



DIRECTORY

ICSC Canadian Shopping Centre Law Conference

April 27 – 28, 2017

The Fairmont Royal York | Toronto, ON



Thursday, April 27

Registration

8:00 am – 5:30 pm | [Concert Hall Foyer, Convention Floor](#)

Breakfast

8:00 – 8:30 am | [Concert Hall Foyer, Convention Floor](#)

Welcome and Introduction to the Program

8:30 – 8:45 am | [Concert Hall, Convention Floor](#)

Mary Ormond

ICSC 2017 Canadian Shopping Centre Law
Conference Program Planning Committee Chair
Legal Counsel
Build Toronto Inc.
Toronto, ON

Genevieve Wong

ICSC 2017 Canadian Shopping Centre Law
Conference Program Planning Committee Vice-Chair
Director, Retail Legal Services
Oxford Properties Group
Toronto, ON

Roundtable Discussions

8:45 – 10:15 am | [Concert Hall, Convention Floor](#)

	Topics	Leader 1 and 2
1.	Landlord Payment Failure: Drafting and Negotiating Tenant Allowance Clauses and Remedies	Jamie Paquin and Brian Parker Daoust Vukovich LLP
2.	Force Majeure	Neil Abbott and Natasha Carew Gowling WLG (Canada) LLP
3.	Percentage Rent and Online Sales: Rethinking Gross Revenue Definitions	Paul Morassutti Osler, Hoskin & Harcourt LLP
4.	Statute of Frauds and Leases	Michael Yuzdepski Stikeman Elliott LLP
5.	Registering Notices of Leases, Caveats, Restrictive Covenants and Other Agreements: Requirements and Deadlines	Scott Campbell and Kevin Emamian McLean & Kerr LLP

6.	To Infinity and Beyond: How New Technology Is Affecting Commercial Leases	Stuart Chaimberg and Josh Selby Miller Thomson LLP
7.	Proposed New Construction Lien Legislation: Impact on Tenants	Krista Chaytor WeirFoulds LLP
8.	Environmental Law 101	Talia Gordner Blaney McMurtry LLP Michael H. Lieberman Norton Rose Fulbright Canada LLP
9.	Dispute Resolution: Choices and Drafting Best Practices	Allan Dick Sotos LLP
10.	Unique Issues for Ground Leases	Charlene Schafer and Abraham Costin McCarthy Tétrault LLP
11.	The Same but Different: Retail and Office Leasing Practices	Josh Disenhouse and Nelly Mosstaghimi-Tehrani Miller Thomson LLP
12.	Litigating the Lease: Courtroom Considerations	Leanne Fasciano McLean & Kerr LLP Eric Gareau Oxford Properties Group
13.	Releases, Indemnities, and Waivers of Subrogation	Kevin O'Brien De Granpré, Chait LLP
14.	Dealing With Difficult Clients and Difficult Legal Professionals*	Stephen Messinger Minden Gross LLP
15.	Conflicts of Interest*	Sheldon Disenhouse Dentons Canada LLP
16.	Calculating Pro Share Is a Money Issue: Calculation, Exclusion, and Modification	Oliver Moore Norton Rose Fulbright Canada LLP
17.	What's New in Property Taxes? New Values, Changes to the Vacancy Rebate Program, Highest and Best Use, Parking Taxes, and More!	Melissa Muskat Minden Gross LLP
18.	Who Let the Dogs Out? Dealing With Pets	Ben Radcliffe and Adam Perzow Minden Gross LLP
19.	The Forfeited Corporate Property Act: New Real Estate Record-Keeping Requirements for Ontario Corporations	Kenneth Pimentel and Candace Cooper Daoust Vukovich LLP

