

ICSC 2012 Canadian Shopping Centre Law Conference

February 23 – 24
Hyatt Regency Toronto
Toronto, Ontario

PROGRAM

**Earn CLE
Credits!**

The ICSC 2012 Canadian Law Conference will seek continuing education credit preapproval from law societies in Ontario, Quebec, British Columbia and Saskatchewan.
For more information and updates on our progress, visit www.icsc.org/2012clc



Conference Schedule



Thursday, February 23

REGISTRATION

8:00 am – 5:30 pm

CONTINENTAL BREAKFAST

8:00 – 8:45 am

OPENING REMARKS

8:45 – 8:50 am

Co-Chairs:



Kenneth A. Beallor

ICSC 2012 Canadian Law Conference
Program Planning Committee Co-Chair
Torkin Manes LLP
Toronto, ON



David R. Thompson

ICSC 2012 Canadian Law Conference
Program Planning Committee Co-Chair
WeirFoulds LLP
Toronto, ON

ROUNDTABLE DISCUSSIONS

9:00 – 10:30 am

CONCURRENT SESSIONS

10:45 am – 12:00 noon

A. Getting to the Lease... In One Piece! Are We There Yet?

Regardless of whether you act for the Landlord or the Tenant you continue to run up against the same issue “How do I get to the Lease?”. Our experienced panel will help navigate the myriad of “pre-lease” documents from TPF’s, LOL’s and the Offer to Lease so you CAN get to the Lease. They will discuss whether your pre-lease document is “binding” and help you determine which document works best for your particular Landlord or Tenant client.

Moderator

Michael S. Horowitz

Minden Gross LLP
Toronto, ON

Panelists

Mordecai Bobrowsky

First Capital Realty Inc.
Toronto, ON

Christina Kobi

Minden Gross LLP
Toronto, ON

Angela Mockford

Weir Foulds LLP
Toronto, ON

B. Tenant Remedies – Tenants Have Rights Too

Our experienced and diverse panel will look at how tenants’ rights and remedies are dealt with under the Common Law as well as the differences under Civil Law. We will explore proper lease drafting to ensure that the Tenant is appropriately protected and look at what remedies are available to the Tenant under the lease and at law should the Landlord not fulfill its obligations. We will also consider practical advice as to how to enforce tenant’s rights.

Moderator

Jim Fraser

McLean & Kerr LLP
Toronto, ON

Panelists

Sharon Addison

McLean & Kerr, LLP
Toronto, ON

Leigh Balgopal

Scotiabank
Toronto, ON

Richard Burgos

Lavery, De Billy, L.L.P.
Montreal, QC

LUNCHEON SERVED

12:00 noon – 1:00 pm

KEYNOTE PRESENTATION

1:00 – 1:45 pm

The Re-emergence of the Department Store as a Power Anchor in Canadian Shopping Centres



Bonnie Brooks

President & CEO
Hudson’s Bay Company
Toronto, ON

CONCURRENT EDUCATIONAL WORKSHOPS

1:45 – 3:00 pm

A. Growing with Other People’s Money - Leasing in the Franchise Context

An interactive look at the unique issues to be considered when a franchisor or franchisee is the tenant. Will the franchisor head lease the space and sublease to its franchisee, or allow the franchisee to lease its own space? If head leasing the space, what lease provisions should the franchisor pay particular attention to? Is a sublease from franchisor to franchisee like any other sublease? If the franchisee is the tenant, what can the franchisor do to gain control of the real estate in the event of a default by the franchisee? Does the franchisor need to secure any covenants from the landlord? What should a landlord consider when leasing for a franchised



concept? Who will the tenant be? What if the franchisor asks to be released on assigning to a franchisee? How should the landlord deal with the franchisor's need for third party rights such as assignment and de-branding. These and other issues will be addressed through the use of hypotheticals and group discussion.

