The ICSC 2016 Canadian Shopping Centre Law Conference will seek continuing education credit pre-approval for the Provinces of Ontario, Québec & British Columbia. For more information and updates on our progress, visit www.icsc.org/2016CLC.
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THURSDAY, APRIL 21

REGISTRATION
8:00 am - 5:30 pm

CONTINENTAL BREAKFAST
8:00 - 8:45 am

OPENING REMARKS
8:45 – 9:00 am

JULIE ROBBINS
ICSC 2016 Canadian Shopping Centre Law Conference Program Planning Committee Chair
Partner
Dentons Canada LLP
Toronto, ON

MARY ORMOND
ICSC 2016 Canadian Shopping Centre Law Conference Program Planning Committee Vice-Chair
Legal Counsel
Ormond Law / Build Toronto Inc.
Toronto, ON

ROUNDTABLE DISCUSSIONS
9:00 – 10:30 am

NETWORKING BREAK
10:30 – 10:45 am

CONCURRENT SESSIONS
10:45 am – 12:00 pm

A. Words from the Wise: Professionalism and Ethics in Commercial Leasing

In this session, you will hear a lively debate amongst experienced commercial leasing counsel on professionalism and ethics topics including: inadvertent disclosure of information through e-mail error and the duty to maintain confidentiality; as the recipient of an inadvertent disclosure, do you have a duty to notify the sender, and what can you or should you share with your client; how do you act in good faith and avoid sharp practice when dealing with mistakes made by opposing counsel; what can you do as an in-house counsel when opposing counsel communicates directly with your business people; the overstatement — how far can you go — is it a violation of the duty to not knowingly assist in or encourage dishonesty, or perhaps a violation of the duty to act in good faith; is it a breach of the duty to maintain confidentiality or any other duty if you use concessions you gained in a deal for Client A when negotiating a different deal for Client B; is it a breach of the duty to maintain confidentiality to tell your client that you know the opposing party will agree to a certain concession because you got it from them in another deal; in dealing with difficult clients, how do you handle concerns you might have about the instructions you are getting without damaging your working relationship with the client; and what are best practices for managing business and legal conflicts of interest. These and other professional and ethical topics will be discussed in the context of commercial leasing.

MODERATOR
MARY ORMOND
Legal Counsel
Ormond Law / Build Toronto Inc.
Toronto, ON

PANELISTS
SHELDON DISENHOUSE
Partner
Dentons Canada LLP
Toronto, ON

CELIA HITCH
Director, Retail Legal Services
Oxford Properties Group
Toronto, ON

WILLIAM A. ROWLANDS
Partner
McMillan LLP
Toronto, ON

NATALIE VUKOVICH
Partner
Daoust Vukovich LLP
Toronto, ON

B. You've Got Questions; We've Got the Answers!

How far back can a Landlord go to claim unbilled CAM charges? Can you register your Offer to Lease? Must you continuously operate regardless of what the Lease stipulates? Depending on where the Premises are situated in Canada, the answers can and will be very different. Join our experienced leasing counsels from across the country who will provide you with the answers to these questions and many others for different jurisdictions!
MODERATOR
MARIE SAINT-AMOUR
Attorney
MSA
Montréal, QC

PANELISTS
STÉPHANIE BEAUREGARD
Attorney
Delegatus Legal Services Inc.
Montréal, QC

ABRAHAM COSTIN
Partner
McCarthy Tétrault LLP
Toronto, ON

KENNETH KROHMAN
Partner
MacKensie Fujisawa LLP
Vancouver, BC

DEANNE MACLEOD
Partner
Stewart McKelvey
Halifax, NS

LUNCH SERVED
12:00 – 12:45 pm

KEYNOTE PRESENTATION
12:45 – 1:30 pm

Entering the Canadian Retail Market: How to Get It Right?
A discussion with industry leaders about cross border retailing and the international retailer experience in coming to Canada. What are the barriers to entry? What are the keys for success?