20.	Leases Within the Context of a Purchase Agreement for a Shopping Centre	Robert Schwartz and Tamara Katz Gardiner Roberts LLP
21.	No-Builds and Restrictions on Common Areas: Impacts on the Shopping Centre	Merv Allen McMillan LLP
22.	Limitation Issues: Can I Still Sue? How Far Back Can I Go?	Enzo Salles Minden Gross LLP Barry Weintraub Rueters LLP
23.	Commercial Tenancies Act: What You May Not Know or Remember	John Wolf Blaney McMurtry LLP
24.	Co-Tenancy Issues	Andrea Rossanese Ivanhoé Cambridge
25.	Bankruptcy/Insolvency Law for Leasing Professionals (i.e. for Dummies)	Linda Galessiere McLean & Kerr LLP
26.	Dealing With US-Based Tenants: What They Want and How They Negotiate	Jory Grad Owens Wright LLP
27.	Helpful Leasing Hints	Harvey Haber and Ken Beallor Torquin Manes LLP

*Professionalism Credits

Networking Break

10:15 – 10:30 am | [Concert Hall Foyer, Convention Floor](#)

Concurrent Sessions

10:30 – 11:45 am

A *Hit Me With Your Best Shot: A Litigation Primer* [Ballroom, Convention Floor](#)

Our panel of no-nonsense litigators will give you a crash course in litigation – explaining everything from the first “shot across the bow” letter to realizing upon a judgment (if you win). We’ll cover questions such as:

1. What goes into preparing basic Court documents (pleadings)?
2. What kind of evidence do I need to support my position?
3. How long does any particular method of litigation generally take, and are there any shortcuts (on the flipside, what can slow down a matter)?
4. What can you ask the Court to do for you (general and specific remedies)?
5. What happens if you win? If you lose?

MODERATOR

Angela Mockford

Associate
Minden Gross LLP
Toronto, ON

PANELISTS

Alex Lev-Farrell

Partner
Berkow Youd Lev-Farrell Das LLP
Toronto, ON

Gasper Galati

Partner
Daoust Vukovich LLP
Toronto, ON

Howard Sniderman

Partner
Witten LLP
Edmonton, AB

B *We Built This City: A Construction Primer for Leasing Professionals*

[Tudor 7 & 8, Main Mezzanine Floor](#)

This panel will provide background on how a shopping centre and a tenant’s premises are built and the issues that typically arise during the construction process. Some of the questions that will be explored by our panelists include:

1. What are the steps that a landlord/developer (or sometimes tenant) typically needs to go through prior to putting a shovel into the ground?
2. How is a building shell typically built?
3. What needs to be completed prior to handing off the shell to the tenant for fit-out?
4. What are the steps that a tenant typically needs to go through once they receive the shell but prior to starting improvement work?
5. How is a tenant’s space typically fitted out?
6. What are some of the issues that may arise during construction, and how are they dealt with?
7. What permits/approvals are required from the municipality prior to the tenant opening for business?

MODERATOR

Karsten Lee

Partner
WeirFoulds LLP
Toronto, ON

Thursday continued

PANELISTS

Dennis Daoust

Partner
Daoust Vukovich LLP
Toronto, ON

Paul Diamond

Director Design, Construction and Store Development
Walmart Canada Corp.
Mississauga, ON

Roland Garro

Director, Retail Design and Construction
Oxford Properties Group
Toronto, ON

Lunch Served

11:45 am – 12:30 pm | Concert Hall, Convention Floor
(No lunch service after 12:30 pm)

Keynote Presentation

12:30 – 1:30 pm | Concert Hall, Convention Floor

Digital Dash: How Omni-Channel Retail Is Impacting Leasing Fundamentals

The shift from transaction-based retailing to relationship-based retailing continues. This discussion will explore the transformative impact of omni-channel sales on traditional store leases including reevaluation of percentage rent and gross sales reporting requirements, audit rights, radius restrictions, and continuous operations.

