

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



Canadian IT Law Association

Presents

The Fourteenth Annual Canadian IT Law Association Conference

October 28–29, 2010
Fairmont The Queen Elizabeth Hotel,
900 Rene-Levesque Blvd.
Montréal, QC

Quebec Delegates: This program is certified for 16 hours of CLE by the Barreau du Québec. ID Number 10022465.

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 & Saskatchewan Delegates: Certification of this program is pending.

Day 1: Thursday, October 28, 2010

8:00–9:00 AM

Registration & Continental Breakfast

Hosted by: Bereskin & Parr

9:00–9:15 AM

Opening Remarks & Welcome

Co-Chairs:

Eloise Gratton, *McMillan LLP (Montréal)*

Jay Safer, *Vice President, General Counsel & Secretary,
IBM Canada Limited (Toronto)*

9:15–10:45 AM

Trends in IT Contracting

Moderator:

Jay Safer, *Vice President, General Counsel & Secretary,
IBM Canada Limited (Toronto)*

Speakers:

James A. Harvey, *Hunton & Williams LLP (Atlanta)*

Robert Joslin, *Principal, Everest Global Inc. (Toronto)*

Adam Vereshack, *Barrister & Solicitor (Toronto)*

- Risk allocation:
 - Limits of liability and service levels
 - Confidentiality
 - Indemnities
 - Compliance with laws: whose obligation?
- Privacy and security in sourcing transactions
 - Cloud, SaaS, PaaS, IaaS, and their impact on sourcing transactions
 - Data transfer considerations
- Benchmarking and MFC
- Guarantees

10:45–11:00 AM

Networking Break

Sponsored by: Iron Mountain

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: Blake, Cassels & Graydon LLP

Keynote Speaker:

Duncan Stewart, *Director of Research, Technology,
Media & Telecommunications, Deloitte Canada*

Title: TMT Predictions: The Long View

2:15–3:45 PM

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

3:45–4:00 PM

Networking Break

Sponsored by: Iron Mountain

4:00–4:30 PM

Social Media: This Time It's Personal

Speaker:

Véronique Wattiez Larose

McCarthy Tétrault LLP (Montréal)

- Understanding social media: Timeline approach and stakeholders approach
- Social media policy: Background work, drafting tips, guiding principles
- Employment concerns
- New and emerging social media issues

4:30–5:45 PM

Open for Business: Harnessing the Power of Open Source Business Models

Speakers:

David Ma, *Blaney McMurtry LLP (Toronto)*

Thomas Prowse, *Gowling Lafleur Henderson LLP (Kanata)*

Bill Robinson, *Vice President of the Americas, Alfresco*

- Understanding the economics of open source
- How to leverage GPL and other open source licenses
- Types of open source business models
- Success stories in open source
- Possibilities and limitations of open source business models

5:45–6:00 PM

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

6:30 PM

Ticketed Dinner

(See Details on Registration Form)

Sponsored by: Gowling Lafleur Henderson LLP

Location: Ristorante Cavalli

2040 Rue Peel, Montréal

8:00–8:45AM

Continental Breakfast

8:45–10:15 AM

Annual IP Update

Moderator:

Daniel Bereskin, *Bereskin and Parr (Toronto)*

Copyright

Speaker:

Professor Ysolde Gendreau, *Faculty of Law, University of Montréal, (Montréal)*

- Highlights from the proposed reform of the *Canadian Copyright Act, Bill C-32* including:
 - IT related provisions
 - Technological neutrality
 - Impact of international agreements

Patents

Speaker:

Bruce W. Stratton, *Dimock Stratton LLP (Toronto)*

- Patentability of software/business methods: *Amazon, Bilski* and the search for certainty
- Duty of candour in the Canadian Patent Office: The *ex parte* standard after *Lundbeck*
- Competition Act issues and the Patent Act: When is the patent monopoly a problem under competition law?
- Jurisdictional issues: the Saccharine doctrine and offshore acts leading to liability under Canadian patent law

Trade Marks and Domain Names

Speaker:

Cynthia Rowden, *Bereskin and Parr (Toronto)*

- Update on recent trade mark cases relating to technology marks
- New domain name cases: the “bona fide” test
- Recent changes in trade mark practices: opposition, s. 45, description of marks
- Upcoming legislative/regulatory changes

10:15–10:45 AM

Recent Developments in IT Law

Speaker:

Barry Sookman, *McCarthy Tétrault LLP*

This session will provide an up to the minute review of recent developments in information technology law by one of Canada’s leading technology lawyers. Important legislative and regulatory developments, as well as recent case law will be discussed in the context of their impact on IT businesses.