MODERATOR
SUNITA MAHANT
Director & Assistant Secretary
Ivanhoé Cambridge Inc.
Toronto, ON

SPEAKERS
ANDREA ABRAMS
Time Retail Partners
New York, NY

SEAN WALTERS
Ivanhoé Cambridge Inc.
Toronto, ON

CONCURRENT EDUCATION WORKSHOPS
1:30 – 3:00 pm

A. Top Rooftop Topics
From signage, patios and equipment to solar projects and telecommunications, this workshop addresses all those rooftop questions and concerns that have tormented you for so long! As we delve into the critical issues surrounding these common but complex arrangements, the key considerations for both rooftop users and owners will be presented. Topics include: whether to lease or license installation and alterations to the rooftop, aesthetics, rent and fees, owner’s access for maintenance, repairs and replacements, relocation, interference and registration on title. Join us for more than a bird’s-eye view.

WORKSHOP LEADERS
MELISSA McBAIN
Partner
Daoust Vukovich LLP
Toronto, ON

MONTY WARSH
Partner
Aird & Berlis LLP
Toronto, ON

ROEY KERT
Partner
Owens Wright LLP
Toronto, ON

B. A House Divided: Issues with Leasing in a Multi-Use Development or Condominium
In this workshop, participants will discuss the issues and risks of leasing space in a multi-use development or in a condominium or strata development. Amongst other points, this workshop will address how costs are apportioned among the different “uses” of a building or development, how condominium by-laws and other condominium documents affect Tenants, how do reciprocal operating agreements help or hinder a Tenant’s business, and what control rights or remedies do the parties have in such developments.

WORKSHOP LEADERS
KARSTEN LEE
Partner
WeirFoulds LLP
Toronto, ON

CATHERINE E. BRAY
Partner
Borden Ladner Gervais LLP
Toronto, ON

JEFFREY H. SELBY
Partner
Miller Thomson LLP
Calgary, AB
THURSDAY, APRIL 21 CONTINUED

C. In-depth Workshop on Permitted Assignment and Transfer Provisions

Dear Abby, my business partner’s parents are splitting up and going their separate ways. How will this affect our relationship? Is there anything I can do to stop it? PS, his parents have always been more than a little controlling.

Join us while we examine the dynamics between a Landlord’s desire to keep the Tenant and its extended family relationships as they were the day they first met and the Tenant’s desire to allow its corporate family to grow and change over time. In this workshop we will explore the complicated issues surrounding the triggering of the obligation to seek the Landlord’s consent as a consequence of a change in the control of the Tenant. We will work through specific examples during the course in which we will discuss the below questions: How should the triggering event be defined in the lease? What does “affiliated” under the CBCA mean? How is this different from related entities under the Income Tax Act and is there a benefit to using one over the other? What if the entities in question are a joint venture, a partnership or a family trust? Is there any issue with applying Canadian law tests to U.S. parent companies? What information is public? What required information do I need the transferor to provide? And when, e.g., at the beginning of the lease versus the time of the request to transfer? How do I read/analyze this information? How deep into the family tree do I need to go? Can I rely on an opinion from the transferor’s legal counsel and if so, what should it say? What are the usual exceptions to the requirement for consent?

WORKSHOP LEADERS
LAURIE SANDERSON
Partner
Gowling Lafleur Henderson LLP
Ottawa, ON

DENNIS DAOUST
Partner
Daoust Vukovich LLP
Toronto, ON

ALISON TORTORICE
Senior Director, Legal, Ontario Portfolio Office
The Cadillac Fairview Corporation Limited
Toronto, ON

D. Locking Down Priority: Effectively Registering Notices of Lease and Negotiating the Best SNDA You Can

In this workshop, participants will explore the interplay between leases and mortgages, including priority issues and practical considerations for Notices of Lease and Non-Disturbance Agreements. More specifically, we will discuss: (1) Priority rules: Common Law vs Registration vs Contract; (2) Registration requirements in all Provinces, including the disclosure obligations in Ontario and the associated risks; (3) Status of Unregistered Leases in all Provinces; (4) Reversal of priority by Registration (i.e., the dangers of registering a NOL on title following the DeGasperis Muzzo case); (5) How to change priority by Contract (i.e., Subordination Clauses and SNDAs); and (6) SNDAs – the importance, pitfalls and traps from a Tenant’s perspective and a Mortgagee’s perspective. We will also revisit the seminal Goodyear (1998) case and the infamous Tim Hortons case.

WORKSHOP LEADERS
CHRISTINA KOBI
Partner
McLean & Kerr LLP
Toronto, ON

JEFFREY LEM
Director of Titles
Ministry of Government and Consumer Services
Toronto, ON

E. With the Increase in Retail Insolvencies of Late, Landlords Are Heard to Lament, “How Do I Get the Targets Off My Back?”