Workshop Leaders

Darrell Jarvis

Fasken Martineau
Toronto, ON

Mary Ormond

Cara Operations Limited
Vaughan, ON

**B. There is No Such Thing as a “Simple Sublease”! –
An Advanced Workshop on Sublease Issues**

This workshop will be an interactive discussion of various hypothetical sublease situations to help participants understand the complexities of drafting and negotiating subleases. Some of the issues that will be discussed include: what does “mutatis mutandis” really mean and when should you use these words (and what are the consequences if you do not use these words), what rights should not flow through to a subtenant, can you transfer personal rights to a subtenant, what should a landlord consent say and should a landlord be concerned about dealing directly with a subtenant, should the tenant be concerned about the subtenant dealing directly with the landlord, what are the unique considerations that arise when the sublease is only for a portion of the premises and are there consequences for failing to reserve the last day. We will discuss what types of questions you should be asking and the issues you should be raising with your clients to get the information needed to draft sublease documents which protect the interests of the parties and reflect the intentions of the business deal. We will also discuss the concerns that arise with using a template form or precedent sublease. Participants will come out with a better understanding of the unique tricks and traps of subleasing.

Workshop Leaders

Julie Robbins

Fraser Milner Casgrain LLP
Toronto, ON

Kenneth Beallor

ICSC 2012 Canadian Law Conference Program
Planning Committee Co-Chair
Torkin Manes LLP
Toronto, ON

Natalie Vukovich

Daoust Vukovich LLP
Toronto, ON

**C. Risky Business 11 - Out of the Fog,
Advanced Insurance Issues**

Our Panel will discuss the way in which insurance issues are handled-and sometimes mishandled-in Commercial Leases and will provide advice on language that will produce the required result. They will also deal with clauses that are frequently contentious in lease negotiations such as, for example, Subrogation, Release from Liability and Hold Harmless agreements, Leasehold Improvements, Cross Liability & Severability Of Interest –all matters that through misunderstanding take up far too much time in a typical lease negotiation Understanding brings brevity and will be provided in this Seminar. Also discussed will be the matter of securing evidence of insurance required to be placed by Tenants via use of Certificates which-unlike those in common use by insurance companies and brokers-inform the Landlord as to the actual coverage provided per lease requirements.

Workshop Leaders

Marie Saint Amour

Avocate/Attorney
Montreal, QC

Dawn Michaeloff

Owens Wright LLP
Toronto, ON

Chris Steer

Chris Steer Insurance Brokers Ltd.
Toronto, ON

D. Airtight Case – How Not to Prejudice Your Claim

Ever asked yourself the question - “If our case was so good, why did we pay so much money and spend so much time and effort, in order to have this decision rendered by the Court?” If you have ever been involved in litigation, you likely have. This workshop will answer this question and more and will include such legal concepts as waiver and estoppel. Come to hear two litigators experienced in commercial leasing matters discuss this issue and as well discuss how a person should retain and instruct a litigator and control costs! This session promises to be a lively discussion.

Workshop Leaders

Michael Kennedy

Wickwire Holm
Halifax, NS

John Contini

MacMillan LLP
Toronto, ON

Brenda M. Tsukishima

Parlee McLaws LLP
Calgary, AB



Conference Schedule (continued)



E. Putting the Puzzle Pieces Together – Ensuring the Lease Works as an Integrated Whole

When we're negotiating leases, different issues get settled at different times during the negotiation. Sometimes, we're so busy dealing with the issues at ground level that we forget to "get into our helicopters" and view the lease as one integrated whole. This can lead sometimes to quite unexpected results and lots of questions that start with "why". This workshop will discuss how the pieces should fit together and what we may need to remember to ensure the lease puzzle fits together as clearly as possible.

Workshop Leaders

Celia C. Hitch, B.A., LL.B.

Oxford Properties
Toronto, ON

Murray F. Tait

T&T Properties
Calgary, AB

F. The Myth & Magic of Arbitration & Mediation

What are the pros and cons of solving lease disputes by arbitration and mediation? Can arbitration and mediation be used strategically? What should properly drafted arbitration and mediation clauses say? What forms of arbitration and mediation are most appropriate for rent and other lease disputes? Our well respected experts will explore these and other related matters providing you with solid and practical knowledge that you can apply back at the office.