10:45–11:00 AM

Networking Break

Sponsored by: Iron Mountain

11:00 AM–12:30 PM

Roundtables Set #2 (6, 7, 8)

12:30–1:55 PM

Luncheon & Guest Speaker

Hosted by: McInnes Cooper

Keynote Speaker:

Corinne Charette, *Chief Information Officer, Government of Canada*

Title: The Government of Canada and Cloud Computing, Social Media, Technology Acquisitions and IT contracting

2:00–3:30 PM

Roundtables Set #2 (6, 7, 8)

3:30–3:45 PM

Networking Break

Sponsored by: Iron Mountain

3:45–5:15 PM

Online and Mobile Privacy Issues

Moderator:

Michael Erdle, *Deeth Williams Wall LLP*

Speakers:

David T.S. Fraser, *McInnes Cooper (Halifax)*

Mark S. Hayes, *Hayes e-Law LLP (Toronto)*

Lisa R. Lifshitz, *Gowling Lafleur Henderson LLP (Toronto)*

- New developments in location based services
- Managing the data trail
- Issues at the intersection of location based services and social networking
- Online tracking and profiling: How personal information is collected to target advertising
- Deep packet inspection
- Use of web analytics
- Drawing the line between “public” and “private” on social networks
- Social networking sites and the privacy regulators: The *Facebook* case and beyond
- How to help clients use social networking in their business without breaching privacy law

5:15 PM

Conference Ends

1. Understanding IT Industry Bodies and Regulators: Who They are and What Role They Play

Speakers:

Richard Austin, *Barrister & Solicitor (Toronto)*
Ron Babin, *Associate Director & Assistant Professor, Ted Rogers School of IT Management, Ryerson University (Toronto)*
Fraser Mann, *Miller Thomson LLP (Toronto)*

- Who are the regulatory/industry bodies influencing information technology?
 - ISO, SEI, PCI and others
- How are they composed?
- What are their areas of focus and responsibility?
- What is their regulatory authority/jurisdiction?
- Are they policy makers, decision makers or arbiters?
- Impact of the policies, practices, guidelines and standards on IT businesses

2. E-commerce and Canadian Consumer Protection Acts

Sponsored by McMillan LLP and University of Montréal

Speakers:

Vincent Gautrais, *Associate Professor, University of Montréal, Faculty of Law, Chair in e-Security and e-Business Law (Montréal)*
Bruce McWilliam, *McMillan LLP (Toronto)*

- E-commerce aspects of the *Consumer Protection Act, 2002* (Ontario)
 - The Act's requirements for Internet agreements
 - What the Act says about arbitration requirements and restrictions on class proceedings
 - Under what circumstances can a consumer cancel an Internet agreement?
 - What other remedies do consumers have?
 - What about credit card charges?
 - Special requirements for amendments, renewals and extensions
- Quebec Consumer Protection Act and new technologies
 - New CPA provisions on distance contracts
 - Distance contracts and technological neutrality
 - Consequences of the *Dell* case
 - Advertising to persons under the age of thirteen
 - Amendments that may be added in the future
- Comparison of Canadian consumer protection laws
- Impact of the proposed Anti-Spam Act

3. Current and Emerging Technology Litigation Issues

Speakers:

Wendy Matheson, *Torys LLP (Toronto)*
Michel Silvestre, *Ogilvy Renault LLP (Montréal)*

- Outsourcing disputes and disputes related to failed IT projects
- The latest on arbitration clauses
- The trouble with e-mail, twitter, facebook and more
- The latest on cases involving internet anonymity and anti-spam laws
- Protect yourself: e-document management, litigation holds, record retention and destruction policies

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

(This session will be presented in French on Thursday, October 28th AM only)

