

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



Canadian IT Law Association

Presents

2016 IT.CAN 20th Annual Conference

October 24–25, 2016

The Marriott Chateau Champlain Hotel,
1, Place du Canada, Montréal, QC

Accreditation

Law Society of Upper Canada: This program can be applied towards the 9 substantive hours of Continuing Professional Development (CPD) required by the LSUC.

Roundtable 5 is accredited for 1.5 Professionalism hours.

Barreau du Québec: The Barreau du Québec automatically recognizes the program for 16 hours of training as it has been recognized by another Law Society.

Law Society of British Columbia: Attendance at this conference can be listed as 16 hours of CLE in completing your Annual Report to the LSBC.

Law Society of New Brunswick: This program has been accredited for 16 hours of CLE by the Law Society of New Brunswick.

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 and international 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

Private Counsel practicing in the Corporate Commercial and Technology field, in-house Counsel, IT License & Contract Managers, Directors of Operation, Sourcing and Procurement Professionals, CIO's/CTO's/CPO's/COO's/CEO's.

Day 1: Monday, October 24, 2016

8:00–9:00 am

Registration & Continental Breakfast

Hosted by: Bereskin & Parr LLP

9:00–9:15 am

Opening Remarks & Welcome

Co-Chairs:

Co-Chairs: Richard Austin, Deeth Williams Wall LLP (*Toronto*)
François Lajeunesse, Senior Legal Counsel, Bell Canada
(*Montréal*)

9:15–10:45 am

Comparative Privacy for Big Data: Evolution or Revolution?

Moderator:

David Fraser, McInnes Cooper (*Halifax*)

Speakers:

Patricia Kosseim, Senior General Counsel and Director
General, Legal Services, Policy, Research and Technology
Analysis Branch, Office of the Privacy Commissioner of
Canada (*Ottawa*)

Nigel Parker, Allen & Overy LLP (*London, UK*)

Heidi L. Wachs, Special Counsel, Jenner & Block LLP
(*Washington, DC*)

- Big data in Canada, the US and the EU: Cross-jurisdictional analysis of key regulatory approaches and recent case law
- Legal issues inherent in big data projects across industries
- Notice and consent challenges for big data projects
- Internet of Things:
 - Privacy implications of data collected
 - Data usage and analytics
- Big data governance and best practices

10:45–11:00 am

Networking Break

Hosted by: McMillan LLP

11:00 am–12:30 pm

Roundtables Set #1 (1, 2, 3 and 4 in am only)

12:30–2:00 pm

Luncheon & Guest Speaker

Hosted by: Deeth Williams Wall LLP

2:15–3:45 pm

Roundtables Set #1 (1, 2, 3 and 5 in pm session only)

3:45–4:00 pm

Networking Break

Hosted by: McMillan LLP

4:00–5:30 pm

Current Issues in US and Canadian Cybersecurity Law

Sponsored by Orrick

Moderator:

Russell Cohen, Orrick Herrington & Sutcliffe LLP
(*San Francisco*)

Speakers:

Christine Ing, Blake, Cassels & Graydon LLP (*Toronto*)
Robert Masse, Partner, Cyber Risk Services, Deloitte (*Montréal*)
Mark Mermelstein, Orrick Herrington & Sutcliffe LLP
(*Los Angeles*)

- Cyber whistleblowers and their implications for data breach response
- New Canadian data breach reporting and breach log requirements
 - Impact of breach log requirements on non-Canadian companies
- Privacy and other implications of cyberthreat information sharing
- Governance issues and the role of the Board of Directors

5:30 pm

Closing Remarks for Day 1

5:40–6:00 pm

IT.CAN Annual General Meeting

(For All IT.CAN Members)

6:00–6:45 pm

Cocktail Reception & 20th Anniversary Celebration

Hosted by: Torkin Manes LLP

Toast: Dr. C. Ian Kyer, Founding President, IT.CAN

7:15 pm

Ticketed Dinner (See Details on Registration Form)

Location: Restaurant Mozza, 1251 Av. McGill College

Day 2: Tuesday, October 25, 2016

7:45–8:45 am

IT.CAN Women in Technology Breakfast (all registrants are welcome)

Sponsored by: Microsoft Canada Inc.

