

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



Canadian IT Law Association

Presents

# The Eighteenth Annual Canadian IT Law Association Conference

October 20–21, 2014

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 1 is accredited for 1.5 Professionalism hours.

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

**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 submitted 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

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

## Day 1: Monday, October 20, 2014

8:00–9:00 am

### Registration & Continental Breakfast

Hosted by: Bereskin & Parr LLP

9:00–9:15 am

### Opening Remarks & Welcome

#### Co-Chairs:

Marie-Hélène Constantin,  
Blake, Cassels & Graydon LLP (Montréal)  
Michael Erdle, Deeth Williams Wall LLP (Toronto)

9:15–10:45 am

### Annual Update on IP Issues for Information Technology

#### Moderator:

Dr. Sunny Handa, Blake, Cassels & Graydon LLP (Montréal)

### Trade-Marks & Domain Names

#### Speaker:

Martin Kratz, Bennett Jones LLP (Calgary)

- Bill C-31 and substantial reform of the *Trade-Mark Act*
- Impact of adherence to new trade-mark treaties
- Expansion of the international domain name system
- TM clearing house initiative
- Developments on the use of trade-marks and domain names in Quebec under the French language laws
- Recent developments on damages
- Enforcement strategies and developments in China

### Copyright

#### Speaker:

Professor Ysolde Gendreau, Faculty of Law,  
Université de Montréal (Montréal)

- Application of damages in civil vs. common law jurisdictions: *Robinson*
- Recent cases on statutory damages
- Waiting for the notice and notice regime
- Thoughts on the hosting safe harbour exception
- Exceptions vs. permissions: How explicit need they be?
- Update on a Canadian response to ACTA
- United States: Update on *Aereo*
- United Kingdom & EU:
  - UK Intellectual Property Office Guidelines June 2014
  - Expanded scope of fair dealing
  - Copyright after *Usedsoft* and after *Svensson*
  - EU report on private copying

### Patents

#### Speaker:

Victor Krichker, Bereskin & Parr LLP (Toronto)

- Legislative developments:
  - Implementation of the Patent Law Treaty and the Hague System in Canada

- “Anti-Troll” legislation in the US
- Unitary Patent System and Unified Patent Court in Europe
- Important decisions of the past year:
  - FCA decision in *Eurocopter* and its extension of “promise of the patent” doctrine
  - Canadian Patent Appeal Board decisions: Where does CIPO stand on statutory subject matter post *Amazon?*
  - USSC decision in *CLS v Alice Bank*: Will we get more certainty on the test for statutory subject matter in the US?
  - US Federal Circuit decision in *Commil v Cisco* and induced infringement

10:45–11:00 am

### Networking Break

Hosted by: Blake, Cassels & Graydon LLP

11:00 am–12:30 pm

### Roundtables Set #1 (1 & 2 in AM only, 5, 6)

12:30–2:00 pm

### Luncheon & Guest Speaker

Hosted by: Deeth Williams Wall LLP

**Keynote Speaker:** Olga Ziman Sabbagh, Legal Counsel,  
Interac Association and Acxsys Corporation (Toronto)

2:15–3:45 pm

### Roundtables Set #1 (3 & 4 in PM only, 5, 6)

3:45–4:00 pm

### Networking Break

Hosted by: Blake, Cassels & Graydon LLP

4:00–5:30 pm

### Cybersecurity: Mitigating Business Risk

#### Moderator:

Éloïse Gratton, McMillan LLP (Montréal)

#### Speakers:

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

Dr. Avner Levin, Director, Privacy & Cybercrime Institute,  
Ryerson University (Toronto)

Mark Mermelstein, Orrick, Herrington & Sutcliffe LLP  
(Los Angeles)

Benoit-Luc St. Pierre, Manager, Management and Risk  
Consulting, KPMG LLP (Montréal)

- Global update on cyberlegislation
- The age of global cyber-surveillance post Edward Snowden:
  - State surveillance of personal and business information
  - Review of Canada’s recent bills (C-13 and S-4)
  - Privacy challenges and risks
- Implications for IT contracting practices:
  - Vendor pushback on negotiating security
  - Practical advice on how to avoid/mitigate the risk
- Cybersecurity technical update:
  - Current risks and challenges for business

- New industry security standards and certifications
- Cyber breach risk assessment and effective response
- Approaches to data loss prevention

- Cyber risk insurance issues
- Data breach best practices: Transparency v. security under mandatory breach notification

