

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



Canadian IT Law Association

**Presents**

# The Fifteenth Annual Canadian IT Law Association Conference

**October 27–28, 2011**  
**Marriott Toronto Bloor Yorkville Hotel**  
**90 Bloor Street, East**  
**Toronto, ON**

**Ontario delegates:** This program can be applied towards the 9 substantive hours of Continuing Professional Development (CPD) required by the LSUC. This program is not accredited for Professionalism hours or for the New Member Requirement.

**Québec Delegates:** This program has been submitted for certification for 16 hours of CLE by the Barreau du Québec.

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

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

**8:00–9:00 AM**

**Registration & Continental Breakfast**

Hosted by: Bereskin & Parr

**9:00–9:15 AM**

**Opening Remarks & Welcome**

**Co-Chairs:**

Simon Hodgett, *Osler, Hoskin & Harcourt LLP*

Bernice Karn, *Cassels Brock & Blackwell LLP*

**9:15–10:45 AM**

**Annual IP Update**

**Moderator:**

Barry Sookman, *McCarthy Tétrault LLP*

**Copyright**

**Speaker:**

Casey Chisick, *Cassels Brock & Blackwell LLP*

- Update on recent case law
- International developments
- Status of copyright reform:
  - Anti-circumvention provisions for TPM and DRM
  - User generated content
  - Reproduction for private purposes
  - Format shifting/time shifting
  - ISP liability
  - Educational exemptions

**Patents**

**Speaker:**

Victor Krichker, *Bereskin & Parr LLP*

- Decision of the Federal Court of Appeal in Amazon.com
  - Test for patentable subject matter in Canada
- CIPO revisions to the Manual of Patent Office Practice (MOPOP)
- Decision of the US Supreme Court in Microsoft v. i4i
  - Standard of proof for invalidating patents under US patent law
  - Update on US patent reform legislation

**Trade-Marks and Domain Names**

**Speaker:**

Gary Daniel, Blake, *Cassels & Graydon LLP*

- Keyword advertising and meta-tags
- Trade-mark related frauds and scams
- Initial interest confusion:
  - Hope in the war on cybersquatters (*Masterpiece v. Alavida*)
- CIRA: New rules for dispute resolution

- Trade-marks in cyberspace
- What is new in top level domains?

**Trade Secrets and Confidential Information**

**Speaker:**

Peter Wilcox, *Torys LLP*

- Recent case law involving the use of confidential information and trade secrets:
  - Disclosed in mergers and takeover bids (*Certicom v. Research in Motion*)
  - Disclosed during ongoing business transactions (*Sabre v. IATA*)

**10:45–11:00 AM**

**Networking Break**

**11:00 AM–12:30 PM**

**Roundtables Set #1** (Roundtables 1, 2, 3 and 4 AM only)

**12:30–2:00 PM**

**Luncheon & Guest Speaker**

Hosted by: McCarthy Tétrault LLP

**2:15–3:45 PM**

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

**3:45–4:00 PM**

**Networking Break**

**4:00–5:30 PM**

**Compliance with Anti-SPAM Legislation in Canada, the US & EU: A Comparative Perspective**

**Moderator:**

Eloise Gratton, *McMillan LLP*

**Speakers:**

Andy Kaplan-Myrth, *Policy Advisor, Electronic Commerce Branch, Industry Canada*

Constantine Karbaliotis, *Americas Privacy Leader, Mercer*  
Michael Peeters, *Pinsent Masons LLP*

- Anti-SPAM and anti-spyware provisions
- Consent issues: Opt-in model (Canada and EU) vs. opt-out model (US)
- Anti-SPAM compliance in Canada, the US and EU:
  - Interpretation of exceptions, exemptions and the notion of “existing business relationship”
  - Penalties: How are they being applied?
  - Enforcement powers against foreign spammers
  - Current state of e-mail marketing: How are international marketers dealing with these different Anti-SPAM laws
- Comparative analysis of procedures dealing with opt-out requests for each jurisdiction

