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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, 8, 14 and 15.

Highlights:

- **Chapter 8—Bonds, Judgements, Orders and Other Proceedings—The Assignments and Preferences Act Model**—This section was updated to include a reference to *Townsgate Homes Inc. v. Owens Wright LLP*, a relatively rare decision where a number of consent judgments were impugned and ultimately set aside. In this case, a law firm (Owen Wright LLP) obtained consent judgments given by its own (insolvent) clients (Greenville) with, as the Applicants (land developers and creditors of Greenville) stated in their factum, “a transparent intention to prefer one creditor—the law firm—over all others.”. The consent judgments obtained by the law firm were registered as executions against Greenville. This arrangement was designed to benefit the firm, which the court said was fully aware of Greenville’s financial predicament. The firm registered the executions “knowing that the Applicants would have to pay the judgment debt in order to have the execution deleted and their first phase [of the development] registered”. In the end, the consents to judgment, discussed above, were declared “null and void” and the judgments were set aside.
- **Chapter 14—PROVING THE FRAUDULENT INTENT OF THE DEBTOR—BADGES, OR INFERENCES,* OF FRAUD**—This section was updated to include a list of “badges of fraud” offered by Paul Perell (later Perell J.), a widely respected commentator and judge, whose article was cited by the Ontario Court of Appeal in *Ontario Securities Commission v. Camerlengo Holdings Inc.* The court enumerated several factors—such as the debtor’s precarious financial state, relationships between parties, lack of fair consideration, and evidence of secrecy or haste—as indicators of fraudulent conveyance.