

l'Association canadienne du droit
des technologies de l'information



Canadian IT Law Association

Presents

The Thirteenth Annual Canadian IT Law Association Conference

October 22–23, 2009
Park Hyatt Hotel
4 Avenue Road,
Toronto, ON

Quebec Delegates: Certification du Barreau du Québec en attente/Certification by the Barreau du Québec is pending.

British Columbia Delegates: Attendance at this conference can be listed as 17 hours of CLE in completing your Annual Report to the LSBC.

8:00–9:00 AM

Registration & Continental Breakfast

Hosted by: Bereskin & Parr

9:00–9:15 AM

Opening Remarks & Welcome

Co-Chairs:

Michael Erdle, *Deeth Williams Wall LLP (Toronto)*

Barry Sookman, *McCarthy Tétrault LLP (Toronto)*

9:15–10:45 AM

Current Trends in Limits of Liability and Indemnification

Moderator:

Barry Sookman, *McCarthy Tétrault LLP (Toronto)*

Speakers:

C. Ian Kyer, *Fasken Martineau DuMoulin LLP (Toronto)*

Matthew Snell, *Senior Counsel,*

IBM Canada Limited (Toronto)

William S. Pearson, *Assistant Vice-President & Senior Counsel, Corporate, Sun Life Assurance Company of Canada (Toronto)*

- Challenging issues in limits of liability and indemnities
 - What is capped and what is not?
 - What is subject to limitations and exclusions of liability and what is not?
 - What should be indemnified and what should not?
- How to deal with privacy, confidentiality and security
- Industry practice in dealing with caps on liability
- Scope and limitations of indemnity provisions

10:45–11:00 AM

Networking Break

11:00 AM–12:30 PM

Roundtables Set #1

(Roundtables 1, 2, 3, 4 AM only)

12:30–2:00 PM

Luncheon & Guest Speaker

Hosted by: Blake, Cassels & Graydon LLP

Keynote Speaker:

Dr. Ron Dembo, *Founder and CEO, Zerofootprint*

The role of IT in combatting climate change

2:15–3:45 PM

Roundtables Set #1 (1, 2, 3, 5 PM only)

3:45–4:00 PM

Networking Break

4:00–4:15 PM

Report on Recent IT Law

Speaker:

Peter Ruby, *Goodmans LLP (Toronto)*

- SCC decision regarding enforcement of non-competition agreements
- Update on the new federal anti-spam law
- Developments regarding on-line defamation litigation

4:15–5:45 PM

Bankruptcy and Insolvency Issues Relating to IT

Moderator:

Scott Bomhof, *Torys LLP (Toronto)*

Speakers:

Mario Forte, *Ogilvy Renault LLP (Toronto)*

John McKenna, *Senior Vice President,*

PricewaterhouseCoopers Inc. (Toronto)

Joe Pasquariello, *Goodmans LLP (Toronto)*

- Drafting agreements with a view to possible bankruptcy or insolvency: Building in protections to avoid potential bad outcomes
- Use of escrow arrangements
- IT due diligence when acquiring distressed companies
- Licensing issues on insolvency
- Legislative issues: implications of the *BIA* and *CCAA* and pending reforms

5:45–6:00 PM

**IT.CAN Annual General Meeting
(For All IT.CAN Members)**

6:30 PM

Ticketed Dinner

(See Details on Registration Form)

Hosted by: Gowling Lafleur Henderson LLP

Location: Prego Della Piazza,

150 Bloor Street West, Toronto

l'Association canadienne du droit
des technologies de l'information



Canadian IT Law Association

8:00–8:55AM

Continental Breakfast

Hosted by: McCarthy Tétrault LLP

9:00–10:30 AM

Information Technology IP Annual Update

Moderator:

Stuart McCormack, *Stikeman Elliott LLP (Ottawa)*

Patents:

Speaker: Brian W. Gray, *Ogilvy Renault LLP (Toronto)*

- Business method and software patents:
 - *In re Bilski*
 - *Amazon.com*
 - New Canadian Patent Office policy
- New SCC standards of novelty and obviousness:
How are they being applied?
- Recent US and Canadian patent cases effecting licensing and the IT industry
- US patent reform

