



Program

Canadian Law Conference

Metro Toronto Convention Centre – South Building

Toronto, ON | April 20 – 21, 2020

#ICSCLaw



www.icsc.com/2020CLC

MONDAY, APRIL 20

Registration

7:30 am – 6:00 pm

▶ [Room 700 Pre-function](#)

Breakfast & Networking

8:00 – 8:30 am

▶ [Room 718 Pre-function](#)

Welcome and Introduction to the Program

8:30 – 8:45 am

▶ [Room 718](#)

Yan A. Besner

Canadian Law Conference Program Advisory Committee Chair
Partner
Osler, Hoskin & Harcourt LLP
Montreal, QC

Angela Mockford

Canadian Law Conference Program Advisory Committee Vice Chair
Lawyer
Mockford Law
St. Catharines, ON

Roundtables (Round 1)

8:45 – 9:45 am

▶ [Room 718](#)

Networking Break

9:45 – 10:15 am

▶ [Room 718 Pre-function](#)

Concurrent Sessions

10:15 – 11:30 am

A **Future Proofing a Landlord's Lease, Including Definition of "Shopping Centre" Now and In Future.**

▶ [Room 716 A](#)

MODERATOR

Sunita Mahant

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

PANELISTS

David R. Beneteau

General Counsel
Movati Athletic (Group) Inc.
Toronto, ON

Savvas Kotsopoulos

Partner
Miller Thomson LLP
Toronto, ON

Doris Maida

Vice President Legal, Leasing and Operations
Quadreal Property Group
Toronto, ON

B **Mixed-Use Development, Or as the Gastronomically Inclined Would Say, Real Estate 'Fusion,' Is It Delicious or Does It Just Cause Indigestion?**

▶ [Room 716 B](#)

Mixed-use and mixed-ownership developments are increasingly becoming the norm in today's challenging retail environment. Whether it's called diversification, densification or simply 'creative development,' it invariably comes with a host of complicated legal issues. Please join our panel of experts as they take you on a deep dive into the nuances of mixed-use developments from a landlord and tenant perspective. They will advise on questions to ask, risks to flag, rights to secure and obligations to impose, so as to ensure that your client gets the 'meal' that they bargained for, and not a mad dash to the pharmacy.

MODERATOR

David Fenrich

Senior Director, Legal Services
The Cadillac Fairview Corporation Limited
Vancouver, BC

PANELISTS

Robert Crépin

Senior Director, Legal Services
The Cadillac Fairview Corporation Limited
Montreal, QC

Janet Derbawka

Partner
McMillan LLP
Vancouver, BC

Jamie Paquin

Partner
Daoust Vukovich LLP
Toronto, ON

C Mindfulness at Work: A Session for Legal Professionals

► Room 714 A

Professionals often overlook the impact of mounting workloads, multiple demands and highly stressful environments on their ability to perform. Mindfulness can turn these workplace challenges into opportunities by helping us to work with our innate qualities, be less reactive and appreciate different perspectives for healthier workplace interactions. The session will be facilitated by Professor Thomas Telfer, Western University Faculty of Law. Professor Telfer has experience with bringing mindfulness into the classroom and the workplace. Dr. Telfer will use the Mindful@Work materials developed by leading mindful educator Mindfulness Without Borders, which was developed to mitigate the challenges and stresses of the modern workplace. The curriculum draws from the scientific expertise and collaborated works of a variety of internationally respected leaders. Professor Telfer will introduce participants to mindfulness, the positive benefits of being mindful and why mindfulness is relevant for the legal profession. The session will focus on mindfulness practices and strategies and how these practices can work with emotional intelligence topics.

The Law Society of Ontario has recommended incorporating daily mindfulness practices in its Personal Management Guideline

- An introduction to mindfulness
- The benefits of a mindfulness practice
- Why mindfulness is relevant to the legal profession
- How mindfulness may improve mental health

MODERATOR

Yan A. Besner

Partner

Osler, Hoskin & Harcourt LLP

Montreal, QC

PANELIST

Dr. Thomas Telfer

Professor of Law

Western University

London, ON

Lunch Served

11:30 am – 12:15 pm

► Room 718

Keynote Presentation

12:15 – 12:45 pm

Blurred Lines – A Customer-Centric Approach to Retail Success

► Room 718

Join us for our keynote discussion with industry leaders in hospitality and entertainment.