5:30 pm

### Closing Remarks for Day 1

5:45–6:00 pm

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

7:00 pm

### Ticketed Dinner (See Details on Registration Form)

**Location:** Ostaria Rosalie, 1232 rue de la Montagne,  
Montreal

## Day 2: Tuesday, October 21, 2014

8:00–8:45 am

### Registration & Continental Breakfast

8:45–9:00 am

### Opening Remarks & Welcome

#### Co-Chairs:

Marie-Hélène Constantin,  
Blake, Cassels & Graydon LLP (Montréal)  
Michael Erdle, Deeth Williams Wall LLP (Toronto)

9:00–10:30 am

### Evolution of IT Licensing: From Software Licensing to Software as a Service

#### Moderator:

Robert Percival, Norton Rose Fulbright Canada LLP (Toronto)

#### Speakers:

Dr. Sam De Silva, Pennington Manches LLP (Oxford, UK)

Daniel Glazer, Fried, Frank, Harris, Shriver & Jacobson LLP  
(New York, NY)

Lisa R. Lifshitz, Torkin Manes LLP (Toronto)

- The move from traditional licensing models towards SaaS
- Risk allocation: Current trends in representations and warranties, limitations on liability and indemnities
- Comparing Canadian, European and US approaches to IT licensing and SaaS
- High transaction costs for IT contracting: Changing pricing models
- Cloud 2.0:
  - IP ownership/access/security and evolving standards
  - Business continuity

- Market developments/trends from commoditization of standard terms & conditions for service contracts, SLAs to bespoke private cloud offerings
- International licensing updates, including:
  - *Usedsoft* decision in light of EU Competition rules

10:30–10:45 am

### Networking Break

Hosted by: McMillan LLP

10:45am–12:15 pm

### Roundtables Set #2 (7, 8, 9 and 10 in AM only)

12:15–1:45 pm

### Luncheon & Guest Speaker

Hosted By: McCarthy Tétrault LLP

#### Keynote Speaker:

George Takach, McCarthy Tétrault LLP (Toronto)

#### A Digital Strategy for Canada

2:00–3:30 pm

### Privacy and Information Governance Challenges in the Age of Big Data

#### Moderator:

David Fraser, McInnes Cooper (Halifax)

#### Speakers:

Jerrard B. Gaertner, President,

Canadian Information Processing Society, Ontario (Toronto)  
Kateri-Anne Grenier, Norton Rose Fulbright Canada LLP  
(Quebec, QC)

Michael Power, Barrister & Solicitor (Toronto)

- Privacy compliance: Regulatory aspects
- Big Data information governance risks: Personal cloud, BYOD
- Advising on retention, preservation and destruction of Big Data
- Security: Managing meta-data integrity
- Big Data breach issues
- Business and IT perspective on Big Data
- Cross border data transfer issues
- Litigation and evidentiary challenges of Big Data
- Special considerations of predictive analytics

3:30–3:45 pm

### Networking Break

Hosted by: Torkin Manes LLP

3:45–5:15 pm

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

5:15 pm

### Conference Ends



## Roundtables Day 1: October 20, 2014

### 1. IT and the Practice of Law: Whatever Happened to the Paperless Office?

This session will be presented on Monday, October 20 in AM only. This roundtable contains 1.5 Professionalism Hours as approved by the LSUC. Attendance at the other Roundtables may be claimed toward the Substantive CPD requirement.

#### Speakers:

Monica Goyal, Founder of My Legal Briefcase and Aluvion Law (*Toronto*)

John D. Gregory, General Counsel, Justice Policy Development Branch, Ministry of the Attorney General (Ontario) (*Toronto*)

- Automation today: What beginners should know; what experts shouldn't forget
- Making it work:
  - Technology and the 'standard form'
  - Technology and negotiation
  - Technology and security: Are lawyers the weakest link?
- Your online presence:
  - Using, not abusing, social media
  - The Rules of Professional Conduct still apply – but how?
  - Traps for the unwary: Unauthorized practice, forming client relationships, breach of confidence and more
- New answers to old questions:
  - E-signatures today
  - E-evidence today (it's not just about discovery)

### 2. Développements récents 2013–2014 en TI en droit québécois (en français)

(This session will be presented in French on Monday, October 20th AM only.)

#### Conférenciers:

Michel Généreux, GenereuxLegal Inc. (*Montréal*)

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

- Revue de la jurisprudence québécoise de l'année ayant une incidence en TI, y compris en matière de contrats de licences, de contrats de services et d'entreprises, et de droits d'auteurs
- Impacts de l'entrée en vigueur et application au Québec de la loi canadienne anti-pourriel
- Développements récents en matière de renseignements personnels
- Impacts du budget québécois 2014–2015 sur les TI

### 3. Canada's New Anti-Spam Legislation: Compliance Challenges and Risk Mitigation Strategies

#### Speakers:

Craig McDougall, Dentons Canada LLP (*Edmonton*)