**5:30-5:45 PM**

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

**5:45-6:45 PM**

**Cocktail Reception**

Hosted by: Gowling Lafleur Henderson LLP

**7:00 PM**

**Ticketed Dinner**

**(See Details on Registration Form)**

**Location: Peridot Resto Lounge**

81 Bloor Street East, Toronto

**Day 2: Friday, October 28, 2011**

**7:45-8:45AM**

**Continental Breakfast & Keynote Speaker**

Hosted by: Blake, Cassels & Graydon LLP

**Keynote Speaker:** Wally Kowal, *President and Founder of Canadian Cloud Computing Inc.*

**Title: Challenges for Cloud Service Providers in Canada**

**9:00-10:30 AM**

**Cloud Computing Business Models and Associated Legal Issues**

**Moderator:**

Fraser Mann, *Miller Thomson LLP*

**Speakers:**

Lisa Abe, *Fasken Martineau DuMoulin LLP*

Albert Silverman, *PwC | Senior Vice President & Chief Architect, Consulting & Deals*

Matthew Snell, *GTS Canada Senior Counsel, IBM Canada*

- Cloud computing business models:
  - Public, private and hybrid service offerings
- Cloud computing in the healthcare, financial services and government sectors
- Negotiability of vendor agreements:
  - What types of terms are negotiable and in what circumstances?
- Cloud computing legal issues:
  - Service levels
  - Data ownership and back-ups
  - Confidentiality

- Privacy and security
- Regulatory compliance
- Transition arrangements

- Future of the industry: Upcoming trends and new developments

**10:30-10:45 AM**

**Networking Break**

**10:45 AM-12:15 PM**

**Roundtables Set #2 (6, 7, 8, 9)**

**12:15-1:45 PM**

**Luncheon & Guest Speaker**

Hosted by: IT.CAN

**Keynote Speaker:**

Michael Schmalz, *President, Digital Extremes*

**2:00-3:30 PM**

**Roundtables Set #2 (6, 7, 8, 9)**

**3:30-3:45 PM**

**Networking Break**

**3:45-5:15 PM**

**Issues in Contracting for Customized IT Solutions**

**Moderator:**

Catherine Workun, Q.C., *Senior Counsel, Telus Legal Services*

**Speakers:**

Scott Ackerman, *Director and IT Practice Lead, Western Management Consultants*

Monty Carter, *Senior VP & President,*

*TELUS Enterprise Solutions*

Robert Hunt, *Program Executive Director, TELUS*

Craig McDougall, *Fraser Milner Casgrain LLP*

- Issues and risks when developing and implementing a custom IT solution
- Due diligence to undertake prior to engaging the vendor
- Importance of requirements: Know what you need before you build it
- Structuring agreements for success
- Importance of project management and project oversight

**5:15 PM**

**Closing Remarks**

**5:30 PM**

**Conference Ends**

## 1. e-Health in Canada: Standards and Interoperability

### Speakers:

Stephen Kirby, *Senior Legal Counsel, IBM Canada Limited*  
Richard Pearse, *Legal Counsel, eHealth Ontario*  
Roger Watkiss, *MacLeod Dixon LLP*

- The e-health procurement landscape
- Technology issues: data system interoperability standards
- Funding initiatives
- Contracting issues in the health sector: RFP's
- Regulatory issues
- Jurisdictional issues when transferring data:
  - Restrictions on transfers
  - What legislation applies?

## 2. Contract Management and Governance of IT Projects

### Speakers:

Richard Austin, *Austin Technology Law*  
Asif Quadir, *Senior Legal Counsel, Scotiabank*

- Contract management processes:
  - Managing performance, finance, contract, risk and relationship issues
- Limits of governance: Customer and service provider perspectives
- The role of audits and emerging audit standards (ISAE 3402, SSAE 16, SAS 70 and 5970 Audits)
- Special circumstances:
  - Unique challenges for governments, offshore delivery and multi-sourcing transactions

### IT.CAN Membership

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

## 3. Mobile Business: Industry Trends, Public Policy Issues and Legal Implications

### Moderator:

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

### Speakers:

David Canton, *Harrison Pensa LLP*  
Eric Gross, *Gowling Lafleur Henderson LLP*

- The platform wars:
  - Implications for publishers, developers, consumers, regulation, national economic policy
  - What is HTML5? Why does it matter?
- Intermediary liability:
  - What happens when government asks the platforms to mind the (app) store?
- Mobile privacy:
  - Location-based services
  - Mobile advertising
- Commerce: Local offers; payments; mobile payments, security
- Mobile broadband: Impact of usage caps on m-commerce