Peter Chase

CEO

BPC

New York, NY



Vince Guzzo

CEO

Cinémas Guzzo

MrSunshine on CBC's *Dragons' Den*

Montreal, QC

Workshops

1:00 – 2:15 pm

A Getting Down to Business: The Low-Down on Doing Deals on First Nation Lands

► Room 716 A

This workshop will explore this topic in the context of the Taza mixed-use development. The Tsuut'ina Nation and Canderel have partnered to develop Taza — one of the largest First Nation developments in North America. When completed, Taza will consist of 1,200 acres of development on the Tsuut'ina Nation (bordering Calgary) with 17 million square feet of real estate and includes Costco as an anchor tenant. Each of our panelists has played a key role in this development and will share with us the processes and challenges specific to leasing on First Nation lands from the perspectives of the Tsuut'ina Nation and its partner, Canderel, the lender, and the anchor tenant. The name "Taza" was chosen because it is related to "amaze" in the Tsuut'ina language. Attend this workshop to not only learn about doing business on First Nation lands but also be amazed at the sheer breadth of this development.

MODERATOR

Laurie Sanderson

Partner

Gowling WLG (Canada), LLP

Ottawa, ON

PANELISTS

Abraham Costin

Counsel
McCarthy Tetrault LLP
Toronto, ON

John Doolan

Partner
Leader, Aboriginal
Miller Thomson LLP
Vancouver, BC

B How Does Ontario's Construction Act Affect Me? Navigating Allowances and Liens in the New World

► **Room 716 B**

Exploring the issues of lien liability under the recent Construction Act (Ontario), how leases should be drafted and how landlords/tenants should govern and protect themselves in light of the recent legislative amendments.

MODERATOR

Amelia Nasrallah

Vice President, Legal
Brookfield Property Partners
Toronto, ON

PANELISTS

David Brand

General Counsel
MegaPro X/Stanford Homes
Toronto, ON

Rick Del Vecchio

Partner
Miller Thomson LLP
Toronto, ON

Marta O. Lewycky

Partner
Minden Gross LLP
Toronto, ON

C The Future of Dining: Ghost Kitchens and Delivery Apps

► **Room 714 A**

This session will explore the changing trends of how we dine and enjoy restaurant food. Our expert panel will introduce to you the emerging concept of a ghost kitchen or a virtual kitchen (but don't fret – the real estate is real!), and explore the state of the market with respect to third-party delivery apps. The session will also

delve into the issues surrounding leasing to ghost kitchens as well as how retail landlords are dealing with third-party delivery apps.

MODERATOR

Karsten Lee

Partner
WeirFoulds LLP
Toronto, ON

PANELISTS

Adam Armeland

Co-Founder & CEO
Kitchen Hub Inc.
Toronto, ON

Ryan Freeman

Head of Enterprise Partnerships
DoorDash
Toronto, ON

Clark Harrop

Partner
Dale & Lessmann LLP
Toronto, ON

D A Cure for Ailing Shopping Centres? Medical Uses in The Retail Setting

► **Room 714 B**

Join our experienced workshop leaders in an interactive examination. We'll be scoping the advantages and disadvantages of locating medical and quasi-medical tenants in retail centres. Our experts will provide a cross-country perspective on: (a) the potential healing of properties that are suffering, by incorporating medical and quasi-medical uses into the tenant mix; (b) the pain points in negotiations around use clauses, exclusive clauses, operating costs, and the scope of Landlord's Work and Tenant's Work; and (c) the prognosis for growth in such uses over the next few years. No sedation necessary.

MODERATOR

Angela Mockford

Lawyer
Mockford Law
St. Catharines, ON

PANELISTS

Jeremy Behar

Founder, Co-CEO
Canadian Dental Services
Toronto, ON

Bianca Kratt
Partner
Parlee McLaws LLP
Toronto, ON

Adam Perzow
Partner
Borden Ladner Gervais LLP
Toronto, ON

Plenary Session

2:15 – 3:30 pm

► Room 718

Anchors Away – A Deep Dive into the Co-Tenancy Waters

In this Plenary Session we will explore the complexities of the co-tenancy provision and focus on issues faced by both landlord and tenant when negotiating co-tenancy provisions in a multi-tenant shopping centre lease. We have assembled a panel of experts to provide tips for drafting co-tenancy clauses and avoiding potential pitfalls. Get those pencils ready – you're going to want to take notes.

