

# *ICSC 2014*

## *Canadian Shopping Centre Law Conference*

March 27 – 28, 2014  
The Fairmont Royal York Hotel  
Toronto, Ontario

### PROGRAM

#### **Earn CLE Credits!**

The ICSC 2014 Canadian Shopping Centre Law Conference will seek continuing education credit pre-approval from bureaus in Ontario, Quebec & BC. For more information and updates on our progress, visit [www.icsc.org/2014CLC](http://www.icsc.org/2014CLC).



# Conference Schedule



## Thursday, March 27

### REGISTRATION

7:30 am – 5:30 pm

### CONTINENTAL BREAKFAST

8:00 – 8:45 am

### OPENING REMARKS

8:45 – 8:50 am



#### **Susan D. Rosen**

ICSC 2014 Canadian Shopping Centre  
Law Conference Program Planning  
Committee Co-Chair  
Partner  
Gowling Lafleur Henderson LLP  
Toronto, ON



#### **Joseph Grignano**

ICSC 2014 Canadian Shopping Centre  
Law Conference Program Planning  
Committee Co-Chair  
Partner  
Blake, Cassels & Graydon LLP  
Toronto, ON

### ROUNDTABLE DISCUSSIONS

9:00 – 10:30 am

### CONCURRENT SESSIONS

10:45 am – 12:00 noon

#### **A. VIVA LES DIFFERENCES!**

Mixed-Use Projects - Leasing and Living in Harmony?  
Mixed-use projects combining retail, recreational, office, commercial, residential, health and medical uses, are increasingly popular, and they often include freehold, leasehold and condominium types of ownership. This session will draw on the expertise of panelists from Quebec, Ontario and British Columbia to discuss the methods by which the interests and concerns of the various groups of occupants and owners are harmonized. The allocation of control, costs and responsibilities associated with leasing, and management with a focus on shared facilities such as parking, loading areas, accesses and services will be discussed.

#### *Moderator*

#### **Dennis Daoust**

Partner  
Daoust Vukovich LLP  
Toronto, ON

#### *Panelists*

#### **Scot Diamond**

Partner  
Miller Thomson  
Montreal, QC

#### **Chris Jackson**

General Counsel  
Onni Group  
Vancouver, BC

#### **Alison Tortorice**

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

#### **B. LIKE IT OR NOT, WE'RE HERE TO STAY!**

Understanding and Negotiating the Intricacies of  
Renewal and Extension Clauses

This session will focus on the importance of clear definitions of terms and phrases such as “fair market value” and what is “reasonably comparable.” Does the lease contain an arbitration clause? how does it work and when can it be exercised? how are experts used in determining new rents and what are the differences between arbitration in common law vs civil law? Our panel of experts will discuss the virtues of a well drafted clause versus a clause that is unclear and uncertain and answer that age-old question: “what is the difference between an option to renew and an option to extend?”

#### *Moderator*

#### **Marie Saint-Amour**

MSA  
Montreal, QC

#### *Panelists*

#### **Lisa Borsook**

Partner  
WeirFoulds LLP  
Toronto, ON

# Conference Schedule



## Mireille Cloutier

Director, Legal Services, Eastern Canada Portfolio  
The Cadillac Fairview Corporation Limited  
Toronto, ON

## Antonella Talarico

Associate  
Sherman Brown LLP  
Toronto, ON

## LUNCH SERVED

12:00 noon – 1:00 pm

## KEYNOTE PRESENTATION

1:00 – 1:45 pm

### Retailers' Podium

#### Moderator



#### Joseph Grignano

ICSC 2014 Canadian Shopping Centre Law  
Conference Program Planning Committee  
Co-Chair  
Blake, Cassels & Graydon LLP  
Toronto, ON

#### Highlighted Retailers:

- Alan Bekerman: President, IQ Foods Co.
- David McLellan: Regional Real Estate Manager, Panda Restaurant Group
- Darven Erickson: COO (Canadian Franchisee) Five Guys Burgers and Fries
- Cammie Trainer: Real Estate Manager, Chipotle