Keynote Speaker: Mary-Anne Carignan, President,
Clinical Division, Purkinje Inc. (*Montréal*)

8:00–8:45 am

Opening Remarks & Welcome

Co-Chairs:

Richard Austin, Deeth Williams Wall LLP (*Toronto*)
François Lajeunesse, Senior Legal Counsel, Bell Canada
(*Montréal*)

9:00–10:30 am

International IP Updates for Technology Practice

Moderator:

Barry Sookman, McCarthy Tétrault LLP (*Toronto*)

Speakers:

Dan Bereskin, Bereskin and Parr LLP (*Toronto*)

Ysolde Gendreau, Professeur, Faculté de droit,

Université de Montréal (*Montréal*)

Brian Gray, Norton Rose Fulbright Canada LLP (*Toronto*)

Bruce Stratton, Dimock Stratton LLP (*Toronto*)

Trademarks – Dan Bereskin

- Can a metatag be used to deceive?
 - If so, under what circumstances?
 - Is proof of deception essential to trademark relief?
- When is a trademark “clearly descriptive or deceptively misdescriptive” of the place of origin?
- Is a software license a “good” for which a trademark can be registered?
- What constitutes “use in Canada” for a registered trademark covering services? How should such marks be registered if the service primarily is performed abroad?
- What “special circumstances” can avoid cancellation of a trademark registration for non-use?

Copyright – Ysolde Gendreau

- What is “technological neutrality” doing to copyright in Canada?
- How are the 2012 exceptions in the *Copyright Act* impacting the scope of copyright in online uses of protected works?
- What can we learn from recent EU developments on copyright?
- What should be discerned from the US Supreme Court decision not to hear the *Google* case?

Domain Names – Brian Gray

- When and where is it appropriate for a court to restrict access to domains?
 - *Equustek v. Google*
- Should the laws of one country apply to the internet activities in another country?
- Is linking to a domain actionable? When?

Patents – Bruce Stratton

- How does the U.S. approach to patentability of IT systems impact Canada, post *Alice*?
- Does the current European approach to patentability fit the Canadian law as set out in *Amazon*?
- Is there a cost-effective way for Canadian IT enterprises to obtain broad patent protection for their technology?
- What does the made-in-Canada law on the “promise” mean for patents in the IT sector?

- Does the disclosure requirement in the written description of a patent create special problems for IT-based inventions?
- Is the patentability of business methods a roadblock for Fintech or an irrelevant historical footnote?

10:30–10:45 am

Networking Break

Hosted by: IT.CAN

10:45 am–12:15 pm

Roundtables Set #2 (6, 7, 8 and 9 in am session only)

12:15–1:45 pm

Luncheon & Guest Speaker

Hosted by: McCarthy Tétrault LLP

2:00–3:30 pm

Fintech at the Crossroads of Technological Innovation, Financial Regulation and Legal Compliance

Moderator:

John Jason, Of Counsel, Norton Rose Fulbright Canada LLP (*Toronto*)

Speakers:

Anne Butler, VP, General Counsel and Corporate Secretary, Canadian Payments Association (*Ottawa*)

Josh Death, Associate VP Legal, IP and Patentable Innovation, TD Bank (*Toronto*)

Adam Nanjee, Head of Financial Technology Innovation and Ventures, MarS Discovery District (*Toronto*)

- Fintech: The latest in financial services technology innovation and regulation
- Retail payment scheme and how it is changing
- Rethinking regulation and current laws in a rapidly evolving environment:
 - Challenges of the current Canadian regulatory landscape
 - Balancing security and innovation
 - International lessons
- Big Banks: Race to find solutions for digital banking and business challenges
- Cryptocurrency, Bitcoin and Blockchain environments: How they work
- Blockchain: The 2nd digital revolution – hype or hope?
 - Potential use cases and legal impact
 - Smart property and smart contracts

3:30–3:45 pm

Networking Break

Hosted by: IT.CAN

3:45–5:15 pm

Roundtables Set #2 (6, 7, 8)

5:15 pm

Conference Ends

1. Clean Tech for Technology Lawyers

Speakers:

Richard Corley, Goodmans LLP (*Toronto*)
Denis Leclerc, President and CEO, Écotech Québec (*Montréal*)

