

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



Canadian IT Law Association

2017 IT.CAN

21st Annual Conference

October 23–24, 2017

**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. Roundtable 6 is accredited for 1.5 hours of Professionalism hours.

Barreau du Québec: The Barreau du Québec automatically recognizes the program for 16 hours of training as it has been recognized by another Law Society.

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 will be accredited for 16 hours of CLE by the Law Society of New Brunswick.

Law Society of Alberta: Alberta lawyers may consider including this course as a CPD learning activity in your mandatory Continuing Professional Development Plan as required by the Law Society of Alberta.

About the Conference

This conference will provide an opportunity to learn about the most recent and significant developments in Canadian and international technology 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 technology law as they relate to Canada.

Who should attend

Private Counsel practicing in the Corporate Commercial and Technology field, in-house Counsel, Licensing & Contract Managers, Directors of Operation, Sourcing and Procurement Professionals, CIO's/CTO's/CPO's/COO's/CEO's.

Day 1: Monday, October 23, 2017

8:00–9:00 am

Registration & Continental Breakfast

Hosted by: Bereskin & Parr LLP

9:00–9:15 am

Opening Remarks & Welcome

Co-Chairs:

David Fraser, McInnes Cooper

Lisa R. Lifshitz, Torkin Manes LLP

9:15–10:45 am

The Fintech Evolution Revolution

Moderator:

Daniel Logan, Baker McKenzie

Speakers:

Lisa Ford, Senior Counsel, Royal Bank of Canada

Jeffrey Roode, Miller Thomson LLP

Jason Young, Head of Legal and Government Relations,
PayPal Canada

- Fintech: What it is and what it is not
- Three myths of Fintech
- The current legal and regulatory landscape applicable to Fintech
- How does a regulated system impact innovation?
 - Current compliance challenges for financial institutions
- Impact of financial sector regulatory requirements on commercial relations with Fintech
- Commercial aspects of Fintech and payments
- Complexities and current trends in recent Fintech partnerships
- What does the future hold?
 - Evolution of the financial system
 - Department of Finance: Review of the federal financial sector framework
 - Payments Canada: Modernizing Canada's clearing and settlement systems

10:45–11:00 am

Networking Break

Hosted by: Cox & Palmer

11:00 am–12:30 pm

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

12:30–2:00 pm

Luncheon & Guest Speaker

Hosted by: Deeth Williams Wall LLP

Keynote Speaker: Mike Brown, Chief Technology Officer and co-founder, ISARA Corporation

Title: Sooner Than You Think: Quantum Computing and the Reinvention of Security

2:15–3:45 pm

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

3:45–4:00 pm

Networking Break

Hosted by: McMillan LLP

4:00–5:30 pm

Blockchain and Smart Contracts: Next Generation Database Technology

Moderator:

Christine Ing, Blake, Cassels & Graydon LLP

Speakers:

Manav Gupta, IBM Distinguished Engineer, CTO,
Cloud Canada

William Mougayar, Partner, General Capital Ventures, Author of
“The Business Blockchain: Promise, Practice and Application
of the Next Internet Technology”

Robert Percival, Norton Rose Fulbright (Canada) LLP

- Blockchain technology:
 - What it is, how it works and why it matters
- Insights on the promise, practice and application of Blockchain
- Security and data limits to Blockchain technology
- Blockchain disruption beyond Fintech
- What are Smart Contracts?
 - Are they contracts?
 - Are they enforceable?

5:30 pm

Closing Remarks for Day 1

5:40–6:00 pm

IT.CAN Annual General Meeting

(For All IT.CAN Members)

6:00–6:45 pm

Cocktail Reception

Hosted by: Torkin Manes LLP and

Lapointe Rosenstein Marchand Melançon, LLP

7:15 pm

Ticketed Dinner (See Details on Registration Form)

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

Day 2: Tuesday, October 24, 2017

7:45–8:45 am

IT.CAN Women in Technology Breakfast (all registrants are welcome)

Sponsored by: Microsoft Canada Inc.

