

## Ottawa

Room 870, The Valour Building  
Ottawa, Ontario K1A 0A6  
Tel.: 613-992-5335  
Fax.: 613-996-8418  
[Pat.finnigan@parl.gc.ca](mailto:Pat.finnigan@parl.gc.ca)



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

*Pat Finnigan*

Member of Parliament / Député  
Miramichi – Grand Lake

## Ottawa

Pièce 870, Édifice de la Bravoure  
Ottawa (Ontario) K1A 0A6  
Tél. : 613-992-5335  
Télé. : 613-996-8418  
[Pat.finnigan@parl.gc.ca](mailto:Pat.finnigan@parl.gc.ca)

## Constituency

514 Water Street  
Miramichi, New Brunswick E1V 3G5  
Tel.: 506-778-8448  
Fax.: 506-778-8150

## Circonscription

514, rue Water  
Miramichi (Nouveau-Brunswick) E1V 3G5  
Tél. : 506-778-8448  
Télé. : 506-778-8150

Ottawa, 9 June 2016

The Honourable Lawrence MacAulay  
Minister of Agriculture and Agri-Food

cc: The Honourable Navdeep Singh Bains  
Minister of Innovation, Science and Economic Development

Dear ministers,

The Standing Committee on Agriculture and Agri-Food held three public meetings on 9 May, 16 May and 1 June 2016 with officials from your respective departments and representatives of Canada's horticulture sector to examine options for re-establishing Canada's preferential access to the dispute resolution mechanism under the United States (U.S.) Perishable Agricultural Commodities Act (PACA).

As you are aware, the lack of a comparable approach in Canada to protect producers of fruits and vegetables in case of non-payment from buyers has led the U.S. authorities to revoke Canada's preferential access to PACA in October 2014. According to horticulture industry stakeholders, access to payment protection under PACA is now more difficult and even inaccessible for many producers. The Conference Board of Canada has estimated that annual losses to GDP as a result of the PACA rule change could go as high as \$38.4 million, along with the permanent loss of 464 jobs and \$17.7 million in labour income. The lack of adequate protection in Canada is also problematic, as various sources estimate that losses in the Canadian produce industry from business insolvency average between \$18 million and \$25 million per year.

Officials from Agriculture and Agri-Food Canada have reminded the Committee that upcoming changes to the regulations under the *Safe Food for Canadians Act* will require sellers and buyers to be members of a third party, single dispute resolution body, likely the Dispute Resolution Corporation (DRC). The Committee noted that this system may be comparable to the U.S. system in terms of handling



commercial disputes and non-payment by solvent buyers. The Committee therefore encourages you to consider accelerating the implementation of these regulations.

The dispute resolution mechanism of the DRC, however, does not address the risks associated with bankruptcy and insolvency. Therefore, it will not be sufficient to ensure reciprocity with the U.S. and enable Canadian exporters to regain preferential access under PACA. According to the industry, current protection rules in place under the *Bankruptcy and Insolvency Act* to aid suppliers of perishables are too limited to be effective and deemed equivalent by the U.S.

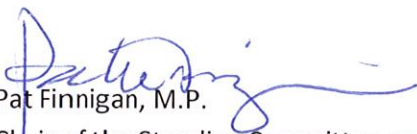
Under the guidance of the horticulture industry and the DRC, Professor Ronald Cuming (College of Law, University of Saskatchewan) developed a draft model law that would provide for a protection measure for suppliers of fresh fruit and vegetable products from the effect of insolvency when their buyers fail to pay for the products they delivered. The draft model law, attached to this letter, proposes the establishment of a limited statutory deemed trust, which would give to the seller, the beneficiary under the trust, a first priority status with respect to trust property.

The Committee has been told that by covering only bankruptcy cases, the implementation of the deemed trust would fall solely within federal jurisdiction. In addition, witnesses have mentioned that there had been no decreases in the availability of credit in the U.S. following the implementation of the PACA trust, and that banks see this system as a net gain for lenders doing business with agricultural clients.

The Committee is therefore urging you to study carefully this proposed model with a view to implementing a payment protection program for produce growers in case of buyer bankruptcy as soon as possible, and to negotiating with the U.S. to restore Canada's privileged access under PACA.

On behalf of the Committee, I look forward to your response to our concerns.

Respectfully,



Pat Finnigan, M.P.

Chair of the Standing Committee on Agriculture and Agri-Food