produce.

We would like to thank Industry Canada for the opportunity to comment on the consultations for the statutory review of the *Bankruptcy and Insolvency Act (BIA)* and the *Companies' Creditors Arrangement Act*.

Although changes to the BIA were made back in the early 1990's to help farmers and fishermen maintain access to their products in the event a buyer declared bankruptcy or went into receivership, these changes have proven to be grossly inadequate for the produce sector because of the perishability of the product.

In 1984, the United States established "deemed trust" provisions through the *Perishable Agricultural Commodities Act (PACA)* that protected shippers in the event their buyer became insolvent. The PACA trust helps suppliers of perishable products ensure prompt payment by buyers. The trust makes suppliers' interests in a debtor's assets superior to those of other creditors, including secured creditors. When shipping to the United States, Canadian firms can receive the same PACA trust benefits as U.S. sellers. U.S. suppliers and their government representatives are seeking reciprocal protection in Canada.

While our industry takes due diligence seriously to reduce risks wherever possible, it is not possible to eliminate them entirely. Our members can be severely impacted when buyers declare bankruptcy or enter into receivership. Many of our members are smaller growers who have placed most, if not all, of their crop in the hands of just one buyer. The bankruptcy of his buyer can lead to the bankruptcy of the grower who is unable to sustain such a loss. Or it can increase the likelihood of not being able to obtain credit at reasonable rates.

Our members believe that the most effective way to provide protection to produce sellers is through the creation of a statutory deemed trust similar to the U.S. to ensure that bankruptcy assets are secure and accessible. Our experience with PACA and with bankruptcies in our sector in Canada has convinced us of this.

We urge the Government of Canada to amend the Bankruptcy and Insolvency Act in order to establish a deemed trust mechanism in order to provide transparency and security to the buyers and sellers of fresh produce. These changes would not require government funding or government oversight.

We also understand that the Canadian Produce Marketing Association, the Canadian Horticultural Council and the Fruit and Vegetable Dispute Resolution Corporation are preparing a larger submission on behalf of the industry and we would support that proposal.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ian MacKenzie", with a stylized flourish at the end.

Ian MacKenzie
President