Copyright:

Speaker:

Professor David Vaver, *Osgoode Hall Law School, York University (Toronto)*

- Originality
- Title
- Infringement
- Implications of the Copyright Board's satellite radio decisions
- Remedies: damages and injunctions
- Statutory & case law developments from the US, UK and EU

Trademarks & Domain Names:

Speaker:

Daniel R. Bereskin, *Bereskin Parr (Toronto)*

- ICANN implementation plan for new gTLDs
- Impact of new gTLDs on trademark owners
- Federal Court decisions involving descriptiveness
- Opposition decisions
- Section 45 decisions
- Use of trademarks on-line, including social networking sites

10:30–10:45 AM

Networking Break

10:45 AM–12:15 PM

Roundtables Set #2 (6 AM only, 7, 8, 9)

12:15–1:45 PM

Luncheon & Guest Speaker

Hosted by: McInnes Cooper

Keynote Speaker:

Steven M. Prentice,
President, Bristall Morgan Inc. (Toronto/New York)

2:00–3:30 PM

Roundtables Set #2 (7, 8, 9)

3:30–3:45 PM

Networking Break

3:45–5:15 PM

Cloud Computing:

Opportunities, Challenges and Legal Risks

Moderator:

Richard Corley, *Blake, Cassels and Graydon LLP (Toronto)*

Speakers:

Jacob Glick, *Canada Policy Counsel, Google Inc. (Ottawa)*
Eloïse Gratton, *McMillan LLP (Montréal)*
Simon Hodgett, *Osler, Hoskin & Harcourt LLP (Toronto)*

- Computer applications, data and storage delivered over the Internet (cloud computing) rather than from desktops or corporate servers: What are the implications?
- Potential benefits: cost savings; data security; and environmental impacts
- Privacy challenges of processing personal information in the cloud:
 - Compliance costs and the problems imposed by privacy laws on industry and consumers
 - Privacy regulation of cloud services and its impact on competition
 - Jurisdictional issues
- Challenges for policymakers and lawyers
- Contracting for cloud computing:
 - Provider perspectives
 - Challenges for consumers and enterprise users (commercial, public and nonprofit)
- IT services agreements in the era of cloud computing: system performance commitments (e.g., service levels), data security, allocation of risk for intellectual property infringement, loss of data and other risks and liabilities

5:15 PM

Closing Remarks

1. Online Contracts and Legal Compliance in the Age of Mobile Computing

Speakers:

Arlan Gates, *Baker & McKenzie LLP (Toronto)*

Marie-Hélène Constantin,

Blake, Cassels & Graydon LLP (Montréal)

- Business to Business and Business to Consumers: updating terms and conditions for the wireless era
- Compliance issues and online mobile contracting: execution, enforceability, capacity, disclosures, disclaimers, representations, liability, consents, Quebec specific issues and more
- Advanced issues arising under provincial consumer protection legislation
- Managing mobile computing within your organization:
 - developing and implementing effective employee management policies
 - telecommuting and crossing borders with mobile computing devices

2. e-Health Challenges and Opportunities

Speakers:

Irene Kozina,

General Counsel, Canada Health Infoway (Montréal)

Elisabeth Symons, *Miller Thomson LLP (Toronto)*

Linda Weaver, *VP Product Management, Healthcare*

Delivery Solutions, TELUS Health Solutions (Halifax)

- Electronic health records-legal issues:
 - Privacy & consent
 - Security
 - Licensing and intellectual property issues
 - Legislative issues
 - Jurisdictional differences
 - Pan-Canadian standards
- Issues that arise when designing, implementing, procuring and operating an e- health project
- Public/private sector contract challenges
- Adoption issues
- International standards

3. Data Destruction and Records Retention

Speakers:

Ken Anderson, *Assistant Commissioner Privacy,*

Information & Privacy Commissioner of Ontario (Toronto)

Ryk Edelstein, *Partner, Converge-Net Inc. (Montréal)*

Dominic Jaar,

Legal Counsel, Ledjit Consulting Inc. (Montréal)