J. Andrew Sprague, Miller Thomson LLP (*Toronto*)

This roundtable will enable participants to share their experiences working with CASL both within their own organizations and on behalf of clients. The focus will be on professional responsibility and practice management changes that participants have made within their own firms/companies and recommendations made to clients to ensure compliance with the new legislation. Discussion topics include:

- Experiences with implementing compliance programs for the anti-spam provisions for both clients and your own firm/company
- Managing your personal contact lists and your compliance with firm policies
- Practical compliance challenges to date: Solutions and best practices
- Interpretational challenges with CASL and how organizations are addressing them
- Looking forward: Effective compliance management for CASL's computer program provisions – in force January 15th
- Practice management and CASL: Compliance approaches that have worked and that have failed
- Enforcement actions taken under CASL by regulators to date and the implication for your clients, firm or company

### 4. Mobile Payment Technology Issues

#### Speakers:

Yvon Audette, KPMG LLP (*Toronto*)

Wendy Gross, Osler Hoskin & Harcourt LLP (*Toronto*)

Daniel Logan, McCarthy Tétrault LLP (*Toronto*)

- The current state of mobile payments in Canada
- New and emerging payment solutions
- The mobile payment ecosystem, terminology, operating models and players
- Key legal and compliance issues arising in the mobile payments context:
  - Privacy – Security – Consumer protection – Industry standards and certifications
- Understanding the key regulators, industry oversight bodies and networks

### 5. Hot Topics in IT Law 2014

#### Speakers:

Timothy Banks, Dentons Canada LLP (*Toronto*)

Peter Ruby, Goodmans LLP (*Toronto*)

- Legislative update: *Bill S-4*, *Bill C-13* and more
- Case law update: Significant developments in data security and ecommerce
- Do not track: Dead or alive?
- Computer program provisions and CASL: Outstanding issues
- Revenue authorities' roundup: What's new for e-commerce sites and digital currency
- Internet of everything: Regulatory statements on mobile apps and internet of things

### 6. A Checklist of Issues for Doing Business in Quebec

#### Speakers:

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

Anny Lafrance, Conseillère juridique principale/Sr. Legal Counsel, Electronic Arts (Canada) Inc. (*Montréal*)

Michel Solis, Solis Juritech (*Montréal*)

- Contracts of adhesion and external clauses
- The right to terminate service contracts just about anytime
- Lobbying registration when selling to government or a government owned corporation
- Quebec's Financial Markets Authority's "seal of approval" for larger contracts
- French language issues
- Advertising online in Québec
- TM clearing house
- Employment issues
- Class action exposure

## Roundtables Day 2: October 21, 2014

### 7. Strategic Use of Outsourcing Arrangements

#### Speakers:

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

Richard F.D. Corley, Goodmans LLP (*Toronto*)

Peter Misceovich, Assistant General Counsel, Bell Canada (*Toronto*)

- From tactical to strategic:
  - Changing customer requirements
  - Expanding and evolving delivery options
- Managing complexity:
  - Customer as integrator
  - Governance of multi-vendor environments
  - Unique requirements of business process outsourcing transaction
  - Alignment of incentives
- Contractual implications:
  - Enterprise master agreements
  - Emerging cyber-security issues and challenges
  - Security in multi-vendor environments
  - Service levels and enforceability

### 8. Global Practice Issues: The Intersection of Anti-Corruption and Technology

#### Speakers:

Jonathan P. Armstrong, Cordery (*London, UK*)

Jon Pomykala, Regional Director, Consilio (*Washington, DC*)

Kristine Robidoux, QC, Gowling Lafleur Henderson LLP (*Calgary*)

- Data protection and anti-corruption law: Canada, US and UK
  - US Foreign Corrupt Practices Act ("FCPA"): Application to subsidiaries in Canada
  - Canadian Corruption of Foreign Officials Act ("CFPOA")
  - UK Bribery Act 2010
  - Extra-territorial application
- Conflict between the requirements and data protection and privacy rights
- What is an unethical business practice? What do bribery schemes look like in various jurisdictions?
- Effective compliance strategies for companies doing business abroad
- Implementing effective internal anti-corruption compliance programs
- Industry sector standards for transparency in reporting payments and profits from foreign business affairs
- Anti-corruption and technology procurement

### 9. Mobile and Telecommunications Contracting

#### Speakers:

Roger Watkiss, Norton Rose Fulbright Canada LLP (*Toronto*)

Catherine A. Workun, Q.C., Senior Counsel, TELUS Legal Services (*Edmonton*)

- Scope of services:
  - Voice and data – Data hosting – Wireless and land lines
  - Co-location
- Acquiring telecom services as part of your IT agreement
- Regulation in the mobile and telecommunications environment
- Spectrum issues
- Contracting do's and don'ts
- Contracting for mobile apps
- BYOD and related issues

### 10. The Current State of Net Neutrality

#### Speakers:

Todd Daubert, Dentons (*Washington, DC*)

Charles Morgan, McCarthy Tétrault LLP (*Montréal*)

- Open vs. closed Internet: Impact on technology related transactions
- Recent US issues:
  - Comcast and Time Warner merger
  - *Apple* and *Netflix* decisions
- Understanding the positions of telecommunications companies
- The current legal landscape in Canada
- Canadian "deep packet inspection" decision
- \* The likely consequences for Canada as a result of the current upheaval in the United States

## 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 \$169 plus services and taxes.

Tel: 1-800-200-5909; Direct Tel: 514-878-9000

(Group rate for Canadian IT Law Association code: CIL).