MODERATOR

Christina Kobi
Partner
Minden Gross LLP
Toronto, ON

1 Co-Tenancy 101

Given the current retail landscape, co-tenancies have become one of the most hotly contested issues in lease negotiations. You'll learn about the different types of co-tenancies (such as opening co-tenancy vs. operating co-tenancy) as well as the interplay between the co-tenancy being granted to a specific tenant and the opening/operating covenants of other tenants at the property. With many shopping centres undergoing redevelopment, much consideration needs to be given to the timing of various tenant possession/openings and the potential domino effect should anything go awry.

Mordecai Bobrowsky
Vice President, Legal
Primaris Management Inc., a Division of H&R REIT
Toronto, ON

2 The (almost) Perfect Co-Tenancy Clause

Drafting a "bullet-proof" co-tenancy provision is a very difficult task, especially in the context of recent jurisprudence. Clear and concise drafting by landlords and tenants should result in mutually acceptable and enforceable lease clauses. This session will concentrate on the key areas of a typical co-tenancy clause and the various options that are generally considered by sophisticated counsel during negotiations. Critical areas of the clause such as triggers, waiting periods and replacement stores will be reviewed. We will also delve into creative drafting options that may be used to counteract recent attempts by landlords to neutralize previously agreed upon co-tenancy provisions.

Cory Sherman

Founding Partner
Sherman Brown, Barristers & Solicitors
Toronto, ON

3 Remedies for Co-Tenancy Failure

After fighting hard for co-tenancy rights as part of the lease negotiation, when a co-tenancy requirement is not met – what are the rights and remedies available to a tenant? For opening co-tenancy failures, tenants may want the right to delay construction and/or store opening. Tenants may also want to delay or abate rent and eventually invoke a right of termination for both opening and operating co-tenancy failures. Landlords will want time to cure co-tenancy failures and may look for rent to resume if their tenants do not elect to terminate. Landlords should be careful to ensure that the list of acceptable replacement tenants is broad enough to cure any co-tenancy failure.

Neil Davie

Partner
Norton Rose Fulbright Canada LLP
Vancouver, BC

4 The Implementation of Co-Tenancy Rights

Despite having negotiated a co-tenancy right in your lease, it may be that you cannot exercise it. Apart from limitations surrounding bankruptcy and insolvency proceedings, there may be other obstacles that the tenant didn't anticipate – such as limitations imposed as a result of equitable principles relating to fairness and reasonableness, and penalty proscriptions.

A general discussion in respect of those principles, and other circumstances in which courts have restricted a tenant's co-tenancy rights, despite the plain wording of the lease, will be discussed.

Lisa Borsook
Executive Partner
WeirFoulds LLP
Toronto, ON

5 The Impact of Bankruptcy and Insolvency Proceedings on Co-Tenancy Rights

Retail tenants typically negotiate co-tenancy clauses to protect them in the event of the loss of anchor tenants or high vacancy rates in the shopping centre. However, tenants can be prevented from exercising these rights on the insolvency of an anchor tenant (for example, Target, Sears). We will be looking at the jurisdiction/rationale for a court-ordered stay of third-party rights under the Companies Creditors' Arrangement Act, the considerations in lifting the stay and the impact of the stay on landlord and tenant rights, including whether co-tenancy rights can be invoked retroactively after the stay is lifted. Separately, we will be discussing re: Aeropostale, where the court held that co-tenancy rights which were personal to the tenant could be assigned by a trustee in bankruptcy.