The panel consists of insolvency experts and solicitors representing Landlords in negotiation of Leases. The discussions will start with an overview of recent retail insolvency court filings followed by a discussion of some of the interesting features of the Target proceeding. The panel will then turn to possible ways those Landlords can mitigate the loss associated with a Tenant’s insolvency through negotiation of Lease terms.

WORKSHOP LEADERS
MICHAEL KENNEDY
Partner
Patterson Law
Halifax, NS

LINDA GALESSIERE
Partner
McLean & Kerr LLP
Toronto, ON

AUBREY E. KAUFFMAN
Partner
Fasken Martineau DuMoulin LLP
Toronto, ON

D. FRASER MACFADYEN
Partner
Stewart McKelvey
Halifax, NS

NETWORKING BREAK
3:00 – 3:15 pm
PLENARY SESSION

3:15 – 4:30 pm

Defaults: It’s All Your Fault
This session will discuss defaults from both a Landlord and Tenant perspective, and how to exercise your rights and remedies without waiving your rights.

MODERATOR
KEN BEALLOR
Partner
Torkin Manes LLP
Toronto, ON

1. Conduct Yourself Properly: Stop, Look & Listen!
Lease provisions may not be drafted in a way that will protect your interests when it comes time to interpreting them in the light of the conduct of the parties.

SPEAKER
STEVE MESSINGER
Partner
Minden Gross LLP
Toronto, ON

2. The Enforcement Awakens: Remedies for Tenants
Tenants have remedies, too! The Lease terms, the statute and the common law provide the Tenant with remedies which are not always understood and utilized. We will review some of the highlights of equitable set-off, special negotiation rights and remedies, the need for security and the limitations of liability.

SPEAKER
SHARON ADDISON
Partner
McLean & Kerr LLP
Toronto, ON

3. Anchors Away: Where Did All the Big Boxes Go?
With the failure of many large retailers in Canada in recent years, Co-tenancy Provisions have taken on a greater significance. We will review the various types of Co-tenancy Clauses, who the Co-tenancy should apply to, what should have to happen before a remedy applies, how long the remedy will last and who can be brought in to cure the Co-tenancy fail.

SPEAKER
JANET DERBAWKA
Partner
McMillan
Vancouver, BC

4. The Terminator’s Guide To Tenancies
How to properly terminate tenancies and remove personal property with the least amount of risk and rebound.

SPEAKER
DAVID THOMPSON
Partner
WeirFoulds LLP
Toronto, ON

5. It Ain’t Over Till It’s Over
Tenant’s repair and restoration obligations upon expiration of the Lease. With abandoned goods and chattels, what should a Landlord do?

SPEAKER
STEVE CYGELFARB
Partner
Fogler, Rubinoff LLP
Toronto, ON

6. You Are Not Alone in a Default: Third-party Interests in Leased Premises
Though a Lease between a Landlord and Tenant is seen as a two-party agreement, a number of third parties have an interest in the leasing arrangements, the premises and the business operated from the premises. This presentation will highlight the interests which lenders to the parties, franchisors, creditors (including suppliers and other third parties) may have in the leasing relationship and how they are impacted when there is a default as well as what rights they may have when there is a default.

SPEAKER
ALLAN DICK
Partner
Sotos LLP
Toronto, ON

7. Defaults in Québec: Distinct Society
What can the Landlord and the Tenant do when faced with a Lease default? Do you need a court order? Self-help? Self-Preservation? Offset? Mutual mutilation? We will address typical reflexes parties have when faced with a default and a Lease Agreement that may provide more rights that may or may not be enforceable and how to act and abide by the Lease and the case law to avoid undesired results. We will discuss the standard Landlord and Tenant remedies as well.

SPEAKER
YAN BESNER
Partner
Dentons Canada LLP
Montréal, QC

MEMBER-HOSTED RECEPTION

4:30 – 5:30 pm
If you are interested in being a sponsor, visit www.icsc.org/2016CLC for more information.
DINNER EVENT
6:00 – 9:00 pm
TOCA Restaurant
The Ritz-Carlton Toronto
181 Wellington Street West
Toronto, ON M5V 3G7
Separate registration and additional fee are required. For further information please visit www.icsc.org/2016CLC or contact Kiran Balladin at kballadin@icsc.org.

