

**From:** Sam Babe

**To:** insolvency-Insolvabilite: IC

**Subject:** Statutory Review of the Bankruptcy and Insolvency Act and the Companies" Creditors Arrangement Act

**Date:** July-04-14 12:52:02 PM

**Attachments:** image002.png

Dear Director-General,

In the discussion paper, under the heading "Applicability of Asset Sale Test" in the "Asset Sales" section, the following statement is made: ". . . court approval of sales outside the ordinary course of business must take into account how the sale could impact on the payment of wage and pension claims . . .", with a footnote citing BIA s.65.13(8) and CCAA s.36(7). This statement is false insofar as CCAA s. 36(7), as enacted, does not give such protection to pension claims. This is due to a drafting error, referencing a non-existent CCAA subsection 34(a) when a reference to "36(a)" is what would be required. This error is acknowledged and explained in footnote 28 to the legislative summary for Bill C-12 (which Bill would be enacted as *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005, S.C. 2007 C. 36*) as follows:

“(28) It should be noted that there is a small drafting error under the proposed section 36(7) of the CCAA. That section reads: “The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement” (emphasis added). Subsections 6(4)(a) and 6(5)(a) of the CCAA, as enacted by Chapter 47, are the provisions that require the reorganizing debtor to meet its obligations with respect to unpaid wage claims and unremitted pension plan contributions. However, these provisions are renumbered under clause 106 of Bill C-12 as paragraphs 6(5)(a) and 6(6)(a). There is no 6(4)(a).”

This drafting error should be fixed.

Yours Truly,

**Sam Babe**, J.D., M.B.A.

[www.airdberlis.com](http://www.airdberlis.com)

This message may contain confidential and/or privileged information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Aird & Berlis LLP may monitor, retain and/or review email. Email transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Neither Aird & Berlis LLP nor the sender, therefore, accepts liability for any errors or omissions in the contents of this message, which arise as a result of email transmission. Any advice contained in this communication, including any attachments, which may be interpreted as US tax advice is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code; or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.