Catherine Francis
Partner
Minden Gross LLP
Toronto, ON

Networking Break

3:30 – 3:45 pm
▶ [Room 718 Pre-function](#)

Roundtables (Round 2)

3:45 – 4:45 pm
▶ [Room 718](#)

Networking Reception

4:45 – 6:00 pm
▶ [Room 718 Pre-function](#)

TUESDAY, APRIL 21

Registration

7:30 am – 2:00 pm
▶ [Room 700 Pre-function](#)

Breakfast & Networking

8:00 – 8:45 am
▶ [Room 718 Pre-function](#)

Roundtables (Round 3)

8:45 – 10:15 am
▶ [Room 718](#)

Networking Break

10:15 – 10:45 am
▶ [Room 718 Pre-function](#)

Concurrent Sessions

10:45 am – 12:00 pm

A Beyond Regulation: Innovation and the Evolution of Accessible and Inclusive Spaces

▶ [Room 716](#)

With 1 in 5 Canadians identifying as having one or more disabilities of some kind, and the recent proclamation of the Accessible Canada Act in July 2019 (complementing provincial accessibility legislation already in existence in each of Ontario, Manitoba and Nova Scotia), landlords and retailers are learning that accessible design is not just a matter of regulatory compliance. They are designing spaces to be accessible and operating those spaces in a manner that makes them accessible to all persons. Join us and learn from some of Canada's most innovative landlords and retailers about the current initiatives they are undertaking to make their spaces more accessible and more inclusive for persons with disabilities and the business imperatives and regulatory standards that inform and underlie these initiatives.

MODERATOR
Ian Sutherland
Partner
Stewart McKelvey
Halifax, NS

PANELISTS
Elizabeth Manley
Senior Manager, Trademarks & Marketing
Law Trademark Agent
Cineplex Inc.
Toronto, ON

B **Immovable Object Meets Irresistible Force**

► [Room 714](#)

In today's evolving retail environment, how do we balance the needs of landlords and tenants so that each maximizes the return on its investment in a shopping centre? A discussion of the interplay between principal/ancillary uses and the tenant's desire for exclusivity and flexibility versus the landlord's ability to create the desired merchandise mix to enhance the customer experience while operating its shopping centre as efficiently and profitably as possible.

MODERATOR
Thomas Santram
Vice President, Deputy General Counsel
Cineplex Inc.
Toronto, ON

PANELISTS
Julie Robbins
Vice President, Legal Operations
Oxford Properties Group
Toronto, ON

Deborah Watkins
Partner
Daoust Vukovich LLP
Toronto, ON

Legal Update
12:00 – 1:00 pm

► [Room 718](#)

Steven Chaimberg
Partner
Miller Thomson LLP
Montreal, QC

Melissa McBain
Partner
Daoust Vukovich LLP
Toronto, ON

Randy Shapiro
Partner
Parlee McLaws LLP
Calgary, AB

Closing Remarks

1:00 – 1:15 pm

► [Room 718](#)

Yan A. Besner
Canadian Law Conference Program Advisory
Committee Chair
Partner
Osler, Hoskin & Harcourt LLP
Montreal, QC

Angela Mockford
Canadian Law Conference Program Advisory
Committee Vice Chair
Lawyer
Mockford Law
St. Catharines, ON

Networking Lunch

1:15 – 2:00 pm

► [Room 718](#)

Event Adjourns

2:00 pm

Sessions and speakers are subject to change.

CLE Credits
The Canadian Law Conference will seek continuing education credit pre-approval for the Provinces of Ontario, Québec and British Columbia. For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Plan as required by the Law Society of Alberta. For Nova Scotia lawyers, consider including this course in your annual CPD Plan as required by the Nova Scotia Barristers' Society.

For more information and updates on our progress visit www.icsc.com/2020CLC.

PROGRAM ADVISORY COMMITTEE

Yan A. Besner, Canadian Law Conference Program Advisory Committee Chair, Osler, Hoskin & Harcourt LLP

Angela Mockford, Canadian Law Conference Program Advisory Committee Vice Chair, Mockford Law

David Fenrich, The Cadillac Fairview Corporation Limited

Christina Kobi, Minden Gross LLP

Karsten Lee, WeirFoulds LLP

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Amelia Nasrallah, Brookfield Property Partners

Laurie Sanderson, Gowling WLG (Canada) LLP

Thomas Santram, Cineplex Entertainment

Randy Shapiro, Parlee McLaws LLP

Ian Sutherland, Stewart McKelvey