

# *ICSC 2013 Canadian Law Conference*

**February 21 – 22**  
**The Fairmont Royal York Hotel**  
**Toronto, Ontario**

## **PROGRAM**

### **Earn CLE Credits!**

The 2013 ICSC Canadian Law Conference will seek continuing education credit pre-approval from bureaus in Ontario, Quebec and British Columbia. For more information and updates on our progress, visit [www.icsc.org/2013cle](http://www.icsc.org/2013cle).



# Conference Schedule



## Thursday, February 21

### REGISTRATION

8:00 am – 5:30 pm

### CONTINENTAL BREAKFAST

8:00 – 8:45 am

### OPENING REMARKS

8:45 – 8:50 am

#### Co-Chairs:



#### David R. Thompson

ICSC 2013 Canadian Law Conference  
Program Planning Committee Co-Chair  
WeirFoulds LLP  
Toronto, ON



#### Susan D. Rosen

ICSC 2013 Canadian Law Conference  
Program Planning Committee Co-Chair  
Gowling Lafleur Henderson LLP  
Toronto, ON

### ROUNDTABLE DISCUSSIONS

9:00 – 10:30 am

### CONCURRENT SESSIONS

10:45 am – 12:00 noon

#### A. FIXIN THINGS BEFORE THEY BREAK

Substantial repairs and capital improvements can mean big bucks if either a landlord or a tenant is on the wrong side of a poorly drafted lease. The million dollar question is literally – who is going to pay for those expenditures? This panel will guide you through the important issues both landlords and tenants should consider, from preliminary due diligence investigations to drafting and interpreting lease language. We will also discuss what happens when those important issues have not been fully negotiated and incorporated into a lease and the parties are faced with expensive repair and/or replacement bills and have to battle it out.

#### Moderator:

#### Susan D. Rosen

Gowling Lafleur Henderson LLP

#### Speakers:

#### Amelia Nasrallah

Brookfield Office Properties, Canadian Commercial Operations

#### Sharon M. Addison

McLean & Kerr LLP

#### Neil Skinner

Sobeys Capital Inc.

#### B. NO SECTION STANDS ALONE – A practical examination of the interconnected nature of various lease provisions

Leases are complex agreements with many interconnected provisions. This panel of experienced in-house counsel will engage in a practical discussion of how various lease provisions work together and the key considerations the legal professional should have in mind both when negotiating the lease and when dealing with issues throughout the life of the lease.

#### Moderator:

#### Mary Ormond

Cara Operations Limited

#### Panelists:

#### Sunita Mahant

Ivanhoe Cambridge

#### Will Ramjass

McDonald's Restaurants of Canada Limited

### LUNCHEON SERVED

12:00 noon – 1:00 pm

### KEYNOTE PRESENTATION

1:00 – 1:45 pm

### CONCURRENT EDUCATIONAL WORKSHOPS

1:45 – 3:00 pm

#### 1. CONTROVERSIAL CLAUSES AND COMPROMISES

Operating covenants, releases and indemnities, relocation clauses, termination provisions and more. Why tenants don't like them and why landlords want them. We look at lease provisions that seem very one sided in a typical landlord's standard lease form. Industry experts representing the diverging landlord and tenant views will look at these clauses with a view of reaching a middle ground that they and their clients can live with. We will also explore the process of coming from seemingly opposite positions to arrive at a mutually acceptable resolution.

#### Moderator:

#### James Fraser

McLean & Kerr LLP

#### Panelists:

#### Deborah Watkins

Daoust Vukovich LLP

#### Tom Santram

Cineplex Inc.

# Conference Schedule



## 2. CHANGING THE DYNAMIC: New and Innovative Concepts in Commercial Leases

Looking to break the cycle of the “same old, same old” lease form, this panel will create, introduce and discuss new and innovative concepts and lease provisions that may forever change the way we look at the landlord/tenant relationship.

