

**2018 ICSC CANADIAN LAW CONFERENCE -  
BREAKFAST ROUNDTABLE MONDAY, APRIL 30, 2018 AT 8:45 A.M.**

**DRAFTING AND NEGOTIATING SUBLEASES:** *Michael H. Lieberman – Norton Rose Fulbright Canada LLP,*  
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**1. What are some issues that Sublandlords and Subtenants should consider upon entering into subleases?**

- **Requirement for landlord consent under the head lease:**
  - Landlord consent is often a pre-requisite to tenants subleasing the leased premises and the details surrounding this requirement, if applicable, are often set out in the head lease.
- **Commercial Tenancies Act, R.S.O. 1990, c. L.7:**
  - Subtenants are included in the definition of “tenant”.
  - Provides subtenants with certain statutory rights.
- **Profits:**
  - If tenants will make a profit from subleases, landlords may seek to obtain some or all of these profits.

**2. What are some common terms included in subleases?**

- **Term:**
  - Good practice for the term of subleases to expire one (1) day prior to expiry of the head lease.
- **Leased premises and parties:**
  - Subleases may be for all or just a portion of the leased premises.
  - Tenants and subtenants are typically the parties to subleases but sometimes landlords are also made parties.
- **Direct agreement with landlord:**
  - Absent privity of contract, subtenants may wish to ensure that upon termination of the head lease that the sublease will not terminate or that the landlord and subtenant will enter into a new lease.
- **Continuing effect of head lease:**
  - Subleases often indicate that all terms and conditions of the head lease continue to apply as between sublandlord and subtenant, except as modified by the sublease.
  - Subtenants should receive a copy of the head lease.

**3. What is the difference between an assignment and a sublease?**

- Where leases are assigned, assignees assume the entire lease and premises, including all rights and obligations provided thereunder; with subleases, tenants are still subject to the terms of the head lease with the landlord, but also step into the shoes of sublandlord vis-à-vis the subtenant.
- As with leases, the ability (or inability) to assign subleases is often set out in the head lease and/or sublease itself.