MODERATOR

Sunita Mahant

Senior Director, Legal Affairs, Operations
Ivanhoé Cambridge Inc.
Toronto, ON

SPEAKERS

Adam Gang

ASG Advisors
New York, NY

Nina Kampler

Kampler Advisory Group, LLC
New York, NY

Concurrent Education Workshops

1:45 – 3:00 pm

A *Here I Go Again: Options to Renew and Extend* Ballroom, Convention Floor

This interactive workshop will focus on options to renew/extend, such as the legal distinction between renewal and extension options, drafting tips from a landlord's and tenant's perspective, including pre-conditions to exercise, how to draft an enforceable option, meaning of "fair market rent," how to properly exercise your option, exceptions to strict enforcement rules, whether a landlord is subject to a duty of good faith, and if so, how it applies.

MODERATOR

Christina Kobi

Partner
McLean & Kerr LLP
Toronto, ON

PARTICIPANTS

Lisa Borsook

Executive Partner
WeirFoulds LLP
Toronto, ON

Sheldon Disenhouse

Partner
Dentons Canada LLP
Toronto, ON

Michael Horowitz

Partner
Minden Gross LLP
Toronto, ON

B *You Oughta Know – How to Deal With* Complex Priorities Issues **ADV** Salon B, Convention Floor

Non-disturbance and attornment agreements are commonplace, but from time to time, challenging situations arise that may shift the priorities of the involved parties. In this advanced session, panelists will discuss challenging situations and the key things to keep in mind when negotiating NDAs.

MODERATOR

Deanne MacLeod

Partner
Stewart McKelvey
Halifax, NS

PARTICIPANTS

Jeffrey Lem

Director of Titles
Province of Ontario
Toronto, ON

Jeffrey Selby

Partner
Miller Thomson LLP
Calgary, AB

C *With a Little Help From My Friends**
Tudor 7 & 8, Main Mezzanine Floor

In this workshop, we will ask for “a little help from our friends” leading the workshop to address real life practical ethical issues facing both in-house and outside counsel in representing landlords and tenants in the commercial leasing field. We will discuss topics of ethics and professional responsibility including the duty to avoid and manage conflicts of interest, and the duty to act in good faith and avoid sharp practice. We will also discuss issues surrounding client service including managing difficult clients. Further, we will discuss topics relating to practice management including running your practice to meet client expectations through succession planning, training and delegating to staff, and maintaining proper records. The workshop will include hypothetical scenarios and will encourage discussion about the participants’ practical experiences, recommended best practices, and real life questions and challenges so we can provide all attendees with “a little help from my friends” on these important areas of professionalism.

MODERATOR

Antonella Talarico

National Director, Legal & Lease Administration
Crombie REIT
Mississauga, ON

PARTICIPANTS

Rebecca Askew

Senior Director, Legal Services
The Cadillac Fairview Corporation Limited
Toronto, ON

Neil Davie

Partner
Norton Rose Fulbright
Vancouver, BC

David Thompson

Partner
WeirFoulds LLP
Toronto, ON

*Professionalism Credits

D *Please Release Me: The Importance of Fitting the Release and Indemnity Pieces Seamlessly With Insurance* **ADV**
Quebec, Main Mezzanine Floor

Insurance, releases, and indemnities may be discrete provisions in a lease but the importance of reviewing them together cannot be overstated. These provisions are complementary and must work hand-in-hand in order to ensure that there are no gaps in insurance coverage for either landlord or tenant. Join our experienced panelists in exploring the ramifications when such provisions conflict and the considerations to bear in mind as we negotiate these provisions in the lease.

MODERATOR

Genevieve Wong

Director, Retail Legal Services
Oxford Properties Group
Toronto, ON

PARTICIPANTS

Grant Ferguson

Associate
Stieber Berlach LLP
Toronto, ON

Dawn R. Michaeloff

Partner
Owens Wright LLP
Toronto, ON

William A. Rowlands

Partner
McMillan LLP
Toronto, ON

E *Money for Nothing: What You CAM and CAMnot Do: Operating Cost Inclusions, Deductions, Exclusions*
Alberta, Main Mezzanine Floor

In this workshop, we will discuss matching the drafting to reality. We’ll delve into what to look for and what to avoid.

