

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



Canadian IT Law Association

Presents

# The Nineteenth Annual Canadian IT Law Association Conference

October 26–27, 2015

The St. Andrew's Club and Conference Centre  
150 King St. West, 16th Floor  
Toronto, ON

## 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.

**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 may be 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

- 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 26, 2015

8:00–9:00 am

## Registration & Continental Breakfast

Hosted by: Bereskin & Parr LLP

9:00–9:15 am

## Opening Remarks & Welcome

### Co-Chairs:

Christine Ing, Blake, Cassels & Graydon LLP (*Toronto*)

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

9:15–10:45 am

## Annual Update on IP Issues for Information Technology

### Moderator:

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

### Trademarks & Domain Names

#### Speaker:

A. Kelly Gill, Gowling Lafleur Henderson LLP (*Toronto*)

- Trademark infringement and meta tags
- The return of trademark interlocutory injunctions?
- New border-control tools to prevent and deter the importation of counterfeit goods into Canada and new criminal offences
- Digital trademarks such as holograms, moving images, screen shots
  - Will this impact the sale of digital goods and internet commerce?

### Copyright

#### Speaker:

Jill Jarvis-Tonus, Bereskin & Parr LLP (*Toronto*)

- Update on recent Copyright Board decisions and case law:
  - How many players now have a piece of the copyright pie and where will it all end?
  - Implications for users of digital works
- Internet service provider liability:
  - Can infringement on the Internet be policed: the notice and notice regime
- Copyright and metatags and “look and feel” of websites: *Red Label Vacations Inc. v. 411 Travel Buys Limited*
- *The Combatting Counterfeit Products Act* and amendments to *The Copyright Act*

### Patents

#### Speaker:

Ron Dimock, Dimock Stratton LLP (*Toronto*)

- Patentable subject matter: Canadian and US patentability standards for software and business method inventions since *Amazon v. Commissioner of Patents* (FCA) and *Alice Corp v. CLS Bank* (USSC)

- Joint infringement and inducing infringement: enforcing patents in Canada and the US since *Akamai Technologies v. Limelight and Commil v. Cisco* (USSC)
- Utility: promise, sound prediction and *Eli Lilly v. Canada*
- Patent Trolls and NPEs: “Not in Canada” you say?
- Competition Bureau: new enforcement guidelines regarding intellectual property
- Privilege for patent agents: *SNF v. BASF* (FC) and proposed legislation
- Comprehensive Economic and Trade Agreement (“CETA”)

10:45–11:00 am

## Networking Break

Hosted by: McMillan LLP

11:00 am–12:30 pm

## Roundtables Set #1 (1, 2, 3 or 4)

12:30–2:00 pm

## Luncheon & Guest Speaker

Hosted by: Deeth Williams Wall LLP

Keynote Speaker: Mike Monteith,

CEO and Co-Founder, ThoughtWire

“Digital Life on the Intelligent Internet of Things”

2:15–3:45 pm

## Roundtables Set #1 (1, 2, 3 or 4)

3:45–4:00 pm

## Networking Break

Hosted by: The Canadian IT Law Association

4:00–5:30 pm

## Key IT Law Issues for Wearable & Mobile Devices

### Moderator:

David Canton, Harrison Pensa LLP (*London, ON*)

### Speakers:

Eloïse Gratton, Partner and National Co-leader, Privacy Practice Group, Borden Ladner Gervais LLP (*Montreal*)

Jeffrey Smolkin, Counsel, TD Bank Group (*Toronto*)

Rachael Vaughn, Attorney Next Generation Devices, Microsoft (*Redmond, WA*)

- Mobile banking and smartphone credit/debit card payments
- Privacy by design for mobile devices and apps
- App development considerations / licenses
- Health information and wearables
- Wearables as regulated health devices under the *Food and Drug Act*
- Search & seizure of cell phones
- Behavioural advertising for mobile and wearable devices
- Use of wearable/mobile collected information

5:30 pm

## Closing Remarks for Day 1

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5:30–5:45 pm

## IT.CAN Annual General Meeting

(For All IT.CAN Members)

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5:45–6:45 pm

## Cocktail Reception

Hosted by: Torkin Manes LLP

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7:00 pm

## Ticketed Dinner (See Details on Registration Form)

Location: Little Anthony's, 121 Richmond Street West, Toronto

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# Day 2: Tuesday, October 27, 2015