8:45–9:00 am

Opening Remarks & Welcome to Day 2

Co-Chairs:

David Fraser, McInnes Cooper

Lisa R. Lifshitz, Torkin Manes LLP

9:00–10:30 am

IP Update for Technology Practice

Moderator:

Victor Krichker, Bereskin Parr

Patents

Speaker:

Jenna Wilson, Wilson Lue LLP

- Update on promise of the patent and sound prediction doctrines in Canada
- File wrapper estoppel in Canada
- Update on CIPO and PAB approach to statutory subject matter for computer-implemented inventions
- Changes to standard for proving wilful infringement in the US
- Update on the application of the *Alice* test by US courts to patents for computer-implemented inventions
- US PTAB's use of the broadest reasonable interpretation standard

Trademarks & Domain Names

Speaker:

Sharon E. Groom, McMillan LLP

- Update on implementation of Bill C-31 legislative changes
- Protection afforded a word mark
- Test for descriptiveness of the place of origin
- Test for passing off
- Initial interest confusion in context of keyword advertising
- Ownership of social media handles and domain names

Copyright

Speaker:

Catherine Lovrics, Bereskin Parr

- Technological protection measures
- Information location tools and search engines
- Statutory damages for copyright infringement
- Set top boxes
- Erroneous DMCA takedown liability

Trade Secrets

Speaker:

Roch J. Ripley, Gowling WLG

- Updates on the U.S. Defend Trade Secrets Act (DTSA)
- U.S. Copyright Act does not pre-empt a trade secrets claim
- Misuse of private corporate confidential information by the government
- Confidentiality Orders

10:30–10:45 am

Networking Break

Hosted by: Gowling WLG

10:45 am–12:15 pm

Roundtables Set #2 (5, 7, 8)

12:15–1:45 pm

Luncheon & Guest Speaker

Hosted by: Orrick Herrington & Sutcliffe LLP

Keynote Speaker: Tony Kim, Co-chair,

Cybersecurity Group, Orrick

Title: Bug Bounties, Ransomware and New Cyber Ailments

2:00–3:30 pm

Legal Control of Internet Content: Who Decides and What is the Impact?

Moderator:

Peter Ruby, Goodmans LLP

Speakers:

Eloïse Gratton, Borden Ladner Gervais LLP

Curt Howard, Head of Legal, Google Canada

Julie Rosenthal, Goodmans LLP

Barry Sookman, McCarthy Tétrault LLP

- In what circumstances can non-parties to a dispute be ordered by a Canadian court to take-down Internet content?
- What are the business and privacy implications of *Google Inc. v. Equustek Solutions* and The *Globe24* decisions for:
 - Internet users – Internet intermediaries – Those affected by a wrong committed over the Internet
- In what circumstances can Canadian authorities regulate business activity on the Internet?
- Policy implications of Canadian courts and regulators controlling Internet players outside Canada
- Practical implications:
 - to Canadians seeking the intervention of Canadian courts and regulators?
 - for non-Canadians?
- Is there a Canadian right to be forgotten?

3:30–3:45 pm

Networking Break

Hosted by: Osler, Hoskin & Harcourt LLP

3:45–5:15 pm

Roundtables Set #2 (6, 7, 8)

5:15 pm

Conference Ends

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1. Litigation Risks That Should be on Your Radar (and What to Do About Them)

Speakers:

Alex Cameron Fasken Martineau DuMoulin LLP
Ted Charney, Charney Lawyers
David Elder, Stikeman Elliott LLP

- Data breach class actions and settlements
 - Business to business data breach claims
 - Breach notification and record keeping
 - CASL private right of action and penalties
 - Privilege considerations
-

2. Navigating the Challenges and Harvesting the Benefits of Big and Open Data

Speakers:

Richard Austin, Deeth Williams Wall LLP
Andy McGhie, Director, Geospatial Competence Centre,
Information & Technology Division, City of Toronto
Bill McMullin, Viewpoint Realty Services
Lou Milrad, Milrad Law

- What is Open Data and how does it relate to Big Data and Data Analytics?
 - Transparency and Open Data
 - Restrictions on access
 - Open Data and the private sector
 - Commercialization and innovation: Value of Big & Open Data
 - Blockchains for public data
 - Data governance due diligence
 - Liability issues
-

3. Effectively Managing Open Source

Speakers:

Mark McCans, Senior Legal Counsel, CIBC
L. Philip Odence, VP/ General Manager,
Black Duck Software Inc.
Thomas Prowse, Senior Legal Counsel, QNX/Blackberry

- Software licensing and contracting:
 - Supply chain considerations
 - Customer requirements
 - Management challenges:
 - License compliance
 - Governance issues
 - Identifying and responding to security vulnerability
 - Due diligence considerations
 - Organizational culture: Processes and procedures to regulate and track open source internally
-

4. Automated and Connected Vehicles as Data Repositories

Speakers:

David Adams, President, Global Automakers of Canada
Dr. Rajen Akalu, University of Ontario Institute of Technology
Geoff Moysa, McMillan LLP

- Vehicles as information aggregators: What information can be collected?
 - IP rights and software licensing: Who owns the data collected?
 - Third party use of data collected
 - Privacy and cybersecurity implications including vehicular infotainment platforms
 - The regulatory framework:
 - Government regulation and policy
 - Statutory data privacy requirements
 - The business framework for commercial agreements
-

2018 Early Bird Membership

**Renew your IT.CAN Membership for 2018
by December 1, 2017 and SAVE!**

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

Visit www.it-can.ca for full details.

5. Canadian and US Export Controls and Economic Sanctions: Key Steps for Mitigating Risk for Software and Technology Companies (Oct 24th AM only)

Speakers:

John W. Boscariol, McCarthy Tetrault LLP
Kay Georgi, Arent Fox (Washington)
Stephen Whitney, General Counsel & Corporate Secretary,
Sandvine Incorporated ULC

- Overview of export controls relating to cryptography and cybersecurity
- When to apply for an export permit or license? When do exemptions apply?
- Application of economic sanctions in the tech sector
- Review of sample sections from procurement and M&A agreements
- Canada and US export controls and economic sanctions: Key differences
- Lessons learned from enforcement examples
- Best practices to mitigate penalty and reputational risk
- Elements of effective compliance programs
- Challenges and solutions for dealing with cloud structures

6. Professionalism Issues for Corporate and Technology Lawyers: Ethical Negotiations and the New Duty of Good Faith (Oct 24th PM only)

(This Session contains 1 hour and 30 minutes of Professionalism Content.)

Speakers:

James Kosa, Deeth Williams Wall, LLP
Ian Thorburn, Solicitor, City of Toronto

- Good faith: What are we talking about?
- Contractual good faith in negotiations
- Implied good faith and limits
- Good faith, unconscionability and fiduciary duty
- LSUC Rules of Conduct and professional standards
- Negotiations and confidentiality

7. Allocating Risk and Liability in the Brave New World of Technology Contracting

Moderator: Patrick Fitzgerald, Cox & Palmer

Speakers:

Riccardo D'Angelo, Managing Director,
Global Transactions, Accenture
Nikki Latta, Associate General Counsel, Deloitte LLP
Jill Renaud, Senior Corporate Counsel, Economical Insurance

- Structuring deals in the new world:
 - Flow through cloud licenses
 - Flow through platform licenses
 - Identifying risk factors
 - Who bears the risk?
- Traditional risk allocation vs. risk allocation for newer types of services:
 - Roles of representations, warranties, indemnities and limitation of liability for cloud services, agile development and other technology contracts
 - Data security and privacy liability provisions
 - The role of insurance in risk mitigation

8. Trends and Challenges in Innovative Health Care Technology: Digitization, Connected Devices and AI

Speakers:

Ryan Berger, Norton Rose Fulbright Canada LLP
Michael Dingle, National Deals Technology Leader,
PwC Canada
David Thomas, Telus Health Solutions

- Current state of connectivity and digitization in Canadian healthcare
- Networked medicine: Cloud computing, connected devices, and the border
- Personalized medicine
- Artificial Intelligence: Are we ready?
- The Promise of Big Data in healthcare: Where are we on the continuum?
- Health care start-up challenges: Legal, regulatory, finding traction, raising capital
- Global view: US, EU and other markets
- Data security and privacy: Consumers, providers, systems and regulators

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Canadian IT Law Association

Registration Information

How to Register:

No faxed registrations please.