## 4. Nouveaux développements québécois en droit des technologies de l'information

**(en français) This session will be presented in French on Thursday, October 27<sup>th</sup> AM only**

### Speakers:

Helene Deschamps-Marquis,  
*Blake, Cassels & Graydon LLP*  
Julien Saulgrain, *blue HF*

- Amendements à la Loi sur la protection du consommateur :
  - Contrats de services de télécommunications
  - Cartes prépayées
  - Garanties supplémentaires proposées par Internet
- La "preuve Facebook" et les décisions québécoises sur les réseaux sociaux
- Tendances contractuelles dans le secteur des technologies de l'information

## 5. Dispute Resolution Information Technology

This session will be presented on Thursday,  
October 27<sup>th</sup> PM only

### Speakers:

Michael Erdle, *Deeth Williams Wall LLP*  
Peter Ruby, *Goodmans LLP*

- Pros and cons of mediation, arbitration and litigation
- Benefits of alternative dispute resolution (ADR)
- What makes ADR suitable for some cases and not others?
- Why is ADR not used more often for technology disputes?
- Effective arbitration, escalation and mediation clauses for IT contracts
- Picking the right neutral and managing the process

## 6. Trends in Technology Licensing Models

### Speakers:

Eric Boehm, *Borden Ladner Gervais LLP*  
Daniel Greenberg, *Associate General Counsel,*  
*SAP Canada Inc.*

- Overview of new software delivery models:
  - Virtualization, SaaS, cloud, software shelving, open source and more
- Software services licensing
- A look at the difference between software licenses and services
- General licensing issues: What has changed?
  - Vendor representations and warranties, IP Indemnity, confidential information, material changes, additional terms and conditions

## 7. Social Media Advertising and Marketing Law Issues

### Speakers:

Daniel Cole, *Gowling Lafleur Henderson LLP*  
Arlan Gates, *Baker & McKenzie LLP*

- Advertising goods and services through social media channels
- Rules governing endorsements and testimonials
- Using social media to promote and run contests
- Social media governance and policies
- Marketing to children and minors on line
- Responding to third party social media content
- Legal and practical strategies for limiting liability

## 8. CASE STUDY

### International IT Issues: Launching an IT Product or Service in Multiple Jurisdictions

### Speaker:

Charles Morgan, *McCarthy Tétrault LLP*  
Robert Percival, *Norton Rose Group OR LLP*

- Managing an international launch of an IT product or service
- Tailoring your launch to higher standard jurisdictions
- Key considerations for a global product/service launch:
  - Consumer protection
  - Product warranties
  - e-Commerce issues
  - Customer service
  - Privacy and data security
  - IP Issues
  - Local idiosyncrasies

## 9. Aird & Berlis Sponsored Roundtable Investment in IT: Venture Capital after the Fall

### Speakers:

Don Johnston, *Aird & Berlis LLP*  
Mark Stirling, *Vice President, Investments,*  
*GrowthWorks Capital Ltd.*

- Do venture capitalists have money to invest in IT?
- How are VC's valuing companies in the IT space?
- Will social media fare any better than garden-variety IT?
- What IT companies can expect from the VC in the current market

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Canadian IT Law Association

# Registration Form

## The Fifteenth Annual Canadian IT Law Association Conference

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**Online registration by credit card:** Via our secure site at [www.it-can.ca](http://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

**No faxed registrations please.**

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

	Early Bird Fee until September 28, 2011	Received after September 28, 2011
<b>IT.CAN MEMBER</b>	\$1350 (plus \$175.50 HST) <b>\$1525.50</b> <input type="checkbox"/>	\$1450 (plus \$188.50 HST) <b>\$1638.50</b> <input type="checkbox"/>
<b>NON-IT.CAN MEMBER*</b>	\$1550 (plus \$201.50 HST) <b>\$1751.50</b> <input type="checkbox"/>	\$1650 (plus \$214.50 HST) <b>\$1864.50</b> <input type="checkbox"/>
* Includes introductory 1-year membership with IT.CAN		
<b>ACADEMIC/IN-HOUSE COUNSEL/ GOVERNMENT/NON-LAWYER</b>	\$875 (plus \$113.75 HST) <b>\$988.75</b> <input type="checkbox"/>	\$975 (plus \$126.75 HST) <b>\$1101.75</b> <input type="checkbox"/>
<b>STUDENT</b>	\$175 (plus \$22.75 HST) <b>\$197.75</b> <input type="checkbox"/>	\$275 (plus \$35.75 HST) <b>\$310.75</b> <input type="checkbox"/>