## CONCURRENT EDUCATIONAL WORKSHOPS

1:45 – 3:00 pm

### A. MINDBOGGLING MATH

Understanding How Financial and Mathematical Calculations in Leases Really Work  
If the thought of having to calculate a CAM cap causes you to break out into a cold sweat, this workshop is for you! This will be unlike any other math class you've ever taken. This workshop will be a practical, understandable, hands-on review of the many mathematical concepts found in leases, including CAM and realty tax caps and escalations, percentage rent breakpoints, CPI and more. And if that isn't enough to entice you, we'll have prizes!

#### Moderator

#### Mary Ormond

Vice President, Real Estate, Portfolio Management  
Cara Operations Ltd.  
Toronto, ON

#### Panelist

#### Natalie Vukovich

Partner  
Daoust Vukovich LLP  
Toronto, ON

### B. COMMERCIAL CONDOMINIUM LEASES

Special Issues and the "Keys" to Getting Them Right!  
This panel will consider questions such as: How are condominium leases different than non-condominium leases? How does the condominium declaration, by-laws and other documentation affect the use and enjoyment of a condominium unit and the common elements? What special considerations should one give to issues such as parking, garbage removal, loading and unloading, signage, use of patios and terraces, odours and noise, just to name a few. How are common element expenses incorporated into operating costs? What protections are necessary from a Landlord's and Tenant's perspective?

#### Moderator

#### Michael S. Horowitz

Partner  
Minden Gross LLP  
Toronto, ON

#### Panelists

#### Phil Drapper

Partner  
Harris Sheaffer LLP  
Toronto, ON

#### Anthony Romanelli

Partner  
Bratty and Partners LLP  
Toronto, ON

# Conference Schedule



## **C. CHANGING THE DYNAMIC (THE SEQUEL)**

More 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 G. Sherman**

Partner  
Sherman Brown  
Toronto, ON

*Panelists*

### **Janet Derbawka**

Partner  
McMillan LLP  
Toronto, ON

### **Norman Lieff**

Partner  
Norton Rose LLP  
Toronto, ON

### **Mario Paura**

Partner  
Stikeman Elliot LLP  
Toronto, ON

## **D. THE NOT SO IRON CHEFS**

The Legal Challenge

Unique considerations in dealing with restaurant defaults including franchisee/leasehold mortgages and loans, PPSA security and priority issues, effect of BIA on lease relationships and interests in leasehold improvements and other assets of a tenant, relationship between the franchisor/franchisee/landlord/lenders, non-disturbance agreements and landlord consents and acknowledgements.

*Moderator*

### **Kenneth A. Beallor**

Partner  
Torkin Manes LLP  
Toronto, ON

*Speaker*

### **Monte Warsh**

Partner  
Heenan Blaikie LLP  
Toronto, ON

## **E. DEAL OR NO DEAL**

Understanding What Happens Before it “Goes Legal”

Understanding the business deal between the tenant and the landlord. What are the real motivations behind a lease? Our experienced panel will discuss the business considerations for entering into a deal from the tenant, broker and landlord perspectives. Is it a “fully baked deal”?

*Moderator*

### **Genevieve Wong**

Director, REM Legal  
Oxford Properties Group  
Toronto, ON

*Speakers*

### **Christina Kobi**

Partner  
Minden Gross LLP  
Toronto, ON

### **Dianne Lemm**

Principal/Partner Mall Services  
Northwest Atlantic  
Toronto, ON

### **Gregory Orysiuk**

Vice President, Leasing  
20 VIC Management Inc.  
Toronto, ON

## **REFRESHMENT BREAK**

3:00 – 3:15 pm



# Conference Schedule



## PLENARY SESSIONS

3:15 – 4:30 pm

### Getting to the Commencement Date

A Review of the Various Types of Issues that Can Arise During the Journey to the Commencement Date

*Moderator*

**Julie Robbins**

Partner

Fraser Milner Casgrain LLP

Toronto, ON

### 1. KEY DATES AND CONDITIONS IN NEW DEVELOPMENTS

Review of the key preconditions for a lease in a new development (i.e. acquisition of property, zoning, site plan agreement, ingress and egress, pylon sign approvals, co-tenancies, timing of construction, building permits or other licenses and approvals necessary to operate, environmental review); What is the lawyer's role in raising these issues and/or chronicling these concerns? Do in-house lawyers have any specific concerns with conditions and timing issues?