FRIDAY, APRIL 22

REGISTRATION
8:00 am – 1:00 pm

CONTINENTAL BREAKFAST
8:00 – 8:30 am

ROUNDTABLE DISCUSSIONS
8:30 – 10:00 am

CONCURRENT SESSIONS
10:00 – 11:15 am

A. Is the Grass Really Greener on the Other Side of My Lease?
A look at how to deal with “Green Lease” and “Brown Lease” (Environmental) issues from the Landlord and Tenant perspective. Who pays and how much ‘green’ will it cost going “Green” and/or dealing with “Brown”.

MODERATOR
MICHAEL HOROWITZ
Partner
Minden Gross LLP
Toronto, ON

PANELISTS
MICHAEL BROOKS
CEO, Real Property Association of Canada (REALpac), and Partner, Aird & Berlis LLP
Toronto, ON

JOSEPH GRIGNANO
Partner
Blake, Cassels & Graydon LLP
Toronto, ON

SARAH V. POWELL
Partner
Davies, Ward, Phillips & Vineberg LLP
Toronto, ON

B. Dirt Wars: The Planning Menance
Leasing in development projects is more complex than “regular” in-line/CRU leasing. This session will shed some light on the role of the municipality and the approvals which may be required, as well as highlight issues which may be critical to construction and opening timelines for both Landlord and Tenant. The panel will also discuss typical Tenant and Landlord concerns related to such projects and how they may be effectively addressed in the Lease. Understanding the development process and how the various moving parts work together are key to ensuring a smooth transaction for both parties.

MODERATOR
GENEVIEVE WONG
Director, Real Estate Management, Legal
Oxford Properties Group
Toronto, ON

PANELISTS
ANNE BENEDETTI
Partner
Goodmans LLP
Toronto, ON

MIA COOPER
AVP, Legal Counsel
Canadian Tire Corporation Limited
Toronto, ON

JOHANN SCHUMACHER
VP, Development
Oxford Properties Group
Toronto, ON

NETWORKING BREAK
11:15 – 11:30 am

PLENARY SESSION
11:30 am – 12:45 pm

LEGAL UPDATE
This perennial favourite is back yet again! Haven’t read any case law this year? This session packs 12 months’ worth of case law in just over one hour! It’s the can’t-miss session of the conference!

PANELISTS
JEANNE BANKA
Partner
Daoust Vukovich LLP
Toronto, ON

STEVEN CHAIMBERG
Partner
Miller Thomson
Montréal, QC
CLOSING REMARKS
12:45 - 1:00 pm

JULIE ROBBINS
ICSC 2016 Canadian Shopping Centre Law Conference
Program Planning Committee Chair
Dentons Canada LLP
Toronto, ON

MARY ORMOND
ICSC 2016 Canadian Shopping Centre Law Conference
Program Planning Committee Vice-Chair
Ormond Law / Build Toronto Inc.
Toronto, ON

CONFERENCE ADJOURNS
1:00 pm

NETWORKING LUNCH
1:00 – 2:00 pm

Program information current as of March 1, 2016.

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Toca
The Ritz-Carlton
181 Wellington Street West
Toronto, ON M5V 3G7

DEADLINES
To qualify for the advance registration rates, your registration must be received by April 14, 2016.

CANCELLATIONS
All cancellations will be subject to a $25 cancellation fee. No refunds will be given for cancellations received after April 14, 2016. All requests for refunds must be received by ICSC in writing.

SPECIAL NEEDS
Anyone desiring an auxiliary aid for this meeting should notify Kiran Balladin at +1 416 486 4511 or kballadin@icsc.org no later than April 14, 2016.

CONTINUING EDUCATION CREDITS
CSM/CMD: TBA; CLS: TBA; LSUC: TBA; LSBC: TBA; Barreau Du Québec: TBA

NOTE: This program will be pre-approved for CLE Credits from the Law Society of Upper Canada, Barreau Du Québec, and the Law Society of British Columbia. Lawyers will be able to submit proof of attendance for this conference when applying for CLE credit status.

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Kiran Balladin
Tel: +1 416 486 4511
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ICSC CANADIAN LAW CONFERENCE

April 21 – 22, 2016
The Fairmont Royal York
Toronto, ON

To register, visit www.icsc.org/2016CLC.