MODERATOR

Yan A. Besner

Partner
Osler, Hoskin & Harcourt LLP
Montreal, QC

PARTICIPANTS

Ken Beallor

Partner
Torkin Manes LLP
Toronto, ON

Tracy Loconte

Counsel
Dentons Canada LLP
Toronto, ON

Jim McLellan

Vice President, Real Estate
Indigo Books & Music Inc.
Toronto, ON

Networking Break

3:00 – 3:15 pm | [Concert Hall Foyer, Convention Floor](#)

Plenary Session

3:15 – 4:30 pm | [Concert Hall, Convention Floor](#)

I Want to Break Free: Where Are You Going? Don't Think You Are Getting Off That Easily!

This plenary session will cover a broad range of topics related to transfers of leases including reminders on the basics of transfers as well as some in-depth review of the more complex and difficult issues that arise with transfers. We will discuss these issues from the landlord, tenant, and transferee perspectives.

MODERATOR

Julie Robbins

Director, Legal Services
Morguard Investments Limited
Toronto, ON

1. *Born to Run*: Transfers 101, a Primer on Assignments and Subleasing

What are the key issues that landlords and tenants should be considering when negotiating these provisions in a lease? What are “reasonable” grounds for withholding consent?

Richard Burgos

Partner
Lavery, de Billy, LLP
Montreal, QC

2. *Like a Rolling Stone*: Advanced Subletting: Tips and Traps

There is no such thing as a simple sublease! This session will discuss some of the unique issues that can arise with subleasing and understanding what “mutatis mutandis” really means and which rights should flow through to a subtenant.

Natalie Vukovich

Partner
Daoust Vukovich LLP
Toronto, ON

3. *Change*: Understanding Change of Control and Mergers and Amalgamations

This session will focus on understanding how different corporate transactions and reorganizations are treated under a commercial lease. When is consent triggered? What information and documentation should a landlord be seeking in these kinds of transactions?

Yael Bogler

Partner
Owens Wright LLP
Toronto, ON

4. *I Tried to Leave You*: Ongoing Liability of Landlords and Tenants Post-Transfer

What obligations continue for landlords, tenants, and subsequent assignees following a transfer of the lease? How can parties protect themselves from ongoing liability? Are there situations where a party may be unintentionally released?

Steven Posen

Partner
Minden Gross LLP
Toronto, ON

5. *Hey, That's No Way to Say Goodbye*: Remedies for Landlord Unreasonably Withholding Consent

What rights and remedies does a tenant have if a landlord unreasonably withholds consent? How can a landlord protect himself if he believes he has acted reasonably?

Linda Galessiere

Partner
McLean & Kerr LLP
Toronto, ON

Member-Hosted Reception

4:30 – 5:30 pm | [Ballroom Foyer, Convention Floor](#)

Friday, April 28

Registration

8:00 am – 1:00 pm | [Concert Hall Foyer, Convention Floor](#)

Breakfast

8:00 – 8:30 am | [Concert Hall Foyer, Convention Floor](#)

Roundtable Discussions

8:30 – 10:00 am | [Concert Hall, Convention Floor](#)

	Topics	Leader 1 and 2
1.	End of Term Repair, Removal and Restoration: What Is the Scope of the Tenant's Obligation?	Steven Cygelfarb Fogler, Rubinoff LLP
2.	Drafting/Negotiating Environmentally High-Risk Sites	Jacque Stevens and Matt Gardner Willms & Shier Environmental Lawyers LLP
3.	Insurance 101: Just the Basics	Ilana Cohen and Kristopher Ceelan Oxford Properties Group
4.	How to Deal With Abandoned Property	Christopher Kropka Blaney McMurtry LLP
5.	What Does Quiet Enjoyment Mean Anyway?	Robert Iaccino Fasken Martineau DuMoulin LLP
6.	Negotiating Transfer Provisions	Ken Herlin Goodmans LLP
7.	Drafting and Negotiating Subleases	Carly Caruso and Tracy Loconte Dentons Canada LLP
8.	Operating Costs: What Should and Should Not Be Included	Karine Aubé Oxford Properties Group Jo-Ann Durand Riel Avocats
9.	Relocation: Landlord and Tenant Perspectives	Faruk Gafic Aird & Berlis LLP
10.	Deconstructing the Option to Renew/Extend Clause: Pre-Conditions to Exercise, "Fair Market Rent," and Other Issues	Barbara Grossman Dentons Canada LLP