Workshop Leaders

Joseph Grignano

Blake, Cassels and Graydon LLP
Toronto, ON

Larry Banack

Koskie, Minsky LLP
Toronto, ON

David McCutcheon

Fraser Milner Casgrain LLP
Toronto, ON

PLENARY SESSION

3:15 – 4:30 pm

SEVEN DEADLY SINS - Professional and Ethical Issues

Moderator

Dennis Daoust

Daoust Vukovich LLP
Toronto, Ontario

1. Due Diligence Pertaining to Commercial Leases - Covering Those Embarrassing Exposed Parts.

Stephen Posen

Minden Gross LLP
Toronto, Ontario

2. Managing Instructions in Complex Transactions - Who Said What to Whom?

Ronald A. Goldenberg

Fraser Milner Casgrain LLP
Toronto, Ontario

3. Managing Conflicts - Stuck in the Middle and Staying Sane

William A. Rowlands

McMillan LLP
Toronto, Ontario

4. Limitation Periods - Checking Expiry Dates to Stay Healthy

David V. Westwood

Barrister & Solicitor
Toronto, Ontario

5. Estoppel and Waiver - Watch Your Behavior

Laurie J. Sanderson

Gowling Lafleur Henderson LLP
Ottawa, Ontario

6. Dealing with In-House Counsel - The Out-House Counsel's Guide to Keeping the Air Clear

Alison Tortorice

The Cadillac Fairview Corporation Limited
Toronto, Ontario

7. Common Errors - A Smorgasbord of Unhappy Events

Jeffrey Selby

Parlee McLaws LLP
Calgary, Alberta

MEMBER-HOSTED RECEPTION

4:30 – 5:30 pm

To become a sponsor, go to www.icsc.org/2012clc for the Reception Sponsorship Form.

OPTIONAL DINNER EVENT

6:00 - 8:00pm

Downtown Toronto Restaurant TBA

(A Separate Registration Fee is Required)

** Look for details on the specific location & pricing for this event on our website in January www.icsc.org/2012clc **

Conference Schedule (continued)



E. Putting the Puzzle Pieces Together – Ensuring the Lease Works as an Integrated Whole

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Friday, February 24

REGISTRATION

8:00 am – 1:45 pm

CONTINENTAL BREAKFAST

8:00 – 8:30 am

ROUNDTABLE DISCUSSIONS

8:30 – 10:00 am

CONCURRENT SESSIONS

10:00 – 11:15 am

A. Foreign Retailers Coming to Canada - What do They Need to Know!

Join us for an informative and provocative panel discussion around not only the legal, but the business, issues and concerns that foreign retailers coming to Canada either have or should be considering before they sign on the dotted line. What are the questions they should be asking and information they should be seeking? Our panel will answer this question and more.

Moderator

Susan Rosen

Partner, Gowlings LLP
Toronto, ONB. Operating Costs

Panelists

Tony Grossi

NorthBound Real Estate Advisory
RioCan REIT
Toronto, ON

Tom Mitchell

The Bargain! Shop
Toronto, ON

Mary Mowbray

Colliers International
Toronto, ON

B. Operating Costs – Nickels and Dimes Add Up to Dollars

Endless hours are spent negotiating and fighting over Operating Costs both before and after the Lease is signed. This session will address some of the current hot topics relating to Operating Costs, what Operating Costs may or may not be recoverable and how to properly reflect your client's instructions in the Lease. Ethical issues and the topics of civility and negotiation will also be discussed, as will how to understand where the other side is coming from with some practical tips on how to get to a deal that both parties can live with.

Moderator

David Thompson

ICSC 2012 Canadian Law Conference
Program Planning Committee Co-Chair
WeirFoulds LLP
Toronto, ON

Panelists

Dennis Tobin

Miller Canfield Paddock and Stone LLP
Toronto, ON

Lisa Borsook

WeirFoulds LLP
Toronto, ON

PLENARY SESSION

11:30 am – 12:45 pm

Legal Update

Jeanne Banka

Daoust Vukovich LLP Barristers & Solicitors
Toronto, ON

Steven Chaimberg

Lapointe Rosenstein Marchand Melançon, LLP
Montreal, QC

Richard B. Mask

Parlee McLaws LLP
Calgary, AB

CLOSING REMARKS

12:45 – 1:00 pm



Kenneth A. Beallor

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Torkin Manes LLP
Toronto, ON



David R. Thompson

ICSC 2012 Canadian Law Conference
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WeirFoulds LLP
Toronto, ON

CONFERENCE ADJOURNS

1:45 pm



Registration Form

HOW TO REGISTER:

Fax: +1 732 694 1800 (Credit card registrations only)

Online: www.icsc.org/2012CLC
(Credit card registrations only)