*Moderator:*

**Cory Sherman**  
Sherman Brown

*Speakers:*

**Mario Paura**  
Stikeman Elliott LLP

**Norman Lieff**  
Norton Rose Canada LLP

## 3. WHAT'S THE USE? LET ME LOOSE! Trying to Make Sense of Uses and Exclusives

The ever-changing, overlapping and morphing world of uses and exclusives will be explored by our panel of experienced in-house and external counsel. This workshop will explore the “community of interest” and discuss what steps the landlord and tenant can take to draft, manage and enforce use and exclusive. What does “principal” vs. “ancillary” really mean and how do these concepts relate to the uses and exclusives granted to grocery and non-grocery anchor(s), pharmacy/drugstores, banks, food tenants and any other tenants at a shopping center.

*Moderator:*

**Michael Horowitz**  
Minden Gross LLP

*Panelists:*

**Sheldon Disenhouse**  
Fraser Milner Casgrain LLP

**Angela Mockford**  
Tim Hortons Inc.

**Monty Warsh**  
Heenan Blaikie LLP

## 4. CAN'T CLOSE CAM CLAUSES? How to intelligently address operating expenses

Operating expenses generally represent a significant component of rent. It is also a clause that takes a lot of time to negotiate.

The panelists will review definitions that may have an impact on the tenant's share of operating expenses. They will then review a typical operating expense clause and discuss why should an element be kept, modified or deleted. They will also analyze different ways a tenant can attempt to limit its risk (caps, fixed CAM, audit right) and a landlord's reaction to those demands.

*Moderator:*

**Marie Saint-Amour**  
MSA

*Panelists:*

**Denis Paquin**  
Fasken, Martineau DuMoulin LLP

**Nicolas Rioux**  
Ivanhoe-Cambridge Inc.

## 5. BUILDING A HOUSE OF CARDS – The significance of opening and operating co-tenancies

Co-tenancy provisions take on a greater significance in new development projects and in the redevelopment or expansion of shopping centres. Co-tenancy provisions can affect a tenant's obligation to start construction, and/or open and operate its store, and/or pay full rent. Things get tricky when a lease is conditional on a co-tenant being both opening and operating, and the impact and ramifications can be wide-ranging for both tenants and landlords. Our panel will explore the different forms of co-tenancy clauses and the various issues that the parties should consider when drafting these types of clauses.

*Moderator:*

**Genevieve Wong**  
Oxford Properties Group

*Panelists:*

**Abraham Costin**  
McCarthy Tétrault LLP

**David C. Camp**  
Senn Visciano Canges P.C.

## REFRESHMENT BREAK

3:00 – 3:15 pm

## PLENARY SESSION

3:15 – 4:30 pm

## PROFESSIONALISM TOPICS – You too can have great relationships

*Moderator:*

**Dennis Daoust**  
Daoust Vukovich LLP

**Julie Robbins**  
Fraser Milner Casgrain LLP

## 1. PROJECT MANAGEMENT AND LEADERSHIP SKILLS – Working with consultants and experts

Complicated lease negotiations can involve various consultants and experts (lawyers, accountants, insurers, realty tax experts, architects, out-of-province lawyers, just

# Conference Schedule



to name a few). The leasing lawyer needs to employ project management and leadership skills to coordinate the several participants in a typical major lease transaction to avoid the “that wasn’t my job” syndrome.

*Speaker:*

**Laurie Sanderson**  
Gowling Lafleur Henderson LLP

## 2. MARKETING LEGAL SERVICES – To Tweet or not to Tweet

Using social media, such as Twitter, LinkedIn and Facebook, in your commercial lease practice. Review of the obligations regarding advertising and marketing under the Rules of Professional Conduct and what you should consider when building a profile in the digital world.

*Speaker:*

**Ned Steinman**  
Norton Rose Canada LLP

## 3. NOTIFYING THE CLIENT OR INSURER OF ERRORS AND OMISSIONS – Oops? Now what?

Consideration of obligations to the Law Society and the Client when an error is discovered.

*Speaker:*

**Christine Fotopoulos**  
Borden Ladner Gervais LLP

## 4. TRAINING AND DELEGATION TO STAFF – Can’t you just get a clerk or student to do it?

What work is appropriate to delegate? What level of supervision is required? What tasks should be completed by a supervising lawyer. Best practices for high-volume practices that rely on the use of non-lawyers for cost savings and efficiency.

*Speaker:*

**Stephen Messinger**  
Minden Gross LLP

## 5. CONFLICTS – It’s a small world

What are your obligations to manage and avoid conflicts? Obtaining consent and setting up ethical walls. When do you have to refuse to act? When should you refuse to act?