*Speaker*

**Marta Lewycky**

Vice President, Legal Affairs

First Capital Realty

Toronto, ON

### 2. COVENANT DUE DILIGENCE

Who is your Landlord or Tenant? What type of searches should be done on the land? Should corporate searches or credit checks be done? Should any off-title searches be done? Concerns with a manager or agent signing a lease on behalf of a party?

*Speaker*

**Stephen Posen**

Partner

Minden Gross LLP

### 3. TITLE INSURANCE FOR LEASEHOLD INTERESTS

Review of the types of risks title insurance covers in the leasing context; Review of the most common types of transactions that get title insured; Review of the key coverages contained in leasehold title insurance policies.

*Speaker*

**Robert Clarke**

Director, National Lawyer Channel

First Canadian Title

Toronto, ON

### 4. DRAFTING AND NEGOTIATING TENANT ALLOWANCES AND INDUCEMENTS

Discussion of the various condition precedents that need to be satisfied prior to advancing payment; Review of different payment schedules; Brief review of construction liens; Should the allowance/inducement be secured; What are the Tenant's remedies if a landlord fails to pay? Are there situations when the tenant allowance/inducement should be repaid (or an unamortized portion of it)?

*Speaker*

**Dennis Tobin**

Partner

Blaney McMurtry LLP

Toronto, ON

### 5. "I'M LATE! I'M LATE! FOR A VERY IMPORTANT DATE!" DELAY AND OTHER DOWN-THE-RABBIT-HOLE ADVENTURES OF ALICE SURROUNDING DELAYED SUBSTANTIAL COMPLETION/OPENING OF THE LEASED PREMISES

Tenant remedies following late delivery and incomplete work by the landlord, including penalties and liquidated damage clauses. Dealing with delay caused by tenant such as changes to plans, zoning, approvals, licences and permits —what remedies should a landlord have? What is force majeure and when should it apply? When does frustration of contract apply? Should there be a blackout period for construction or delivery of the leased premises?

*Speaker*

**Laurie Sanderson**

Partner

Gowling Lafleur Henderson LLP

Ottawa, ON

# Conference Schedule



## 6. DEALING WITH THE BANK

Review of non-disturbance agreements, landlord waiver letters, estoppel/status certificates and other documentation or acknowledgements required from lenders for both the landlord and tenant (including when a tenant obtains a leasehold mortgage). Considering the risks and potential consequences to lenders, landlords and tenants if such agreements and documentation are omitted or if they are drafted without due attention to the interests and business objectives of the parties.

*Speaker*

**Stuart LeMesurier**

Partner

McLean and Kerr LLP

Toronto, ON

## 7. GETTING FROM THE OFFER TO THE LEASE

Review of the Repudiation Cases; Consider what types of facts have resulted in successful repudiation claims. Which clauses should be dealt with in an offer (administration fees, relocation clauses, demolition clauses etc.). Is there a deal? What happens when one party thinks there is a deal but the other one does not agree?

*Speaker*

**Angela Mockford**

Lawyer

Weir Foulds LLP

Toronto, ON

## MEMBER-HOSTED RECEPTION

4:30 – 5:30 pm

## OPTIONAL DINNER EVENT!

7:00 – 10:00 pm

(Separate Registration Required)

Come join the committee and your colleagues for a wonderful dinner event. 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!