- Canadian commitments under the Paris Agreement and Vancouver Declaration
- Why Cleantech is the new technology frontier
- How Cleantech leverages the Internet of Things
- Real world impacts of potential privacy and security breaches
- GHG emissions as a key contractual measure
- Contractual terms to address GHG pricing and regulation

2. Re-visiting Cloud Computing Contracts: A Masterclass

Speakers:

Helene Deschamps Marquis, Blake Cassels & Graydon LLP (*Montréal*)
Dr. Sam De Silva, NABARRO LLP (*London, UK*)
Charles McCarragher, AVP Legal (Technology) TD Bank Group (*Toronto*)

- Internal due diligence before using cloud services: Best practice
- Key elements of cloud contracts
- Current state of play of cloud computing contracts: From “non-negotiable” to open dialogue
- Provisions cloud service providers are willing to negotiate
- Ensuring an appropriate allocation of risk between the parties
- UK financial services regulatory issues (FCA Guidance)
- Interplay with EU’s Commission Single Digital Market strategy and proposals for digital contracts
- Cloud and audit rights: Security standards, audit rights and service levels
 - verifying security
 - Audit standards
- Exit strategy

3. CASL Compliance, Enforcement & Challenges to Date

Speakers:

David Elder, Stikeman Elliott LLP (*Ottawa*)
Charles Morgan, McCarthy Tétrault LLP (*Montréal*)
Scott Smith, Director, Intellectual Property and Innovation Policy, The Canadian Chamber of Commerce (*Ottawa*)

- Getting ready for 2017
 - Private right of action
 - End of the three year transition period for implied consent
- Lessons learned for compliance with the “computer program” prohibitions

- Practical tips for dealing with the CRTC in compliance interaction
- CASL: An unconstitutional constraint on Charter protected speech?

4. Développements récents 2016 en TI en droit québécois (en français)

(This session will be presented in French on Oct. 24th AM only.)

Conférenciers:

Patrick Gingras, Ministère de la Justice du Québec (*Québec*)
Pierre Trudel, Professeur, Centre de recherche en droit public, Faculté de droit, Université de Montréal (*Montréal*)

- Dimensions technologiques de la procédure civile à la lumière du nouveau Code
- Décisions marquantes des tribunaux québécois et européens ayant un écho en droit des technologies
- Initiatives québécoises visant à adapter le cadre juridique aux phénomènes comme airbnb, UBER et autres modèles « disruptifs »
- Projet de loi fédéral sur la divulgation d’informations

5. Keeping the Client While Being Realistic

This session has accredited by the LSUC for 1.5 hours of Professionalism content

Speakers:

Nancy Cleman, Lapointe Rosenstein Marchand Melançon LLP (*Montréal*)
Elisabeth Symons, Mann Symons LLP (*Toronto*)

There can be a variety of reasons for clients having unrealistic expectations including the mythos of the start-up, financial issues, a lack of knowledge of the realities of legal practice and personality issues. If left unchecked, unrealistic expectations will place noticeable strains on the lawyer-client relationship. This panel will encourage a frank discussion of a number of situations common to a technology law practice when a client’s expectations may be or may become unrealistic. The discussion will address practical measures for preventing and responding to these situations including:

- Responding to and reassuring a confidentiality-obsessed tech start-up that did not formally retain you after preliminary discussions
- Working with a client when their legal budget is not sufficient for: (i) the volume of work that they need done; or (ii) the volume of work that they want done for that amount
- Taking the client’s personality into account when discussing options
- What to do when the client refuses to follow advice
- How to exit gracefully

6. Audit and Benchmarking Clauses in the New Post-Cloud, Cyber-Sensitive World

Moderator:

Richard Austin, Deeth Williams Wall LLP (*Toronto*)

Speakers:

David Ma, Blaney McMurtry LLP (*Toronto*)

François Lajeunesse, Senior Legal Counsel, Bell Canada (*Montréal*)

Ian Thorburn, Legal Counsel, City of Toronto (*Toronto*)