Speakers:

Patrick Gingras,
Ministère de la Justice du Québec (Québec)
Nicolas Vermeys, *Directeur adjoint, Laboratoire sur la cyberjustice, Centre de recherche en droit public, Faculté de droit Université de Montréal (Montréal)*

- Preuve technologique et Web 2.0
- Signature électronique
- Actes illicites sur Internet
- Comité pour l'harmonisation des systèmes et des normes de la *Loi concernant le cadre juridique des technologies de l'information*

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



Canadian IT Law Association

5. Recent Developments in Communications Law

(This session will be presented on Thursday, October 28th PM only)

Speakers:

Laurence J.E. Dunbar,

Fasken Martineau DuMoulin LLP (Ottawa)

Dr. Sunny Handa, *Blake, Cassels & Graydon LLP & McGill University, Faculty of Law (Montréal)*

- Changes to telecom sector foreign ownership restrictions
- The *Globalive Wireless Management Corp.* decision
- Recent developments in the regulation of telecommunications, ISPs and Internet services
 - The new digital media strategy
 - CRTC's decision on traffic management practices of Internet network providers
 - Regulation of broadcasting services provided by ISP's
- Broadband Expansion
 - CRTC's deferral account proceeding
 - Proposals to include high-speed Internet access in the definition of basic local service
- ISP and hosting sections under Bill C-32

6. Outsourcing Trends: Radical Transformation Driven by Changes in Demand

Speakers:

Harry Ludwig, *Macleod Dixon LLP (Calgary)*

Sebastien A. Ruest, *VP Infrastructure, Software & Services Research, IDC (Toronto)*

- Global Trends:
 - The shape of the services competitive environment
 - Impact of these services on technologies and potential partnerships
- Future of services: Strategic directions, competitor positioning and future opportunities in the market
- Strategies to maintain clients' position in customer requirements, accelerate growth through innovation, mitigate business risks and support global expansion
- Logistic and contractual trends:
 - Outsourcing the stay back team
 - Structuring, managing and measuring the service management office

7. IT Procurement: Best Practices for Issuers and Respondents

Speakers:

Simon Hodgett, *Osler, Hoskin & Harcourt LLP (Toronto)*
Asif Quadir, *Senior Legal Counsel, Scotiabank (Toronto)*

- How do procurement rules apply to private procurements?
- How to issue and how to respond to RFP's in the technology area
- Competitive procurement for information technology from inception to contract
- Considerations for conducting an RFP for services/products that are intended to be used across multiple jurisdictions

8. Comparative IT Law: Civil Code vs. Common Law

Speakers:

Marie-Hélène Constantin,

Blake Cassels & Graydon LLP (Montréal)

Richard Pearse, *Barrister & Solicitor (Toronto)*

- Interpretation of contracts: unconscionability, fundamental breach, intent of the parties, standard term contracts and the concept of good faith
- Warranties and representations:
 - where do they come from and what do they mean?
 - implied warranties, breach and more
- Civil law nominate contracts and common law freedom of contract: What can and should you contract out of?
- Damages and liability
 - Types of damages
 - The concept of foreseeability and other exclusions
- Limitations Act: When can you contract out of a limitation period?
- Joint ownership concepts in common and civil law
- Consumer Protection Legislation: when is a business a consumer? When does Quebec law apply?
- Electronic documents legislation
- IT and the Charter of French Language: Websites, software, agreements, etc.

Registration Form

The Fourteenth Annual Canadian IT Law Association Conference

October 28–29, 2010 • Fairmont The Queen Elizabeth Hotel • 900 Rene-Levesque Blvd. West, Montréal, QC

Online registration by credit card: Via our secure site at 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, 2010