Mail: International Council of Shopping Centers

Attn.: Registration Department
1221 Avenue of the Americas
New York, NY 10020

REGISTRATION FEE:

	Advance	HST 13%	Total
Member*:	\$384.96	\$50.04	\$435.00 (CDN)
Non-Member:	\$561.95	\$73.05	\$635.00 (CDN)
	On-Site		
Member*:	\$473.45	\$61.55	\$535.00 (CDN)
Non-Member:	\$694.69	\$90.31	\$785.00 (CDN)
Student**:	\$ 47.15	\$ 6.13	\$ 53.28 (CDN)

HOTEL RESERVATIONS

A block of rooms has been reserved at:

Hyatt Regency Toronto

370 King Street West
Toronto, ON M5V 1J9

Rate: \$159 Single/Double Occupancy

Cut-off Date: January 24, 2012

To make your hotel reservation, we invite you to visit www.icsc.org/2012clc. To the right of the page, you will see the banner "Book Hotel Now." There you will find the description of the hotel and the electronic form, which features live inventory within the group block. Additionally, you will receive an immediate e-mail confirmation of the reservation to the e-mail address you provide on your form. Although we do require our reservations in writing, we're happy to answer your questions during our office hours from Monday to Friday 8:00 am – 5:30 pm EST, toll-free at +1 888 ICSC TVL (427 2885), ext 412.

DEADLINES:

To qualify for the advance registration fee, your registration must be received by **February 20, 2012**.

CANCELLATIONS:

All cancellations will be subject to a \$25 cancellation fee. No refunds will be given for cancellations received after **February 20, 2012**. All requests for refunds must be received by ICSC in writing.

AIRFARE SAVINGS

The ICSC Travel Desk has secured special airline and car discounts for attendees. For current prices and availability, please contact us at +1 888 ICSC TVL (427 2885) or +1 585 442 8856 from 8:00 am to 5:30 pm EST, Monday through Friday.

CONTINUING EDUCATION CREDITS

SCSM/SCMD: 1 credit; CLS: 1 credit; LSUC: TBA; LSBC: TBA; Barreau du Québec: TBA

NOTE: This program will be preapproved 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. Proof of attendance will be provided at the conference.

SPECIAL NEEDS

Anyone desiring an auxiliary aid for this meeting should notify Kyle Tomlin at +1 416 486 4511 ext 2127, or ktomlin@icsc.org no later than **February 13, 2012**.

I authorize ICSC and its members to send me announcements via mail, fax and phone about ICSC's and ICSC members' programs and services that may be of interest to me or my colleagues. I also consent to receipt of notices from ICSC in electronic form.

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MasterCard Visa AMEX Discover \$ _____

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Account Number (include all digits) _____

Signature _____ Exp. Date (Month/Year) _____

Please photocopy forms as needed.

Reception Sponsorship Form

Sponsorships serve as an advertising or PR opportunity to get your company name out in front of a select audience of industry professionals. Be sure to take advantage of this opportunity!

Your Sponsorship of \$1,000 will include:

- Sponsor sign and/or PowerPoint display of your company logo at the Member-Hosted Reception, 4:30 – 5:30 pm, on Thursday, February 23, 2012
- Recognition in the At-Door Program
- Logo Recognition on the attendee gift
- Logo Recognition on the ICSC Conference Website: www.icsc.org/2012clc
- Sponsor ribbons that can be worn with your badge throughout the Conference.

WHERE

Hyatt Regency Toronto
370 King Street West
Toronto, ON M5V 1J9

DEADLINES:

- Sponsorship received by **February 1, 2012**, to be recognized on the attendee gift.
- Sponsorship received by **February 14, 2012**, to be recognized at the meeting.

ICSC SPONSOR CONTACT:

Kyle Tomlin
Tel: +1 416 486 4511
E-mail: ktomlin@icsc.org

Sponsorship Contact/Return Completed Form to: International Council of Shopping Centers

1221 Avenue of the Americas
New York, NY 10020

Fax: +1 732 694 1800 (*credit card payments only*)

Sign up now by returning this completed form along with:

- \$1,000 payment by credit card or check made out to ICSC. Payment must accompany the Sponsorship Form.
- Your company logo (jpeg or eps format) to ktomlin@icsc.org.

Name _____

Company _____

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