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**Frauds on Creditors: Fraudulent
Conveyances and Preferences**

This work provides practitioners and academics with comprehensive narrative coverage of the law to effectively pursue assets that a debtor has attempted to shield from his or her creditors. This service contains in-depth commentary on the federal and provincial legislation and the case law thereunder, including new material on: the position of an advising and participating lawyer in the context of fraudulent conveyances and preferences; conflict of laws; the oppression remedy and the derivative action; creditors as beneficiaries of the directors' duty of care; injunctions; and certificates of pending litigation.

What's New in this Update:

This release features valuable updates to the commentary and case law in Chapters 1 (A General Framework), 2 (The Position of an Advising and Participating Lawyer in the Context of Fraudulent Conveyances, Fraudulent Preferences and Other Judgment Proofing Activities), 7 (Judgment: Entitlement and Effect), 8 (The "Conveyance" of "Property"), 13 (Proving the Fraudulent Intent of the Debtor), 14 (Protected Conveyances Under the *Fraudulent Conveyances Act Model*), 17 (Persons Having Standing to Impeach an Unjust Preference), 18 (The Elements of an Impeachable

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Preference Under Provincial Legislation), 23.1 (Bankruptcy Offences and Discharge of Bankrupts), and 28 (Transactions Induced by Fraud: Ponzi Schemes).

Highlights:

A General Framework: The question of overlapping or Conflicting Legislation — Provincial and Federal Legislation — Criminal and Quasi-Criminal Law — Constitutional Matters — Attention should be paid to the phrase “despite a pretence or other matter to the contrary”. This phrase does not appear in what might be characterized as more traditional fraudulent conveyances statutes, but it is not new. In fact, the Statute of Elizabeth itself refers to “any pretence, colour, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding”.

Judgment: Entitlement and Effect: Relief Granted and the Effect of Impeachment — Current Law — Remedies Available to the Transferee After Impeachment — A transferee may give “valuable consideration” and still see the conveyance impeached. For example, the court may determine that the consideration, although “valuable”, is “inadequate” and therefore cannot assist the transferee in legitimizing the conveyance.

Protected Conveyances Under the *Fraudulent Conveyances Act Model: Law Reform — Ontario Law Reform Commission (1983) — The Doctrine of Pressure — New Brunswick Department of Justice, Law Reform Division (1976)* — It should first be noted that New Brunswick does not have a statute akin to the Fraudulent Conveyances Acts in force in most provinces. Rather, New Brunswick has enacted legislation dealing with fraudulent preferences: the *Assignments and Preferences Act*. With respect to fraudulent conveyances, the province relies on the *Statute of Elizabeth*. Like the provincial statutes relating dealing mainly with fraudulent conveyances, the *Statute of Elizabeth* saves transfers where, among other things, the transferee has no “notice or knowledge” of the debtor’s fraudulent intent.

In its description of the current law in New Brunswick, the New Brunswick Report adopted an approach that differs from the more traditional view (anchored as the latter is in the actual language of the legislation: “notice or knowledge”):

Mere knowledge of the debtor’s intent on the part of the person who has given consideration will not make the transaction voidable. This appears to apply under both the English statute [the *Statute of Elizabeth*] and the provincial legislation [currently, the *Assignments and Preferences Act*, R.S.N.B. 2011, c. 115], although the actual words of the English statute indicate that notice of the improper intent may be fatal to the rights of third parties [that is, transferees].