*Speaker:*

**Bill Rowlands**  
McMillan LLP

## 6. EFFECTIVE RETAINER AGREEMENTS – Weren’t you tracking that?

Discussion of what lawyers’ responsibilities are regarding key dates such as condition dates, renewal option dates and other critical dates, and administration and monitoring of key rights such as exclusive covenants, no-build areas, rights of first offer/refusal and vista protection. Who is responsible for what? In what circumstances should a lawyer assume responsibility for monitoring critical dates and rights under leases? What self-protective steps should the lawyer take? When should a final reporting letter be provided? What should it say?

*Speaker:*

**Steven Cygelfarb**  
Fogler, Rubinoff LLP

## 7. MARKETING, ETHICAL BUSINESS AND CLIENT RELATIONSHIP DEVELOPMENT – So you’re a commercial leasing lawyer now

Some tips from an experienced commercial leasing lawyer on building a practice, developing a profile in the industry, dealing with difficult clients and other things I wish I knew when I started.

*Speaker:*

**Lisa Borsook**  
WeirFoulds LLP

## MEMBER-HOSTED RECEPTION

4:30 – 5:30 pm

## NEW! OPTIONAL DINNER EVENT!

7:00 – 10:00 pm

(Separate Registration Required)

### Aria Ristorante

25 York Street  
Toronto, ON  
[www.ariaristorante.ca](http://www.ariaristorante.ca)

Come join your colleagues for a dinner event at Aria Ristorante. The separate registration fee will include a three-course dinner and a beverage. This evening will be a great opportunity to network with friends and colleagues while enjoying all the best that Aria has to offer!

Check the registration form for pricing and registration information. You can also register for the optional dinner by going to [www.icsc.org/2013CLC](http://www.icsc.org/2013CLC).



# Conference Schedule



## Friday, February 22

### 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

#### **C. HINTS FROM THE HINTERLAND – Tread carefully outside of Ontario; things are different there!**

This session will deal with the practical matters that must be addressed when dealing with different provinces; how, what and when are lease and other related documents registered? What subdivision/planning traps await the unwary? When is land transfer tax payable for leases?

*Moderator:*

**Michael Kennedy**  
Wickwire Holm

*Panelists:*

**Robert Schwartz**  
Gardiner Roberts LLP

**Janet Derbawka**  
Boughton Law Corporation

**Richard Burgos**  
Lavery, DeBilly, LLP

#### **D. THE OLD SWITCHAROO: Advanced assignment, subletting and other transfer issues**

Do mergers/amalgamations trigger landlord consent rights? What are common loopholes involving partnerships and other non-corporate entities? Is it possible to assign only a portion of the premises or term? According to case law, when can a landlord reasonably withhold its consent? When should a tenant financing trigger landlord consent rights? Our experts will explore these and other issues, providing you with solid and practical knowledge that you can apply back at the office.

*Moderator:*

**Joseph Grignano**  
Blake, Cassels & Graydon LLP

*Panelists:*

**David Ross**  
McMillan

**Rebecca Askew**  
The Cadillac Fairview Corporation Limited

**Savvas Kotsopoulos**  
Miller Thompson LLP

### PLENARY SESSION

11:30 am – 12:45 pm

#### **Legal Update**

*Moderator:*

**Jeanne Banka**  
Daoust Vukovich LLP

*Panelists:*

**Steven Chaimberg**  
Lapointe Rosenstein Marchand Melançon LLP

**Richard B. Mask**  
Parlee McLaws LLP

### CLOSING REMARKS

12:45 – 1:00 pm

*Co-Chairs:*



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**Susan D. Rosen**  
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Toronto, ON

### BUFFET LUNCHEON SERVED

1:00 – 1:45 pm

### CONFERENCE ADJOURNS

1:45 pm

# Registration Form

## HOW TO REGISTER:

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

**Online:** [www.icsc.org/2013CLC](http://www.icsc.org/2013CLC)  
(*credit card registrations only*)

### Mail: ICSC

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)
	<b>On-Site</b>		
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)
Optional Dinner Event	\$ 88.50	\$11.50	\$100.00 (CDN)

## DEADLINES:

To qualify for the advance registration fee, your registration must be received by **February 14, 2013**.