**Booking Website:** [www.it-can.ca/hotel-booking.html](http://www.it-can.ca/hotel-booking.html)

**Cancellations:** Refunds for conference fees will be made if requested by email, received by **SATURDAY, SEPTEMBER 20, 2014**. 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@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, fully completed registration form 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@rogers.com](mailto:lisa.ptack@rogers.com).

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

Bereskin & Parr LLP • Blake, Cassels & Graydon LLP • Blaney McMurtry LLP

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

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Backbone Magazine

## Roundtable Schedule

### Monday, October 20, 2014 (11:00 am–12:30 pm)

1. IT and the Practice of Law: Whatever Happened to the Paperless Office? (AM session only)
2. Développements récents 2013-2014 en TI en droit québécois (*en français*) (AM session only)
5. Hot Topics in IT Law 2014
6. A Checklist of Issues for Doing Business in Quebec

### Monday, October 20, 2014 (2:15–3:45 pm)

3. Canada's New Anti-Spam Legislation: Compliance Challenges and Risk Mitigation Strategies (PM session only)
4. Mobile Payment Technology Issues (PM session only)
5. Hot Topics in IT Law 2014
6. A Checklist of Issues for Doing Business in Quebec

### Tuesday, October 21, 2014 (10:45 am–12:15 pm)

7. Strategic Use of Outsourcing Arrangements
8. Global Practice Issues: The Intersection of Anti-Corruption and Technology
9. Mobile and Telecommunications Contracting
10. The Current State of Net Neutrality (AM session only)

### Tuesday, October 21, 2014 (3:45–5:15 pm)

7. Strategic Use of Outsourcing Arrangements
8. Global Practice Issues: The Intersection of Anti-Corruption and Technology
9. Mobile and Telecommunications Contracting

## Registration Form

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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. Payment must accompany registration.**

Name \_\_\_\_\_ Title \_\_\_\_\_

Firm/Company \_\_\_\_\_ Street \_\_\_\_\_

Suite \_\_\_\_\_ City \_\_\_\_\_ Prov \_\_\_\_\_ Postal Code \_\_\_\_\_

Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

FEES	Early Bird Fee until September 20, 2014	After September 20, 2014
IT.CAN Member	\$1400 (plus \$209.65 tax) <b>\$1609.65</b> <input type="checkbox"/>	\$1500 (plus \$224.63 tax) <b>\$1724.63</b> <input type="checkbox"/>
Non-IT.CAN Member	\$1600 (plus \$239.60 tax) <b>\$1839.60</b> <input type="checkbox"/>	\$1700 (plus \$254.58 tax) <b>\$1954.58</b> <input type="checkbox"/>
Academic/In-House Counsel/ Government/Non-Lawyer	\$925 (plus \$138.52 tax) <b>\$1063.52</b> <input type="checkbox"/>	\$1025 (plus \$153.49 tax) <b>\$1178.49</b> <input type="checkbox"/>
Student	\$200 (plus \$29.95 tax) <b>\$229.94</b> <input type="checkbox"/>	\$200 (plus \$29.95 tax) <b>\$229.94</b> <input type="checkbox"/>

## TICKETED DINNER

If you wish to attend the dinner on Tuesday, October 21, 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 \_\_\_\_\_

**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 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](http://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:

Marie-Hélène Constantin, Blake, Cassels & Graydon LLP  
Michael Erdle, Deeth Williams Wall LLP

#### Committee:

Richard Austin, Counsel, Deeth Williams Wall LLP	Lisa R. Lifshitz, Torkin Manes LLP
Nancy Clemans, Sternthal Katznelson Montigny LLP	Craig McDougall, Dentons Canada LLP
Richard F.D. Corley, Goodmans LLP	Richard Pearse, Senior Counsel, eHealth Ontario
Frank Giblon, Cognition LLP	J. Andrew Sprague, Miller Thomson LLP
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François Lajeunesse, Senior Counsel, Bell Canada	Jim Vibert, Chief Country Counsel, Office of the General Counsel, Hewlett-Packard (Canada) Co.
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