



THE CANADIAN
BAR ASSOCIATION

CBA ANNUAL
**ACCESS TO INFORMATION AND
PRIVACY LAW SYMPOSIUM**

OCTOBER 28-29, 2016 | OTTAWA, ON

FRIDAY, OCTOBER 28, 2016

8:00–8:45 REGISTRATION AND CONTINENTAL BREAKFAST

8:45–8 :50 WELCOME AND INTRODUCTION

Co-Chairs: **David Loukidelis QC**, Chair, Alberta Law Enforcement Review Board (Edmonton, AB)
John Beardwood, Partner, Fasken Martineau LLP (Toronto, ON)

8:50 – 9 :00 INFORMATION COMMISSIONER: A BRIEF RETROSPECTIVE

Speaker: **Suzanne Legault**, Information Commissioner of Canada

The Information Commissioner will open the Symposium by briefly highlighting the key challenges and achievements of her eventful term, which ends in June 2017.

9:00–10:45 INTERNATIONAL UPDATE (1.75 hours – substantive content)

Moderator: **Timothy Banks**, Partner, Dentons Canada LLP (*Toronto, ON*)

Speakers: **Elizabeth Denham**, Information Commissioner of the UK (*London, UK*)
Pablo Francisco Muñoz Díaz, Director General of Legal Affairs, Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (*Mexico City, MX*)
Kai Westerwelle, Partner, TaylorWessing (*Palo Alto, CA*)
Jenna Karadbil, Law Office of Jenna F. Karadbil (*New York City, NY*)

This session starts the conference off with a unique and invaluable overview of the key developments in privacy and access to information law internationally, with a focus on both the practical implications for current compliance, and on developing trends.

10:45 – 10:50 BREAK

10:50–12:15 PROVINCIAL UPDATE - PRIVACY AND ACCESS (1.5 hours – substantive content)

Moderator: **Lorne Randa**, Brownlee LLP (*Edmonton AB*)

Speakers : **Rosemary Thorne**, Access & Privacy Coordinator, Memorial University (*St. John's, NL*)
Glenn Solomon QC, Partner, JSS Barristers (*Calgary, AB*)
Brian Beamish, Information and Privacy Commissioner of Ontario (*Toronto, ON*)

This session will update attendees on recent key developments in access and privacy at the provincial and territorial levels. It will include a discussion of the implications of legislative changes in Ontario, Newfoundland & Labrador, and elsewhere. Significant court and commissioner decisions will be discussed, including the much-anticipated decision in *Information and Privacy Commissioner of Alberta v. University of Calgary*, now pending before the Supreme Court.

12:15–14:00 LUNCH WITH KEYNOTE SPEAKERS (1.0 hour – substantive content)

“What Canada is Doing to Support Internet Freedom Globally”

**Topics and speakers subject to change*

Accreditation in each province and territory:
Please visit the [conference webpage](#) for additional information.

Speaker: **Richard Arbeiter**, Director General, Office of Human Rights, Freedoms and Inclusion, Department of Global Affairs (*Ottawa, ON*)

With over three billion users online and over a billion more expected by next year, the Internet has transformed our daily lives. It is driving remarkable economic growth and creating opportunities for social and democratic development worldwide, but it is also making us vulnerable to state and non-state actors who are exploiting the Internet with increasing sophistication. Governments, civil society, the private sector, the technical community, and Internet users alike are increasingly engaged in international debates on key public policy issues, including the applicability of international law in cyberspace, Internet freedom, and data protection. Richard Arbeiter and Michael Walma will speak to these debates and Canada's role in promoting a cyberspace in which international law is respected, and human rights and democratic spaces are protected.

14:00–15:15 CONCURRENT SESSIONS

SESSION I: The Right to Be Forgotten in the Canadian Context (1.25 hours – substantive content)

Moderator: **David Fraser**, Partner, McInnes Cooper (*Halifax, NS*)

Speakers: **Professor Melanie Samson**, Université Laval (*Québec, QC*)
Elizabeth Denham, Information Commissioner of the UK (*London, UK*)

The seminal decision of the European Court of Justice in *Gonzalez v. Google Spain SA* has had a far-ranging impact beyond the EU operations of Google and other search engines. Debate continues about the balance between free expression and privacy, the efficacy of the remedy granted in *Gonzalez*, and the global implications for the Internet. This panel will discuss whether this 'right' could arise under Canadian law, including in light of the *Charter* implications, and the practical implications of any Canadian right to be forgotten.

SESSION II: Records Retention & Duty to Document in the Public Sector: A New Direction? (1.25 hours – substantive content)

Moderator: **Nancy Bélanger**, General Counsel, Office of the Information Commissioner of Canada (*Ottawa, ON*)

Speakers: **David Loukidelis QC**, Chair, Alberta Law Enforcement Review Board (*Edmonton, AB*)
David Goodis, Assistant Commissioner, OIPC (*Toronto, ON*)
Rick Dearden, Partner, Gowling WLG (*Ottawa, ON*)

There have been several investigations in recent years into allegations of improper records destruction. What meaningful legislative or practical solutions exist to address this concern? Information commissioners have called for a legislated duty to document government actions and decisions. What would such a duty look like? Would it add any value to government openness or accountability? What would be the practical and legal challenges?