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8:00–8:45 am

## Registration & Continental Breakfast

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8:45–9:00 am

## Opening Remarks & Welcome

### Co-Chairs:

Christine Ing, Blake, Cassels & Graydon LLP (*Toronto*)

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

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9:00–10:30 am

## The Breach Lifecycle: Managing the Risks of CyberSecurity

### Moderator:

Kristin G. Ali, Blake, Cassels & Graydon LLP (*Toronto*)

### Speakers:

Douglas H. Meal, Ropes & Gray LLP (*Boston, MA*)

Erin Nealy Cox, Stroz Friedberg (*Dallas, TX*)

Kirsten Thompson, Cybersecurity, Privacy & Data Protection Group, McCarthy Tetrault LLP (*Toronto*)

- Practical approach to managing cybersecurity
  - Cybergovernance:
    - Role of the Board
    - Liability of Directors and Officers: recent developments in the law and predictions for Canada
    - Practical steps to take/things to consider/risks to manage
  - What is the role of the lawyer pre-breach and post-breach?
  - Incidents response planning
  - Post breach response and liability
    - Class actions
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10:30–10:45 am

## Networking Break

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10:45 am–12:15 pm

## Roundtables Set #2 (5, 6, 7 or 8)

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12:15–1:45 pm

## Luncheon & Guest Speaker

Speaker: John Millar, President, Digital Boundary  
“What Makes Law Firms Such Easy and Lucrative  
Cyber Attack Targets?”

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2:00–3:30 pm

## Roundtables Set #2 (5, 6, 7 or 8)

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3:30–3:45 pm

## Networking Break

3:45–5:15 pm

## Advanced IT Contracting: Allocating and Managing Liability

### Moderator:

Jay Safer, VP, General Counsel and Secretary, IBM Canada Ltd.  
(*Markham, ON*)

### Speakers:

Riccardo D'Angelo, Director of Legal Services, Global Accounts, Accenture Inc. (*Toronto*)

Nikki Latta, Associate General Counsel, Deloitte LLP (*Toronto*)

Alan Merskey, Norton Rose Fulbright Canada LLP (*Toronto*)

- The customer's business risk vs. the risk the service provider is asked to cover:
    - What does allocation of risk have to do with limitation of liability?
    - Quantifying the risk
    - Core liability of providing the service vs. ancillary risk
  - Insurable risk: what is covered?
    - Is insurance an alternative or mitigation to liability levels?
  - Does one size limitation of liability fit all?
    - Where not and why not?
  - Interplay between indemnification and limitation of liability: drafting with clarity
  - Effects of representations and warranties and sweeps clauses on limitation of liability
  - Current case law and applicable ranges: what is reasonable to expect?
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5:15 pm

## Closing Remarks

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5:30 pm

## Conference Ends

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## 1. Best Practices for Cloud Sourcing

### Speakers:

Dr. Sam De Silva, Penningtons Manches LLP (*Oxford, UK*)  
Daniel Shap, Managing Counsel,  
CIBC Legal Department (*Toronto*)

- Understanding service categories (SaaS, IaaS and PaaS) and deployment models (private, community, public and hybrid)
- Best practice for due diligence:
  - Financial/commercial
  - Technical/operational (including security questionnaire)
- Enterprise cloud strategy
- Procurement approach: strategy and negotiation tactics
- Key contractual issues: limitations/exclusions of liability, data protection, supplier lock-in, service levels, supply chain and exit management

## 2. Managing Privacy and Cyber Risk with Cyber Insurance

**Sponsored by Orrick**

### Moderator:

Mark Mermelstein, Orrick (*Los Angeles*)

### Speakers:

Russell Cohen, Orrick (*San Francisco*)  
Gregory Eskins, SVP & National Cyber Practice Leader,  
Marsh Canada (*Toronto*)

- What does cyber insurance cover?
- How does cyber insurance differ from traditional insurance?
- Improving your cyber insurance coverage
- The intersection of D&O and cyber liability
- Cyber insurance requirements in commercial agreements
- Qualifying for cyber insurance: evolving underwriting standards and requirements
- New cyber insurance developments: IoT, war and terrorism, regulatory action

## 3. Advanced IP Management Issues

### Speakers:

Stephen Spracklin, Sandvine Corporation (*Kitchener*)  
Lee Webster, Osler, Hoskin & Harcourt LLP (*Toronto*)

- Implementing an IP management program
- IP due diligence/IP audits as part of an M&A
- Lesson learned from dealing with a patent troll
- When the Business Software Alliance comes calling
- Managing the disruption caused by collaboration (OSS or Creative Commons)
- Keeping track of your open source IP assets
- How to avoid litigation on IP contracts