**Aria Restaurant**

25 York Street, Toronto, ON

(\$100.00 per person, tax & gratuity included)

## Friday, March 28

### 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 – 11:30 am

#### A. ETHICS PROFESSIONALISM

The Good, the Bad and the Downright Unethical

Ethics is a very interesting and complex area. Come hear from our panel about things to be afraid of, like whistle blowing (you could get fired and/or sued), harassment (you could get fired and/or sued), summary advice to friends and co-workers (you could create a conflict and get fired and/or sued) and things to remember, like being civil (what goes around comes around), acting within your area of expertise (referrals are not a bad thing) and making sure that you are on time (whether in-house or out, you must meet deadlines and limitation periods). A combination of in-house and external counsel will give practical advice using real-world examples about how to deal with the often tricky world of ethics in the legal context.

*Moderator*

**David R. Thompson**

Partner

WeirFoulds LLP

Toronto, ON

*Panelists*

**Yan Besner**

Partner

Dentons LLP

Toronto, ON

**Oliver Hobday**

Vice President, Legal

RioCan REIT

Toronto, ON

# Conference Schedule



## Jeff Lem

Partner  
Miller Thomson LLP  
Toronto, ON

## Sunita Mahant

Senior Legal Counsel  
Ivanhoé Cambridge  
Toronto, ON

## B. LIFE CYCLE OF A LEASE

This session will focus on the three stages of a standard lease agreement as follows:

- 1. Conception:** different methods of conception (Offers and LOIs)
- 2. Separation Issues:** assignments and changes in control, bumps and curves in the well travelled road, and standard clauses and underlying issues
- 3. Sunset Issues:** terminating and delivery without regret

### Moderator

## Michael Kennedy

Partner  
Wickwire Holm  
Halifax, NS

### Panelists

## Beth Earon

Associate  
Blake, Cassels & Graydon LLP  
Toronto, ON

## Cynthia Elderkin

Partner  
Gowling Lafleur Henderson LLP  
Ottawa, ON

## Robert Schwartz

Partner  
Gardiner Roberts LLP  
Toronto, ON

## PLENARY SESSION

11:45 am – 1:00 pm

### Legal Update

#### Speakers

## Jeanne Banka

Partner  
Daoust Vukovich LLP  
Toronto, ON

## Steven Chaimberg

Partner  
Lapointe Rosenstein Marchand Melançon LLP  
Montreal, QC

## Richard B. Mask

Partner  
Parlee McLaws LLP  
Calgary, AB

## CLOSING REMARKS

1:00 – 1:15 pm



## Susan D. Rosen

ICSC 2014 Canadian Shopping Centre  
Law Conference Program Planning  
Committee Co-Chair  
Partner  
Gowling Lafleur Henderson LLP  
Toronto, ON



## Joseph Grignano

ICSC 2014 Canadian Shopping Centre  
Law Conference Program Planning  
Committee Co-Chair  
Partner  
Blake, Cassels & Graydon LLP  
Toronto, ON

## BUFFET LUNCH SERVED

1:15 – 2:00 pm

## CONFERENCE ADJOURNS

2:00 pm

*Program information current as of December 17, 2013.*



# *ICSC 2014 Canadian Shopping Centre Law Conference Program Planning Committee*

## **CO-CHAIRS**

### **Susan D. Rosen**

ICSC 2014 Canadian Shopping Centre Law Conference  
Program Planning Committee Co-Chair  
Gowling Lafleur Henderson LLP  
Toronto, ON

### **Joseph Grignano**

ICSC 2014 Canadian Shopping Centre Law Conference  
Program Planning Committee Co-Chair  
Blake, Cassels & Graydon LLP  
Toronto, ON

## **COMMITTEE**

### **Dennis Daoust**

Daoust Vukovich LLP

### **James D. M. Fraser**

McLean & Kerr LLP

### **Michael S. Horowitz**

Minden Gross LLP

### **Michael Kennedy**

Wickwire Holm

### **Richard B. Mask**

Parlee McLaws LLP

### **Mary Ormond**

Cara Operations Ltd.

