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FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

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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.

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What's New in this Update:
This release features updates to chapters 1 (A General Framework), 13 (Persons Having Standing, or No Standing, to Impeach a Fraudulent Conveyance), and 14 (Proving the Fraudulent Intent of the Debtor and the Prejudicial Effect of the Conveyance).

Highlights:

- **CHAPTER 13—PERSONS HAVING STANDING, OR NO STANDING, TO IMPEACH A FRAUDULENT CONVEYANCE**—This section was updated to include a discussion on the veil piercing test and clarifies personal liability of corporate actors. It includes excerpts from *A.J. Lanzarotta Fruits & Vegetables Ltd. v. United Farmers* (2024 ONSC 1780), which confirms the two part test drawn from *Aviva Canada Inc. v. Lyons Auto Body* (2019 ONSC 6778): complete control by the alter ego and use of the corporation as an instrument of fraud or to shield illegal activity. It also emphasizes that directors, officers, and employees are not personally liable merely because a corporation acts through them, but they can be liable for their own torts, provided a personal cause of action is specifically pleaded.
- **CHAPTER 14—PROVING THE FRAUDULENT INTENT OF THE DEBTOR AND THE PREJUDICIAL EFFECT OF THE CONVEYANCE**—This section was updated to clarify the treatment of the evidentiary effect of badges of fraud. While a single badge can suffice, litigation typically involves multiple badges and the supposed "conflicting lines of authority" may amount to a distinction without a meaningful difference. Chapter 14 also integrates recent authorities, including *Ernst & Young v. Aquino* (2021 ONSC 527) and its adoption in *In the Matter of the Bankruptcy of Ian Ross McSevney*, 2023 CarswellOnt 15181, 2023 ONSC 5555, 2023 A.C.W.S. 4627, 9 C.B.R. (7th) 325 (Ont. Sup.Ct.J.), which is an example of modern courts echoing Dunlop's badge list.