

## Publisher's Note

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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), 5 (Institution of an Action), 7 (Judgment: Entitlement and Effect), 8 (The "Conveyance" of "Property"), 9 (The Financial Status of the Debtor), 12 (Persons Having Standing, or no Standing, to Impeach a Fraudulent Conveyance), 13 (Proving the Fraudulent Intent of the Debtor), 14 (Protected Conveyances Under the *Fraudulent Conveyances Act* Model), and 30.1 (Provincial Family Law: The Fraudulent and Other Disposition or Intended Disposition of Property).

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## Highlights:

**A General Framework: The Setting — The Traditional Setting: Fraudulent Conveyances and Preferences** — According to the commentary, there are statutes other than those discussed in this text that deal in one way or another with frauds on creditors. For example, in his 19th century treatise on fraudulent conveyances and other related matters, Hunt stated (at 99) that the “Bills of Sale Acts were passed in order to prevent frauds upon creditors by secret bill of sale of personal chattels”. Hunt also dealt with 27 Eliz. c. 4 (at 202): “The statute 27 Eliz. c. 4, was passed in order to provide for purchasers a protection against subsequent assurances similar to that provided by the [statute] 13 Eliz. c. 5 [referred to as the *Statute of Elizabeth* in this text and more generally in the case law and commentaries], in favour of creditors.” In the latter connection, it bears mentioning that this sort of protection in respect of conveyances of specified types of property intended to prejudice purchasers appears in various fraudulent transactions statutes. See for example ss. 5 and 6 of the Ontario *Fraudulent Conveyances Act*.

**Proving the Fraudulent Intent of the Debtor: Badges, or Inferences, of Fraud** — The commentary discusses the notion that, where the impugned conveyance is to a spouse, or indeed where one or more badges of fraud are found, the onus on the plaintiff is heavier is not at all uncommon. This theme is reflected in the discussion throughout. But at the same time, there is also a view that, given the nature of family arrangements, they ought to be treated with more leniency. Mention should be made here to differences in terminology that occur in the cases with reference to the standard of proof applied to the plaintiff’s case. For example, the following phrases appear: “balance of probabilities”, “clear and sufficient proof”, “preponderance of evidence”, “substantial evidence”, and “tangible evidence”.