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**Priority of Crown Claims in  
Insolvency**

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**Introduction**

This text is designed to aid the practitioner in remaining current with the nature of the law of Crown Claims in the various processes of insolvency. Resolving priorities between contractual personal property security transactions and statutory Crown security interests means navigating numerous legislative provisions, wrestling with conflicting case law, and balancing bankruptcy and insolvency law, *Bank Act* security, the *Income Tax Act*, the *Excise Tax Act* and federal/provincial jurisdictions. This text provides: a thorough overview of the general principles applicable to the priority of statutory Crown claims; the constantly evolving rules governing statutory priorities including those resulting from interplay of the *Bankruptcy and Insolvency Act*, the *Bank Act*, the *Income Tax Act* and the *Excise Tax Act*; an in-depth analysis of Crown security interests, such as deemed statutory trusts, statutory liens, super priority and enhanced garnishment orders and an examination of the impact of the *Companies' Creditors Arrangement Act* (CCAA) on the other legislative regimes.

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This release features updates to Chapter 2 (Deemed Statutory Trusts in Non-Bankruptcy Realizations), that discusses a history of deemed statutory trust jurisprudence, priority of pre-existing charges over deemed trust property, the new generation of deemed tracing provisions, and property charged with deemed statutory trusts and relevant priority rules.

## HIGHLIGHTS

**The Impact of Equitable Tracing Rules in Priority Disputes Involving Deemed Statutory Trusts — Sales Tax Collection Schemes — The “Lowest Intermediate Balance Rule” In Ontario** — The author draws upon previous cases to provide insight on how the courts have proceeded with the application of the “lowest intermediate balance rule” in Ontario. According to commentary, the rule remains the law of the Province of British Columbia but has essentially been abandoned in Ontario.

**The New Generation of Deemed Tracing Provisions — Is there a Continuing Obligation to Remit Moneys Deemed to have Been Held in Trust? The Decision in *Canada v. Callidus Capital Corporation*** — The Supreme Court of Canada reversed the decision of the Court of Appeal in *Callidus*. The court essentially stated that the deemed trust of section 222(3) of the *Excise Tax Act* only secures the amount deemed to be held in trust under subsection 222(1), namely taxes collected but not remitted and that, pursuant to subsection 222(1.1) the trust created under subsection 222(1) no longer secures any amounts collected prior to a bankruptcy. In short, upon bankruptcy, subsection 222(3) no longer secures any amount because there is no longer any trust under subsection 222(1): *Callidus Capital Corporation v. Her Majesty the Queen*, 2018 CarswellNat 1151, 2018 CarswellNat 1152, 58 C.B.R. (6th) 223 (S.C.C.).