11.	Kiosks and Temporary Leases	Susan Rosen Gowling WLG (Canada) LLP
12.	Security for Leases: Letters of Credit, Indemnity Agreement, Guarantees, and Deposits	Mireille Cloutier and Jordan Hill The Cadillac Fairview Corporation Limited
13.	Franchising Law for Commercial Leasing Professionals	Kimberley Asnani and Will Ramjass Blake, Cassels & Graydon LLP
14.	Estoppel Certificates: Do They Work? What Purpose Do They Serve?	Daniel Kofman Blake, Cassels & Graydon LLP Jamie Klein McCarthy Tétrault LLP
15.	Lease Due Diligence: Owner and Tenant Perspectives	Marta Lewycky First Capital Realty Inc. Doris Baughan Loblaw Properties Limited
16.	Arbitration Clauses	Jeff Cowan WeirFoulds LLP
17.	Precedent Lease: Worth the Paper It's Written on?	Karen Tsang Oxford Properties Group Jennifer Asnani Choice Properties REIT
18.	Doctors: Your Best Tenants?!	Jeremy Behar Cirrus Consulting Group Inc.
19.	Mediation and Arbitration of Lease Disputes	Robert Cohen Cassels Brock & Blackwell LLP
20.	Reviewing Landlord's Form of Offer: Top Ten Checklist Items for Tenants	Syll Kushner Gowling WLG (Canada) LLP
21.	All About Expansions, ROFOs, and ROFRs	David Ross McMillan LLP
22.	Landlord's Checklist: Top Ten Items for Working With the Tenant's Standard Lease	Deborah Watkins Daoust Vukovich LLP Thomas Santram Cineplex Entertainment LP
23.	Review: Rules of Professional Conduct in the Context of Lease Negotiations*	Darrell Gold and Jamie Bell Robins Appleby LLP

24.	Practice Management Tips for Leasing Professionals*	Jenna Morley Daoust Vukovich LLP David Fenrich The Cadillac Fairview Corporation Limited
25.	Landlord and Tenant Remedies	Ian Cantor Minden Gross LLP
26.	Percentage Rent and Online Sales: Rethinking Gross Revenue Definitions	Konstantine Chatzidimos and Caterina White Sherman Brown Dryer Gold

*Professionalism Credits

Networking Break

10:00 – 10:15 am | [Concert Hall Foyer, Convention Floor](#)

Concurrent Sessions A B

10:15 – 11:30 am

A **The Show Must Go On: Co-Tenancies in Shopping Centre Leases** [Ballroom, Convention Floor](#)

This panel will delve into the complicated work of negotiating and drafting effective co-tenancy provisions. We will examine many topics: why do tenants want/demand co-tenancy protection? When is a co-tenancy provision acceptable to a landlord? How much leverage does a tenant need and what factors does a landlord take into account in deciding whether it will entertain a tenant’s request for co-tenancy protection? What are the landlord’s and tenant’s respective concerns/deal breakers? What are the various forms of co-tenancy clauses? How do we define a co-tenancy failure? What are the tenant’s possible remedies for a co-tenancy failure? How does a landlord “cure” a co-tenancy failure once triggered? This session includes special consideration for landlords and tenants in dealing with co-tenancy failures and will explore damages vs penalties cases such as *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*

MODERATOR

Laurie Sanderson

Partner

Gowling WLG (Canada) LLP

Toronto, ON

PANELISTS

Janet Derbawka

Partner

McMillan LLP

Vancouver, BC

Celia Hitch

Toronto, ON

Cory Sherman

Sherman Brown

Toronto, ON

B **You Shook Me All Night Long**

[Tudor 7 & 8, Main Mezzanine Floor](#)