- The evolution of audit clauses: From the pre-Cloud era to post-Cloud environments
- Reviews, investigations and audits: Differences in scope, results and remedies
- Financial, security, technology, assurance and regulatory audits
- Software license audits:
 - Audit agreements
 - Managing the audit
- The role of in-house counsel in reviewing, drafting and advising on audit clauses and audits *Benchmarking price and performance

Roundtables Day 2: October 25, 2016

7. Understanding the Lifecycle of a Tech Start Ups: From Seed to Exit

Speakers:

Mary-Anne Carignan, President, Clinical Division, Purkinje Inc. (*Montréal*)

Charles Chevrette, McMillan LLP (*Montréal*)

Simon Hodgett, Osler, Hoskin & Harcourt LLP (*Toronto*)

Julien Saulgrain, blue HF (*Montréal*)

- Advising a startup:
 - Pre-incorporation considerations
 - Dos and don'ts
 - Protecting Intellectual Property and employee retention
- Processes and challenges of finding the money:
 - Sources of funding and new types of funding
 - Due diligence through the financing stages
 - New regulations
 - Government programs
- Early stages and seed
- Commercial agreements and licensing issues
- Managing government certifications and contracts
- Teaming with other entities

- How to go beyond the first round financing?
- Series B and C financings
- Exits:
 - Mergers and acquisitions
 - IPO

8. How to Draft in the Age of Agile vs. Waterfall

Speaker:

John Beardwood, Fasken Martineau DuMoulin LLP (*Toronto*)

Robert Percival, Norton Rose Fulbright Canada LLP (*Toronto*)

Joel Ramsey, Torys LLP (*Toronto*)

- Best practices in negotiating and contracting for *Agile* vs. *Waterfall* system integration
- How to manage the lack of specification in *Agile* contracts
- How to know if the client got what they negotiated
- When is *Agile* not an appropriate methodology?
- Common misconceptions about *Agile* development
- Contractual strategies for responding to the risks of *Agile*

9. Challenges in Implementing IT Solutions for Health Care

Speakers:

Bonnie Freedman, Counsel, Borden Ladner Gervais LLP (*Toronto*)

Mark MacNeil, Associate General Counsel, Telus Health (*Montréal*)

Richard Pearse, Legal Counsel, eHealth Ontario (*Toronto*)

- Landscape of IT Solutions and their unique challenges
 - Health records (EHR, EMR, telehealth, etc.)
 - Which solutions are currently trending?
 - Challenges for the next few years
 - Privacy risks and issues
- Convergence of solutions
- Contract issues unique to health care:
 - Damages – Liability – Mitigation of risk
 - SLAs – Privacy and security
- Regulatory issues: PHIPA amendments, changes in other legislation and more
- Challenges of use and connectivity in an existing health care framework
- Provincial variances

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Canadian IT Law Association

Registration Information

Registration: All fees include breakfasts, networking breaks, lunches and access to conference materials. **A current email address is required in order to receive your confirmation.**

Hotel Reservations: The Marriott Chateau Champlain Hotel, 1 Place du Canada, Montreal, QC. Special group rate is \$179 plus services and taxes. Tel: 1-800-200-5909; Direct Tel: 514-878-9000 (Group rate for Canadian IT Law Association code: CIL).
<http://www.montrealchateauchamplain.com/>

Cancellations: Refunds for conference fees will be made if requested by email, received **PRIOR TO September 24 2016**. Substitutions will be permitted after this date. There will be NO exceptions. A processing fee of \$100 (+ \$13 HST) will be charged for refunds. The email address is lisa.ptack@it-can.ca

How to Register:

No faxed registrations please.

By credit card: use our secure, online registration form at www.it-can.ca/events/conference-registration/.

By cheque: mail the original, fully completed registration form and payment to Lisa Ptack, IT.CAN Executive Director, 1 Promenade Circle, P.O. Box 918, Thornhill, ON L4J 8G7. An email address is required in order to 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@it-can.ca.

IT.CAN is pleased to thank the following sponsors:

Bell Canada • Bereskin & Parr LLP • Blaney McMurtry LLP

Deeth Williams Wall LLP • Mann Symons LLP • McCarthy Tetrault LLP • McMillan LLP

Microsoft Canada Inc. • Norton Rose Fulbright Canada LLP • Orrick Herrington & Sutcliffe LLP

Osler, Hoskin & Harcourt LLP • Torkin Manes LLP • Witmart Inc.