15:15–15:30 REFRESHMENT BREAK

15:30–16:45 CONCURRENT SESSIONS (1.25 hours – substantive content)

SESSION I: Canada's Anti-Spam Law: The Looming Right of Private Action and Future Compliance Challenges

Moderator: **David Elder**, Counsel, Stikeman Elliott LLP (*Ottawa, ON*)

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Speakers: **Cristina Onosé**, Senior Manager, Public Affairs Canadian Marketing Association (*Toronto, ON*)
John Beardwood, Partner, Fasken Martineau LLP (*Toronto, ON*)
Scott Smith, Director, Intellectual Property & Innovation Policy, Canadian Chamber of Commerce (*Ottawa, ON*)

CASL's three-year transition period ends July 1, 2017, and the private right of action begins then. Reliance on the transitional rules may be risky and the potential for class actions requires vigilant preparation now. This session will review what we can learn from enforcement activity to date by the CRTC and the Competition Bureau. It will also examine key risks and compliance approaches needed to deal with the private right of action.

SESSION II: Updating Access: What Should It Look Like in the 21st Century? (1.25 hours – substantive content)

Moderator: **Murray Rankin QC MP** (*Victoria BC*)

Speakers: **Colonel (Ret.) Michel Drapeau**, General Counsel, Michel Drapeau Law Office (*Ottawa, ON*)
Professor Alasdair Roberts, Professor of Public Affairs, Truman School of Public Affairs, University of Missouri (*Columbus, MO*)

Technologies, public expectations and resistance to change create a fraught environment as Canada's access to information laws struggle to keep pace. This session will consider a range of challenges to the efficacy of our freedom of information laws. Panelists will offer their expert perspectives on possible solutions. Pro-active disclosure of information and open data systems are familiar measures, but panelists will discuss what else is needed to keep our governments open and accountable in the C21st.

17:00–18:30 NETWORKING RECEPTION

SATURDAY, OCTOBER 29

8:00–8:30 CONTINENTAL BREAKFAST

8:30–10:00 CONCURRENT SESSIONS

SESSION I: Privacy and Health Law: Birth of a New Privacy Regime (1.5 hours – substantive content)

Moderator: **Mary Jane Dykeman**, Partner, DDO Health Law (*Toronto, ON*)

Speakers: **Gary Dickson QC**, former Saskatchewan Information and Privacy Commissioner (*Ottawa, ON*)
David Young, Principal, David Young Law (*Toronto, ON*)
Manuela Di Re, Director of Legal Services, Office of the Information and Privacy Commissioner of Ontario (*Toronto, ON*)

Several Canadian jurisdictions have tabled or contemplated amending bills that will usher in significant changes to their personal health information laws. For example, Ontario's PHIPA is being amended to enhance breach notification and reporting rules and to establish a new regime to facilitate electronic health records systems. Will such changes provide genuinely robust privacy protection for patients? A number of other provinces are undertaking reviews of their legislation. How are other nations trying to achieve a patient-

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focused regime for personal health information? This session will compare how Canadian provinces are amending their laws with how Australia and the UK have configured and revised their EHR regimes.

SESSION II: Encryption, De-identification and Tokenization: An Update (1.5 hours – substantive content)

Moderator: **Howard Simkevitz**, Ontario Institute for Cancer Research (*Toronto, ON*)

Speakers: **Luk Arbuckle**, Director of Technology Analysis, Office of the Privacy Commissioner of Canada (*Ottawa, ON*)
Michael McEvoy, Deputy Commissioner, Office of the Information and Privacy Commissioner of British Columbia (*Victoria, BC*)
Pam Snively, VP, Chief Data and Trust Officer, Telus (*Toronto, ON*)

As increasing amounts of personal information become digitized, and as technologies such as data mining expand and become more sophisticated, how can we best make use of such data without compromising individual privacy? This important panel session will highlight the advantages and limitations of current techniques and methods of managing privacy risk.

10:00–10:15 **REFRESHMENT BREAK**

10:15–11:45 **BIG PICTURE ISSUES – THE REGULATORS’ PERSPECTIVES** (1.5 hours – substantive content)

Moderator: **Francois LeBel**, Partner, Langlois Avocats (*Québec, QC*)

Speakers: **Michael McEvoy**, Deputy Commissioner, Office of the Information and Privacy Commissioner of British Columbia (*Victoria, BC*)
Patricia Kosseim, Office of the Privacy Commissioner of Canada (*Ottawa, ON*)
Jill Clayton, Information and Privacy Commissioner of Alberta (*Edmonton, AB*)

The regulators will discuss three pressing issues. Does the new concept of valid consent in PIPEDA reflect a trend to a more nuanced kind of consent? Or does it simply raise unnecessary new complications? How is breach notification working in practice and what lessons can be learned from experience? What legislative amendments have been made, or are pending, and what are the implications?

11:45–12:15 **CLOSING PLENARY & WRAP UP**

Speaker: **Laura W. Davison**, Chief Privacy & Compliance Officer, Institute for Clinical Evaluative Sciences (*Toronto, ON*)

12:15 **CLOSING REMARKS**

Speakers : **David Loukidelis QC**, Chair, Alberta Law Enforcement Review Board (*Edmonton, AB*)
John Beardwood, Partner, Fasken Martineau LLP (*Toronto, ON*)

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