## CANCELLATIONS:

All cancellations will be subject to a \$25 cancellation fee. No refunds will be given for cancellations received after **February 14, 2013**. 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.

## HOTEL RESERVATIONS

A block of rooms has been reserved at:

### The Fairmont Royal York Hotel

100 Front Street West  
Toronto, ON M5J 1E3

**Rate: \$199** Single/Double, Fairmont Rooms

**Cut-off Date: 11:59 pm EST, January 22, 2013**

To make your hotel reservation, we invite you to visit [www.icsc.org/2013clc](http://www.icsc.org/2013clc) and click on "Book Hotel Now" under Quick Links on the right side of the page. There you can access the latest hotel availability information and the electronic form to reserve your room(s). We would be happy to answer any of your questions during our office hours from Monday to Friday, 8:00 am to 5:30 pm EST, at +1 888 ICSC TVL (427 2885) ext. 2, or internationally at +1 585 442 8900 ext. 4.

## CONTINUING EDUCATION CREDITS

ICSC Certified professionals earn 1.5 credits (A2) towards senior certification renewal.



**NOTE:** This program will be pre-approved for CLE credits from the Law Society of Upper Canada, Barreau Du Quebec, 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](mailto:ktomlin@icsc.org) no later than **February 8, 2013**.

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.

Name \_\_\_\_\_

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City \_\_\_\_\_ Province/State \_\_\_\_\_ Postal/ZIP Code \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_ Membership I.D. # \_\_\_\_\_

Please check here if any of the above information has recently changed.

Method of payment  Cheque made payable to ICSC enclosed for \$ \_\_\_\_\_

MasterCard  Visa  AMEX  Discover \$ \_\_\_\_\_

Optional Dinner Event: Aria Ristorante

# of tickets x \$100.00 = \$ \_\_\_\_\_

Name (as it appears on credit card) \_\_\_\_\_

Credit Card Number (include all digits) \_\_\_\_\_

Signature \_\_\_\_\_ Expiration 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 from 4:30 – 5:30 pm on Thursday, **February 21, 2013**
- Recognition in the At-Door Program
- Logo Recognition on the attendee gift
- Logo Recognition on the ICSC conference website: [www.icsc.org/2013clc](http://www.icsc.org/2013clc)
- Recognition in the final program mailed out to ICSC membership in Canada (provided that the sponsorship and a high-resolution logo are received no later than **November 15, 2012**)
- Sponsor ribbons that can be worn with your badge throughout the Conference.

**WHERE**

**The Fairmont Royal York Hotel**  
100 Front Street West  
Toronto, ON M5J 1E3

**DEADLINES:**

- Sponsorship received by **November 15, 2012**, to be recognized in the final program.
- Sponsorship received by **February 1, 2013**, to be recognized on the attendee gift.
- Sponsorship received by **February 8, 2013**, to be recognized at the meeting.

**ICSC SPONSOR CONTACT:**

Kyle Tomlin  
Tel: +1 416 486 4511  
E-mail: [ktomlin@icsc.org](mailto:ktomlin@icsc.org)

**Sponsorship Contact/Return Completed Form to: ICSC**

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 cheque made out to ICSC. Payment must accompany the Sponsorship Form.
- Your company logo (jpeg or eps format) to [ktomlin@icsc.org](mailto:ktomlin@icsc.org).

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City \_\_\_\_\_ Province/State \_\_\_\_\_ Postal/ZIP Code \_\_\_\_\_

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Please check here if any of the above information has recently changed.

Method of payment  Cheque made payable to ICSC enclosed for \$ \_\_\_\_\_

MasterCard  Visa  AMEX  Discover \$ \_\_\_\_\_

Name (as it appears on credit card) \_\_\_\_\_

Signature \_\_\_\_\_

Credit Card Number (include all digits) \_\_\_\_\_ Expiration Date (Month/Year) \_\_\_\_\_

Please photocopy forms as needed.



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### *ICSC 2013 Canadian Law Conference Program Planning Committee*

#### **CO-CHAIRS**

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#### **COMMITTEE**

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MSA

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Sherman Brown

**Genevieve Wong**

Oxford Properties Group