Roundtable Schedule

Monday, October 24, 2016 (11:00 am–12:30 pm)

1. Clean Tech for Technology Lawyers
2. Re-visiting Cloud Computing Contracts: A Masterclass
3. CASL Compliance, Enforcement & Challenges to Date
4. Développements récents 2016 en TI en droit québécois (en français)

Monday, October 24, 2016 (2:15–3:45 pm)

1. Clean Tech for Technology Lawyers
2. Re-visiting Cloud Computing Contracts: A Masterclass
3. CASL Compliance, Enforcement & Challenges to Date
5. Keeping the Client While Being Realistic

Tuesday, October 25, 2016 (10:45 am–12:15 pm)

6. Audit and Benchmarking Clauses in the New Post-Cloud, Cyber-Sensitive World
7. Understanding the Lifecycle of a Tech Start Ups: From Seed to Exit
8. How to Draft in the Age of Agile vs. Waterfall
9. Challenges in Implementing IT Solutions for Health Care

Tuesday, October 25, 2016 (3:45–5:15 pm)

6. Audit and Benchmarking Clauses in the New Post-Cloud, Cyber-Sensitive World
7. Understanding the Lifecycle of a Tech Start Ups: From Seed to Exit
8. How to Draft in the Age of Agile vs. Waterfall

SEATING IS LIMITED SO REGISTER EARLY

Registration Form

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

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

No faxed registrations please. Payment must accompany registration.

Name _____ Title _____

Firm/Company _____ Street _____

Suite _____ City _____ Prov _____ Postal Code _____

Telephone _____ E-mail _____

FEES	Early Bird Fee until September 25, 2016	After September 25, 2016
IT.CAN Member	\$1500 (plus \$224.63 tax) \$1724.63 <input type="checkbox"/>	\$1600 (plus \$239.60 tax) \$1839.60 <input type="checkbox"/>
Non-IT.CAN Member	\$1700 (plus \$254.58 tax) \$1954.58 <input type="checkbox"/>	\$1800 (plus \$269.55 tax) \$2069.55 <input type="checkbox"/>
Academic/In-House Counsel/ Government/Non-Lawyer	\$975 (plus \$146.01 tax) \$1121.01 <input type="checkbox"/>	\$1075 (plus \$160.98 tax) \$1235.98 <input type="checkbox"/>
Student	\$200 (plus \$29.95 tax) \$229.95 <input type="checkbox"/>	\$200 (plus \$29.95 tax) \$229.95 <input type="checkbox"/>

OPTIONAL DINNER

If you wish to attend the dinner on Monday, October 24, please check this box and add \$99.00 (plus \$14.83 tax) **per person** (includes gratuity) to your registration fee. Spouses/partners are welcome. Seating is limited.

No. of persons _____ × (\$99.00 + \$14.83 tax = **\$113.83**)

TOTAL ENCLOSED:

HST registration #: 886487677RT

PAYMENT

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 _____

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The Marriott Chateau Champlain Hotel, 1, Place du Canada, Montréal, QC

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 and international IT law 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.

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.

Conference Organization

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

Chairs:

Richard Austin, Deeth Williams Wall LLP
François Lajeunesse, Senior Legal Counsel, Bell Canada

Committee:

Sheryl Beckford, Legal Counsel, Purolator Inc.	Michael House, Deeth Williams Wall LLP
Eric Boehm, Borden Ladner Gervais LLP	Christine Ing, Blake, Cassels & Graydon LLP
Nancy Cleman, Lapointe Rosenstein Marchand Melançon LLP	John Le Blanc, Senior Legal Counsel, Scotia Bank
Marie-Helene Constantin, Blake, Cassels & Graydon LLP	Charles Morgan, McCarthy Tétrault LLP
Lisa Danay, Deeth Williams Wall LLP	Richard Pearse, Legal Counsel, eHealth Ontario
Frank Giblon, Corporate Counsel, Cognition LLP	Peter Ruby, Goodmans LLP
Brian Gray, Norton Rose Fulbright LLP	Elisabeth Symons, Mann Symons LLP
Simon Hodgett, Osler, Oskin & Harcourt LLP	

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