- Corporate governance issues:
 - D & O responsibility to protect data
 - Consequences of the failure to secure data
 - Privacy
 - Blocking statutes
 - Regulatory framework
- Policies and procedures
 - Information management: electronic document retention
 - e-mail and instant messages archiving
- e-Discovery
 - E-Bay case and the issue of extraterritoriality
 - Where to locate servers
 - Hiding of evidence
- Security & data protection issues
 - Security Standards
 - Encryption
 - Data destruction
 - Perimeter and infrastructure security technologies

4. New Media and Internet Regulation (October 22nd AM Only)

Speakers:

Jonathan Daniels,

VP Regulatory Law, Bell Canada (Ottawa)

Markham Erickson, *Holch & Erickson LLP (Washington)*

Peter S. Grant, *McCarthy Tétrault LLP (Toronto)*

- Traffic management – are guidelines required or needed?
- Wholesale and retail – should there be any distinction if there are to be restrictions?
- Network neutrality:
 - CRTC regulation or legislative intervention
 - Factors in determining whether regulatory intervention should be permitted?
- Update on US Comcast Cable litigation
- New and emerging US issues on the net neutrality front
- Update on CRTC new media exemption order
- Are ISPs “broadcasting undertakings”?
- Developments affecting Canadian content on new media

5. Chief Privacy Officer Roundtable (October 22nd PM Only)

Moderator:

Adam Kardash, *Heenan Blaikie LLP (Toronto)*

Speakers:

Ruth Belcher, *Managing Director, AccessPrivacyHB
(Former Chief Privacy Officer of Scotiabank) (Toronto)*

Yim Chan, *Global Privacy Executive, IBM Corporation
and Chief Privacy Officer, IBM Canada (Toronto)*

Deborah Sabatino, *Chief Privacy Officer,
Senior Director Ethics and ERM, MDS Inc. (Toronto)*

This interactive panel of Chief Privacy Officers from major corporations, each representing a different industry sector, will discuss the real, emerging and challenging privacy issues that they face on a daily basis. Each issue will be discussed for 10 minutes, with each panelist being asked to provide detailed comments on how they address those risks. Some of the topics to be discussed include privacy issues and challenges with:

- Social networking-from a workplace, privacy and marketing perspective
- The mobile workforce
- Incidents of security breaches
- Training challenges
- Emerging access request issues....and more

Questions and comments from the audience are encouraged.

6. IT Civil Law Update – *en français* (October 23rd AM only)

Speaker:

Professor Vincent Gautrais, *Faculty of Law,
University of Montréal (Montréal)*

- Nouveaux développements de la loi concernant le cadre juridique des technologies de l'information
- État jurisprudentiel en droit de la preuve
- Contrat électronique et l'après-Dell
- Lois sur la protection et les renseignements personnels et web 2.0
- Responsabilité des intermédiaires techniques

7. Negotiating Technology RFP's with the Government

Speakers:

Helene Deschamps-Marquis,
Blake, Cassels & Graydon LLP (Montréal)

Paul Emanuelli, *Procurement Counsel (Toronto)*

- RFP formats and the structure of the transaction

- Advanced RFP/PPP formats in the technology sector
- Problematic points of negotiation:
 - Allocating risk
 - Financing
 - Limits of liability
 - Project risks and accurate specifications
- IP issues and ownership
- Flexible procurement formats: negotiated RFP's, PPP's, Framework Agreements and enhanced pre-qualification procedures

8. A Practical Perspective on Open Source Software and User Generated Content: Case Study

Speakers:

Thomas Prowse, *Gowling Lafleur Henderson LLP (Ottawa)*

Eric Smith, *Fraser Milner Casgrain LLP (Ottawa)*

- Opportunities and challenges presented by OSS and user generated content
- How to spot the issues and deal with them in a practical manner
- Understanding and complying with OSS licenses
- OSS legal developments and best practices
- Securing right to use and limiting liability with respect to user generated content

9. Outsourcing: Effective Strategies for the Next Ten Years

Speakers:

Richard Austin, *formerly General Counsel,
EDS Canada (Toronto)*

Andrew Foti, *Gowling Lafleur Henderson LLP (Ottawa)*

Daniel Logan, *Torys LLP (Toronto)*

- Challenges to negotiating (or renegotiating) long term outsourcing agreements
- Customer and service provider strategies to mitigate recent structural trends
- Market evolution – the impact of offshore service providers, niche players and vendor consolidation
- Accommodating technology, business and regulatory change
- Financial engineering and long term pricing strategies
- Customer or service provider insolvency

Registration Form

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Online registration by credit card: Via our secure site at www.it-can.ca

Registration by mail: Please complete all boxes on form and forward with payment by cheque or credit card to Lisa Ptack, IT.CAN Executive Director, 1 Promenade Circle, P.O. Box 918, Thornhill, ON L4J 8G7

Name _____ Title _____
Firm/Company _____ Street _____
City _____ Prov _____ Postal Code _____
Telephone _____ E-mail _____

	Early Bird Fee until September 22, 2009	Received after September 22, 2009
IT.CAN MEMBER	\$1150 (plus \$57.50 GST) \$1207.50 <input type="checkbox"/>	\$1250 (plus \$62.50 GST) \$1312.50 <input type="checkbox"/>
NON-IT.CAN MEMBER	\$1250 (plus \$62.50 GST) \$1312.50 <input type="checkbox"/>	\$1350 (plus \$67.50 GST) \$1417.50 <input type="checkbox"/>
STUDENT	\$175 (plus \$8.75 GST) \$183.75 <input type="checkbox"/>	\$275 (plus \$13.75 GST) \$288.75 <input type="checkbox"/>
SPECIAL RATE:	\$625 (plus \$31.25 GST) \$656.25 <input type="checkbox"/>	\$725 (plus \$36.25 GST) \$761.25 <input type="checkbox"/>
ACADEMIC (Applies to full-time Academics only)		
CORPORATE COUNSEL		
GOVERNMENT		
SPECIAL NON-LAWYER FEE	\$625 (plus \$31.25 GST) \$656.25 <input type="checkbox"/>	

TICKETED DINNER

If you wish to attend the dinner on Thursday, Oct. 22, please check this box and add \$90.00 (plus \$11.70 tax) **per person** (includes gratuity) to your registration fee. Spouses/partners are welcome. Seating is limited.

No. of persons _____ × (\$90.00 + \$11.70 tax = **\$101.70**)

TOTAL ENCLOSED:

(GST Registration #: 886487677RT)

For credit card payment, please register via our secure online registration page at <http://www.it-can.ca>. Alternatively you can fill in the information below and pay by mail.

Cheque or

Please charge my Visa MasterCard Card Number _____

Expiry Date _____ Signature _____

Name of credit card holder (if different from registrant) _____

Address of credit card holder: Street _____ City _____ Postal Code _____

More registration information next page

Registration Information

Registration: All fees include breakfasts, networking breaks, lunches and conference materials.

Hotel Reservations: Park Hyatt Hotel, 4 Avenue Road, Toronto, Ontario. Special group rate of \$259 (Plus applicable taxes) until Friday, September 18, 2009. For Park Hyatt reservations please dial: 1-800-565-2020 or 416-925-1234.

Cancellations: Refunds for conference fees will be made if requested by email received **NO LATER THAN TUESDAY, SEPTEMBER 22, 2009**. There will be NO exceptions. A processing fee of \$100 (+ \$5 GST) will be charged for refunds. The email address is lisa.ptack@rogers.com

How to Register: By credit card: use our secure, online registration form at www.it-can.ca. **By cheque:** mail the original or a photocopy of the fully completed registration form to Lisa Ptack, IT.CAN Executive Director, 1 Promenade Circle, P.O. Box 918, Thornhill, ON L4J 8G7. Advance registrants who provide an email address will receive a confirmation.

Payment MUST accompany registration.

Payment: Payment can be made by cheque, Visa or MasterCard **ONLY**. Please make cheque payable to Canadian IT Law Association.

Queries: Contact Lisa Ptack at lisa.ptack@rogers.com.