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

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.**

Cancellations: Refunds for conference fees will be made if requested by email, received **PRIOR TO September 23 2017**. 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@it-can.ca

Queries: Contact Lisa Ptack at lisa.ptack@it-can.ca.

IT.CAN is pleased to thank the following sponsors:

Bereskin & Parr • Blake Cassels & Graydon • Blaney McMurtry • Cox & Palmer
Deeth Williams Wall • Gowling WLG • Lapointe Rosenstein Marchand Melançon
McMillan • Microsoft Canada Inc. • Norton Rose Fulbright Canada
Orrick Herrington & Sutcliffe • Osler, Hoskin & Harcourt • Torkin Manes

Roundtable Schedule

Monday, October 23, 2017 (11:00 am–12:30 pm)

1. Litigation Risks That Should be on Your Radar (and What to Do About Them)
2. Navigating the Challenges and Harvesting the Benefits of Big and Open Data
3. Effectively Managing Open Source
4. Automated and Connected Vehicles as Data Repositories

Monday, October 23, 2017 (2:15–3:45 pm)

1. Litigation Risks That Should be on Your Radar (and What to Do About Them)
2. Navigating the Challenges and Harvesting the Benefits of Big and Open Data
3. Effectively Managing Open Source
4. Automated and Connected Vehicles as Data Repositories

Tuesday, October 24, 2017 (10:45 am–12:15 pm)

5. Canadian and US Export Controls and Economic Sanctions: Key Steps for Mitigating Risk for Software and Technology Companies (AM only)
7. Allocating Risk and Liability in the Brave New World of Technology Contracting
8. Trends and Challenges in Innovative Health Care Technology: Digitization, Connected Devices and AI

Tuesday, October 24, 2017 (3:45–5:15 pm)

6. Professionalism Issues for Corporate and Technology Lawyers: Ethical Negotiations and the New Duty of Good Faith (PM only)
7. Allocating Risk and Liability in the Brave New World of Technology Contracting
8. Trends and Challenges in Innovative Health Care Technology: Digitization, Connected Devices and AI

SEATING IS LIMITED SO REGISTER EARLY

Registration Form

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Online registration by credit card: Via our secure site at 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, 2017	After September 25, 2017
IT.CAN Member	\$1525 (plus \$198.25 tax) \$1723.25 ☐	\$1625 (plus \$211.25 tax) \$1836.25 ☐
Non-IT.CAN Member	\$1725 (plus \$224.25 tax) \$1949.25 ☐	\$1825 (plus \$237.25 tax) \$2062.25 ☐
Academic/In-House Counsel/ Government/Non-Lawyer	\$975 (plus \$126.75 tax) \$1101.75 ☐	\$1075 (plus \$139.75 tax) \$1214.75 ☐
Student	\$200 (plus \$26.00 tax) \$226.00 ☐	\$200 (plus \$26.00 tax) \$226.00 ☐

OPTIONAL DINNER

If you wish to attend the dinner on Monday, October 23, 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 _____

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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 for full details including the membership form.

Conference Organization

IT.CAN would like to thank the following members of the Planning Committee:

Chairs:

David Fraser, McInnes Cooper
Lisa R. Lifshitz, Torkin Manes LLP

Committee:

Richard Austin, Deeth Williams Wall LLP
Nancy Cleman, Lapointe Rosenstein Marchand Melançon LLP
David L. Cummings, Caravel Law
Asma Faizi, Legal Counsel, SOCAN
David Feldman, Blake, Cassels & Graydon LLP
Patrick Fitzgerald, Cox & Palmer
Brian Gray, Norton Rose Fulbright Canada LLP
Graham Honsa, Wilson Lue LLP
Christine Ing, Blake, Cassels & Graydon LLP
John Le Blanc, Senior Counsel, Scotiabank
Lou Milrad, Milrad Law Office

Richard Pearse, Senior Legal Counsel, eHealth Ontario
Trevor Pearse, Contracts Manager, Architech
Robert Percival, Norton Rose Fulbright Canada LLP
Peter Ruby, Goodmans LLP
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Stephen Whitney, General Counsel & Corporate Secretary, Sandvine Incorporated ULC

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