## 4. Managing Privacy Issues in an IT Project

### Speakers:

J. Fraser Mann, Mann Symons LLP (*Toronto*)  
Howard Simkevitz, Principal, Simkevitz Law (*Toronto*)

- Evaluating and managing privacy risk: assessments and audits
- Privacy and security issues at the procurement level
- Privacy breaches: notification issues and liability, LoL, caps and extended caps
- De-identification issues: gauging risk of personally identifiable information
- Multi-jurisdictional privacy issues in global transactions

## 2016 Early Bird Membership

Renew your IT.CAN Membership for 2016  
by December 1, 2015 and SAVE!

New Members to IT.CAN benefit from our  
introductory \$100 membership fee.

Visit [www.it-can.ca](http://www.it-can.ca) for full details.

### 5. Standards: For Security, the Cloud, Audits and More

#### Speakers:

Richard Austin, Deeth Williams Wall LLP (*Toronto*)  
Glen D. Bruce, Director, Enterprise Risk Security & Privacy, Deloitte LLP (*Vancouver*)  
Mari Heiser, Senior Technical Staff Member (STSM), Open Group Certified Master Architect IBM Cloud Security and Compliance, IBM Corp. (*San Francisco*)

- The ISO 27000 family of information security standards
  - Standards for cloud security and certification
  - NIST cyber-security framework
  - Standards and audits: ISAE 3402 / SSAE 16 / CSAE 3416
  - Use of standards and frameworks in IT agreements:
    - Limitations on standards
    - Benefits and burdens
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### 6. Technology Issues in Mergers & Acquisitions: Best Practices

#### Speakers:

Adam Armstrong, Torys LLP (*Toronto*)  
Dr. Sunny Handa, Blake, Cassels & Graydon LLP (*Montreal*)

- Due diligence:
    - Understanding the nature of the target business
    - IP ownership and chain of title
    - Technology systems used in the target business
    - Security of data and of technology assets
    - Transferability issues: change of control, assignments, and licenses
    - Regulatory and compliance issues
  - Purchase agreements:
    - Considerations in share versus asset deals
    - Representations and warranties
    - Indemnities and limitation of liability issues
    - Personal information issues
  - Transition service agreements
    - Transition services and service levels
    - Contemplating technology changes during transition
    - Properly integrating transition issues into the deal
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### 7. Specialty Legal Issues for IT Lawyers

#### Tax Essentials for IT Law

**Speaker:** David W. Chodikoff, Miller Thomson LLP (*Toronto*)

- Residency, permanent establishment and challenges of electronic commerce
- Foreign tax basics for the expanding global technology enterprise
- Double taxation: causes and methods of relief
- International tax evasion and the General Anti-Avoidance Rule (GAAR)

#### IT Dispute Resolution:

#### Don't Kid Yourself, There Will be Disputes

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

- Drafting effective dispute resolution clauses
- Common mediation and arbitration pitfalls
- Arbitration is more than “private litigation”
- Project umpires, partnering and other conflict management tools

#### Insolvency Issues for IT Contracts

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

- Insolvency issues in cloud computing arrangements
  - Protection of IP license rights under insolvency
  - IP rights, insolvency and software escrow
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### 8. Litigation Preparedness for Corporate Lawyers: e-Discovery, Information Governance and More

#### Speakers:

Martin Felsky, National e-Discovery Counsel, Borden Ladner Gervais LLP (*Toronto*)  
Laurie MacFarlane, Senior Counsel, Litigation, CIBC Legal Department (*Toronto*)

- Record retention and destruction: has the playing field changed for electronic records?
  - Practical issues for in-house counsel:
    - Clarifying roles and responsibilities – the new team
    - Developing a modern litigation response plan
    - The top three strategies for controlling costs
  - Practical issues for outside counsel:
    - Performing an e-discovery risk assessment
    - Mastering the legal, strategic and technical aspects of e-discovery
    - Using technology effectively in the practice of law
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## 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 Information:** A special rate for IT.CAN registrants and speakers has been arranged with the Sheraton Centre Toronto Hotel. To book a room please contact the Reservations Center at 1-888-627-7175 and give either the name IT.CAN or the group code 'IJ22AB' for easy access to our group block. This rate will be guaranteed until September 24, 2015.