Travel Information

IT.CAN has made arrangements with Air Canada for special flight rates for our speakers and delegates. To book a flight and receive the lower fare, please contact your travel agent or go to www.aircanada.com and enter the Promotion Code: FW7G8U71.

IT.CAN Membership

If you are interested in becoming a member of IT.CAN, please visit our website at www.it-can.ca for full details including the membership form.

Roundtable Schedule

Thur. Oct. 22, 2009 (11:00 AM–12:30 PM)

1. Online Contracts and Legal Compliance in the Age of Mobile Computing
2. e-Health Challenges and Opportunities
3. Data Destruction and Records Retention
4. New Media and Internet Regulation (AM session only)

Thur. Oct. 22, 2009 (2:15–3:45 PM)

1. Online Contracts and Legal Compliance in the Age of Mobile Computing
2. e-Health Challenges and Opportunities
3. Data Destruction and Records Retention
5. Chief Privacy Officer Roundtable (PM session only)

Fri. Oct. 23, 2009 (10:45 AM–12:15 PM)

6. IT Civil Law Update – *en français* (AM session only)
7. Negotiating Technology RFP's with the Government
8. Living with Open Source Software and User Generated Content: A Practical Perspective
9. Outsourcing: Effective Strategies for the Next Ten Years

Fri. Oct. 23, 2009 (2:00–3:30 PM)

7. Negotiating Technology RFP's with the Government
8. Living with Open Source Software and User Generated Content: A Practical Perspective
9. Outsourcing: Effective Strategies for the Next Ten Years

SEATING IS LIMITED SO REGISTER EARLY

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About IT.CAN

The Canadian IT Law Association/l' Association canadienne du droit des technologies de l'information (IT.CAN) is an association which brings together Canadian practitioners in the field of Information Technology law. We are a national forum seeking to foster the discussion of specifically Canadian legal developments in this increasingly innovative and topical field, a goal which has been greeted with an enthusiastic response from the IT Law community.

About the Conference

This annual conference seeks to provide information technology ("IT") lawyers with an opportunity to learn about the most recent and significant developments in Canadian IT Law, to benefit from an analysis of such developments as provided by leading practitioners

and government officials, and to network with leading practitioners in the area.

The main object of this two-day conference will be to provide succinct and topical updates on developments in various areas of IT law as they relate to Canada.

Who should attend

- Corporate/Commercial Lawyers specializing in IT, IP, and e-commerce
- In-House Counsel
- Procurement Counsel
- Government Lawyers
- IT License & Contract Managers/Directors of Operations
- CIO's / CTO's / CPO's

Conference Organization

IT.CAN would like to thank the following members of the Planning Committee:

Chairs:

Michael Erdle, *Deeth Williams Wall LLP (Toronto)*

Barry Sookman, *McCarthy Tétrault LLP (Toronto)*

Conference Planning Committee:

Richard Austin, *former General Counsel, EDS Canada Inc.*

Helene Deschamps Marquis, *Blake, Cassels & Graydon LLP*

Paul Emanuelli, *Procurement Counsel*

Arlan Gates, *Baker & McKenzie LLP*

Frank Giblon, *Cognition LLP*

Jacob Glick, *Canada Policy Counsel, Google Inc.*

Eloïse Gratton, *McMillan LLP*

Simon Hodgett, *Osler, Hoskin & Harcourt LLP*

Dominique Jaar, *Legal Counsel, Ledjit Consulting Inc.*

C. Ian Kyer, *Fasken Martineau DuMoulin LLP*

Lisa Lifshitz, *Gowling Lafleur Henderson LLP*

Daniel Logan, *Torys LLP*

Charles Morgan, *McCarthy Tétrault LLP*

Richard Pearse, *former Senior Counsel, Hewlett-Packard (Canada) Co.*

Robert Percival, *Ogilvy Renault LLP*

Karen Pierpoint, *Stewart McKelvey*

Peter Ruby, *Goodmans LLP*

Eric Smith, *Fraser Milner Casgrain LLP*

Jill Tonus, *Bereskin & Parr*

IT.CAN is pleased to thank the following sponsors:

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