Received after September 28, 2010

IT.CAN MEMBER	\$1250 (plus \$160.94 GST + QST) \$1410.94 <input type="checkbox"/>	\$1350 (plus \$173.81 GST + QST) \$1523.81 <input type="checkbox"/>
NON-IT.CAN MEMBER*	\$1450 (plus \$186.69 GST + QST) \$1636.69 <input type="checkbox"/>	\$1550 (plus \$199.56 GST + QST) \$1749.56 <input type="checkbox"/>
* Includes introductory 1-year membership with IT.CAN		
ACADEMIC/IN-HOUSE COUNSEL/ GOVERNMENT/NON-LAWYER	\$775 (plus \$99.78 GST + QST) \$874.78 <input type="checkbox"/>	\$875 (plus \$112.66 GST + QST) \$987.66 <input type="checkbox"/>
STUDENT	\$175 (plus \$22.75 GST + QST) \$197.75 <input type="checkbox"/>	\$275 (plus \$35.75 GST + QST) \$310.75 <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 \$11.59 tax) **per person** (includes gratuity) to your registration fee. Spouses/partners are welcome. Seating is limited.

No. of persons _____ × (\$90.00 + \$11.59 GST + QST = **\$101.59**)

TOTAL ENCLOSED:

GST registration #: 886487677RT QST registration #: 1216253554

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: Fairmont The Queen Elizabeth Hotel, 900 Rene-Levesque Blvd., Montréal, QC. Special group rate of \$169.00 plus service and taxes.

Please dial: 1-800-441-1414. For the special IT.CAN group rate please use code ITLA1010 until September 27th.

Cancellations: Refunds for conference fees will be made if requested by email received **NO LATER THAN TUESDAY, SEPTEMBER 28, 2010**. 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

How to Register: No faxed registrations please.

By credit card: use our secure, online registration form at 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.

Travel Information

IT.CAN has made arrangements with Air Canada for special flight rates for our speakers and delegates. To book a flight and receive the lower fare, please contact your travel agent or go to www.aircanada.com and enter the Promotion Code: FC9WF7N1.

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.

Roundtable Schedule

Thur. Oct. 28, 2010 (11:00 AM–12:30 PM)

1. Understanding IT Industry Bodies and Regulators: Who They are and What Role They Play
2. E-commerce and Canadian Consumer Protection Acts
3. Current and Emerging Technology Litigation Issues
4. Nouveaux développements québécois en droit des technologies de l'information (AM session only)

Thur. Oct. 28, 2010 (2:15–3:45 PM)

1. Understanding IT Industry Bodies and Regulators: Who They are and What Role They Play
2. E-commerce and Canadian Consumer Protection Acts
3. Current and Emerging Technology Litigation Issues
5. Recent Developments in Communications Law (PM session only)

Fri. Oct. 29, 2010 (11:00 AM–12:30 PM)

6. Outsourcing Trends: Radical Transformation Driven by Changes in Demand
7. IT Procurement: Best Practices for Issuers and Respondents
8. Comparative IT Law: Civil Code vs. Common Law

Fri. Oct. 29, 2010 (2:00–3:30 PM)

6. Outsourcing Trends: Radical Transformation Driven by Changes in Demand
7. IT Procurement: Best Practices for Issuers and Respondents
8. Comparative IT Law: Civil Code vs. Common Law

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 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:

Eloise Gratton, *McMillan LLP*

Jay Safer, Vice President, *General Counsel and Secretary, IBM Canada Ltd.*

Conference Planning Committee:

Richard Austin, *Barrister & Solicitor*

Marie-Helene Constantin, *Blake, Cassels & Graydon LLP*

Arlan Gates, *Baker & McKenzie*

Frank Giblon, *Barrister & Solicitor*

Stéphane Gilker, *Fasken Martineau DuMoulin LLP*

Simon Hodgett, *Osler Hoskin & Harcourt LLP*

Dominic Jaar, *Legal Counsel, Ledjit Consulting*

Lisa Lifshitz, *Gowling Lafleur Henderson LLP*

Daniel Logan, *Torys LLP*

David Ma, *Blaney McMurtry LLP*

Charles Morgan, *McCarthy Tétrault LLP*

Richard Pearse, *Barrister & Solicitor*

Karen Pierpoint, *Stewart McKelvey*

Peter Ruby, *Goodmans LLP*

Barry Sookman, *McCarthy Tétrault LLP*

Adam Vereshack, *Barrister & Solicitor*

Dan Malamet, *ZSA*

Lisa Ptack, *IT.CAN Executive Director*

IT.CAN is pleased to thank the following sponsors:

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University of Montréal

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