When repairing, renovating, or redeveloping a shopping centre, landlords must be mindful of the covenant of quiet enjoyment in favour of their tenants—but what does this actually mean and what are the legal and practical implications? In this concurrent session, the panelists will dig deep into these circumstances and discuss (and of course, debate!) related questions such as when is the covenant for quiet enjoyment breached? What amounts to substantial and permanent interference? When are the concepts of fundamental breach, derogation from grant, and nuisance applicable? What are the landlord’s rights and obligations? What are the tenant’s rights and remedies? Join us as we roll up our sleeves and unpack the issues.

MODERATOR

Melissa M. McBain

Partner

Daoust Vukovich LLP

Toronto, ON

PANELISTS

Marco Gammone

Partner

Aird & Berlis LLP

Toronto, ON

Joseph Grignano

Partner

Blake Cassels & Graydon LLP

Toronto, ON

Michael Kennedy

Partner

Patterson Law

Halifax, NS

Francois Viau

Partner
Gowling WLG (Canada) LLP
Montreal, QC

Their Law: Legal Update

11:30 am – 12:45 pm | Concert Hall, Convention Floor

This perennial favourite is back yet again! Haven't read any case law this year? This session will pack 12 months of case law into just over an hour! It's the can't-miss session of the conference.

PANELISTS

Jeanne Banka

Partner
Daoust Vukovich LLP
Toronto, ON

Steven Chaimberg

Partner
Miller Thomson LLP
Montreal, QC

Randy Shapiro

Partner
Parlee McLaws LLP
Calgary, AB

Closing Remarks

12:45 – 1:00 pm | Concert Hall, Convention Floor

Mary Ormond

ICSC 2017 Canadian Shopping Centre Law
Conference Program Planning Committee Chair
Legal Counsel
Build Toronto Inc.
Toronto, ON

Genevieve Wong

ICSC 2017 Canadian Shopping Centre Law
Conference Program Planning Committee Vice-Chair
Director, Retail Legal Services
Oxford Properties Group
Toronto, ON

Conference Adjourns

1:00 pm

Networking Lunch

1:00 – 2:00 pm | Concert Hall Foyer, Convention Floor

Program information current as of April 21, 2017.

CLE Credits

- Law Society of Upper Canada has accredited this program for 3.15 Professionalism Hours. Attendance at other sessions and roundtables may be claimed toward the Substantive CPD requirement.
- Law Society of British Columbia has accredited this program for 14.30 hours.
- Barreau du Québec has accredited this program for a total of 14:30 hours. Attendees who wish to obtain CLE credits from the Barreau du Quebec are required to sign in at the ICSC Registration Desk.

Program Planning Committee

Mary Ormond, ICSC 2017 Canadian Shopping Centre Law Conference Program Planning Committee Chair, Build Toronto Inc.

Genevieve Wong, ICSC 2017 Canadian Shopping Centre Law Conference Program Planning Committee Vice-Chair, Oxford Properties Group

Yan A. Besner, Osler, Hoskin & Harcourt LLP

Christina Kobi, McLean & Kerr LLP

Karsten Lee, WeirFoulds LLP

Deanne MacLeod, Stewart McKelvey

Sunita Mahant, Ivanhoé Cambridge Inc.

Melissa McBain, Daoust Vukovich LLP

Angela Mockford, Minden Gross LLP

Julie Robbins, Morguard Investments Limited

Laurie Sanderson, Gowling WLG (Canada) LLP

Randy Shapiro, Parlee McLaws LLP

Antonella Talarico, Crombie REIT



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Management Institute

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Level I: Creating Value Through Marketing

Level II: Developing Strategic Marketing Plans and
Measuring Results

To register visit www.icsc.org/2017SAZ

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The Fairmont Royal York | Toronto, ON

www.icsc.org/2017CLC