**Cancellations:** Refunds for conference fees will be made if requested by email, received by **FRIDAY, SEPTEMBER 25 2015**. 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/events/conference-registration/](http://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@rogers.com](mailto:lisa.ptack@rogers.com).

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

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Deeth Williams Wall LLP • Mann Symons LLP • McMillan LLP

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## Roundtable Schedule

### Monday, October 26, 2015 (11:00 am–12:30 pm)

1. Best Practices for Cloud Sourcing
2. Managing Privacy and Cyber Risk with Cyber Insurance
3. Advanced IP Management Issues
4. Managing Privacy Issues in an IT Project

### Monday, October 26, 2015 (2:15–3:45 pm)

1. Best Practices for Cloud Sourcing
2. Managing Privacy and Cyber Risk with Cyber Insurance
3. Advanced IP Management Issues
4. Managing Privacy Issues in an IT Project

### Tuesday, October 27, 2015 (10:45 am–12:15 pm)

5. Standards: For Security, the Cloud, Audits and More
6. Technology Issues in Mergers & Acquisitions: Best Practices
7. Specialty Legal Issues for IT Lawyers
8. Litigation Preparedness for Corporate Lawyers: e-Discovery, Information Governance and More

### Tuesday, October 27, 2015 (2:00–3:30 pm)

5. Standards: For Security, the Cloud, Audits and More
6. Technology Issues in Mergers & Acquisitions: Best Practices
7. Specialty Legal Issues for IT Lawyers
8. Litigation Preparedness for Corporate Lawyers: e-Discovery, Information Governance and More

**SEATING IS LIMITED SO REGISTER EARLY**

# Registration Form

## The Nineteenth Annual Canadian IT Law Association Conference

October 26–27, 2015

The St. Andrew's Club and Conference Centre, 150 King St. West, 16th Floor, Toronto, ON

Online registration by credit card: Via our secure site at [www.it-can.ca/events/conference-registration/](http://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, 2015	After September 25, 2015
IT.CAN Member	\$1450 (plus \$188.50 tax) <b>\$1638.50</b> <input type="checkbox"/>	\$1550 (plus \$201.50 tax) <b>\$1751.50</b> <input type="checkbox"/>
Non-IT.CAN Member	\$1650 (plus \$214.50 tax) <b>\$1864.50</b> <input type="checkbox"/>	\$1750 (plus \$227.50 tax) <b>\$1977.50</b> <input type="checkbox"/>
Academic/In-House Counsel/ Government/Non-Lawyer	\$925 (plus \$120.25 tax) <b>\$1045.25</b> <input type="checkbox"/>	\$1075 (plus \$139.75 tax) <b>\$1214.75</b> <input type="checkbox"/>
Student	\$200 (plus \$26.00 tax) <b>\$226.00</b> <input type="checkbox"/>	\$200 (plus \$26.00 tax) <b>\$226.00</b> <input type="checkbox"/>

### OPTIONAL DINNER

If you wish to attend the dinner on Monday, October 26, please check this box and add \$99.00 (plus \$12.87 tax) **per person** (includes gratuity) to your registration fee. Spouses/partners are welcome. Seating is limited.

No. of persons \_\_\_\_\_ × (\$99.00 + \$12.87 tax = **\$111.87**)

**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 \_\_\_\_\_

# The Nineteenth Annual Canadian IT Law Association Conference

October 26–27, 2015

The St. Andrew's Club and Conference Centre, 150 King St. West, 16th Floor, 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 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:

Christine Ing, Blake, Cassels & Graydon LLP  
Robert Percival, Norton Rose Fulbright Canada LLP

#### Committee:

Richard Austin, Deeth Williams Wall LLP	Richard Pearse, Senior Legal Counsel, eHealth Ontario
Marie-Hélène Constantin, Blake, Cassels & Graydon S.E.N.C.R.L./s.r.l.	J. Andrew Sprague, Barrister & Solicitor
Frank Giblon, Cognition LLP	Elisabeth Symons, Mann Symons LLP
Brian Gray, Norton Rose Fulbright Canada LLP	Christian Tacit, Tacit Law
Farzana H. Kanji, Liaison, Contracts Manager, Legal, Corporate & Compliance Group, BMO Financial Group	Jonathan Tam, Baker McKenzie LLP
John Le Blanc, Senior Legal Counsel, Scotiabank	Kirsten Thompson, McCarthy Tetrault LLP
	Jill Tonus, Bereskin & Parr LLP
	Roger Watkiss, Norton Rose Fulbright Canada LLP

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