### **Julie Robbins**

Fraser Milner Casgrain LLP

### **Marie Saint-Amour**

MSA

### **Cory G. Sherman**

Sherman Brown

### **David R. Thompson**

WeirFoulds LLP

### **Genevieve Wong**

Oxford Properties Group



# Registration Form

## HOW TO REGISTER

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

**Online:** www.icsc.org/2014CLC  
(credit card registrations only)

### Mail: ICSC

Attn.: Registration Department  
1221 Avenue of the Americas, 41st Floor  
New York, NY 10020-1099

## REGISTRATION FEES

	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)

\* To qualify for the ICSC Member rates, each registrant must be an ICSC Member. A company membership does not entitle every employee of that company to membership. An affiliate membership is required.

\*\* To qualify for the ICSC Student Member rates, each registrant must be a Student ICSC Member. A company membership does not entitle every employee of that company to membership. An individual student membership is required.

## DEADLINES

To qualify for the advance registration rates, your registration must be received by **March 21, 2014**.

## CANCELLATIONS

All cancellations will be subject to a \$25 cancellation fee. No refunds will be given for cancellations received after **March 21, 2014**. 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 ET, 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: \$205** Single/Double Occupancy, Fairmont Rooms  
**Cut-off Date: 11:59 pm ET, February 27, 2014**

To make your hotel reservation, we invite you to visit www.icsc.org/2014CLC and click on Book Hotel under Additional Links. 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 through Friday, 8:00 am to 5:30 pm ET, at +1 888 ICSC TVL (427 2885) ext. 2, or internationally at +1 585 442 8900 ext. 4.

## CONTINUING EDUCATION CREDITS



CSM/CMD: 1 credit; CLS: 1 credit;  
LSUC: TBA; LSBC: TBA; Barreau Du Quebec: TBA

**NOTE:** This program is seeking pre-approval 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 Ulli Reiterer at +1 416 486 4511 ext. 2127, or ureiterer@icsc.org no later than **March 21, 2014**.

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.

## OPTIONAL DINNER EVENT

Sign up here for the optional dinner event.  
\$100.00 per person, tax & gratuity included.

\_\_\_\_\_ x \$100.00 per person = \$ \_\_\_\_\_

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

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 (\$100.00 per person) \$ \_\_\_\_\_

\_\_\_\_\_  
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, March 27, 2014**
- Recognition in the At-Door Program
- Logo Recognition on the attendee gift
- Logo Recognition on the ICSC conference Website: [www.icsc.org/2014CLC](http://www.icsc.org/2014CLC)
- Recognition in the final program mailed out to ICSC membership in Canada (provided that the sponsorship and a high-resolution logo is received no later than **December 9, 2013**)
- 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 must be received by **December 9, 2013** to be recognized in the final program.
- Sponsorship must be received by **February 27, 2014** to be recognized on the attendee gift.
- Sponsorship must be received by **March 14, 2014** to be recognized at the conference.

## ICSC SPONSOR CONTACT

Ulli Reiterer  
Tel: +1 416 486 4511 ext. 2127  
E-mail: [ureiterer@icsc.org](mailto:ureiterer@icsc.org)

## Sponsorship Contact/Return Completed Form to ICSC

1221 Avenue of the Americas, 41st Floor  
New York, NY 10020-1099

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

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

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 \$ \_\_\_\_\_

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

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

Signature \_\_\_\_\_ Expiration Date (Month/Year) \_\_\_\_\_

Please photocopy forms as needed.

# It just got better.

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## **ICSC is App-solutely connected.**

- Member to Member lookup
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- Sponsorship and advertising opportunities
- View updated industry job openings



[www.icsc.org/mobile](http://www.icsc.org/mobile)





International Council  
of Shopping Centers, Inc.  
120 Eglinton Avenue East, Suite 500  
Toronto, Ontario M4P 1E2



Scan here for  
more information.

A horizontal green banner spans the width of the page, featuring decorative leaf motifs at both ends. The text is centered within this banner.

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