### TICKETED DINNER

If you wish to attend the dinner on Thursday, Oct. 28, 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 HST = **\$101.70**)

**TOTAL ENCLOSED:**

HST 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:** Marriott Toronto Bloor Yorkville. 90 Bloor Street, East. Special group rate is \$190 plus services and taxes. Please dial 1-888-228-9290. For the special IT.CAN group rate please use code: Canadian IT Law Association until September 27, 2011.

**Cancellations:** Refunds for conference fees will be made if requested by email received **NO LATER THAN WEDNESDAY, SEPTEMBER 28, 2011**. There will be NO exceptions. A processing fee of \$100 (+ \$13 HST) will be charged for refunds. The email address is [lisa.ptack@rogers.com](mailto:lisa.ptack@rogers.com)

**How to Register: No faxed registrations please.**

**By credit card:** use our secure, online registration form at [www.it-can.ca](http://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](mailto:lisa.ptack@rogers.com).

### IT.CAN is pleased to thank the following sponsors:

Aird & Berlis LLP • Bereskin & Parr LLP • Blake, Cassels & Graydon LLP  
Deeth Williams Wall LLP • Gowling Lafleur Henderson LLP • Macleod Dixon LLP  
McCarthy Tétrault LLP • McInnes Cooper LLP • McMillan LLP • Miller Thomson LLP  
Norton Rose Group OR LLP • Osler, Hoskin & Harcourt LLP • Torys LLP

## Roundtable Schedule

### Thur. Oct. 27, 2011 (11:00 AM–12:30 PM)

1. e-Health in Canada: Standards and Interoperability
2. Contract Management and Governance of IT Projects
3. Mobile Business: Industry Trends, Public Policy Issues and Legal Implications
4. Nouveaux développements québécois en droit des technologies de l'information (AM session only)

### Thur. Oct. 27, 2011 (2:15–3:45 PM)

1. e-Health in Canada: Standards and Interoperability
2. Contract Management and Governance of IT Projects
3. Mobile Business: Industry Trends, Public Policy Issues and Legal Implications
5. Dispute Resolution Information Technology  
(PM session only)

### Fri. Oct. 28, 2011 (10:45 AM–12:15 PM)

6. Trends in Technology Licensing Models
7. Social Media Advertising and Marketing Law Issues
8. International IT Issues: Launching an IT Product or Service in Multiple Jurisdictions
9. Investment in IT: Venture Capital after the Fall

### Fri. Oct. 28, 2011 (2:00–3:30 PM)

6. Trends in Technology Licensing Models
7. Social Media Advertising and Marketing Law Issues
8. International IT Issues: Launching an IT Product or Service in Multiple Jurisdictions
9. Investment in IT: Venture Capital after the Fall

**SEATING IS LIMITED SO REGISTER EARLY**

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• Marriott Toronto Bloor Yorkville Hotel

• Toronto, ON

## 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:

Simon Hodgett, *Osler, Hoskin & Harcourt LLP*

Bernice Karn, *Cassels Brock & Blackwell LLP*

#### Conference Planning Committee:

Andrew Alleyne, *Fasken Martineau DuMoulin LLP*

Richard Austin, *Austin Technology Law*

Andrew Bernstein, *Torys LLP*

Eric Boehm, *Borden Ladner Gervais LLP*

Patrick Fitzgerald, *Cox and Palmer*

Arlan Gates, *Baker & McKenzie LLP*

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Mark McCans, *Blake, Cassels & Graydon LLP*

Charles Morgan, *McCarthy Tétrault LLP*

Richard Pearse, *eHealth Ontario*

Robert Percival, *Norton Rose Group OR LLP*

Jay Safer, *IBM Canada Ltd.*

Barry Sookman, *McCarthy Tétrault LLP*

Dan Malamet, *ZSA*

Lisa Ptack, *IT.CAN Executive Director*

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