



# CBA ACCESS TO INFORMATION AND PRIVACY LAW SYMPOSIUM

OCTOBER 2-3, 2015

Oct. 2-3, 2015 | Fairmont Château Laurier | Ottawa, Ontario

## CONFERENCE PROGRAM

### FRIDAY, OCTOBER 2, 2015

**8:00–8:45**      **REGISTRATION AND CONTINENTAL BREAKFAST**

**8:45–9:00**      **WELCOME AND INTRODUCTION**

**Conference Chairs :**      **John Beardwood**, Fasken Martineau LLP (Toronto)  
   **David Young**, David Young Law (Toronto)  
   **Gary Dickson, Q.C.**, Privacy Consultant, former Saskatchewan Information and Privacy Commissioner

**9:00–10:30**      **PLENARY SESSION: INTERNATIONAL UPDATE**

**Moderator**      **John Beardwood**, Fasken Martineau LLP (Toronto)  
**Speakers**      **Kai Westerwelle**, Taylor Wessing (San Francisco)  
   **Jenna Karadbil**, JFK Lawyer (New York)

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

**10:30–10:45**      **REFRESHMENT BREAK**

**10:45–12:15**      **PLENARY SESSION: PROVINCIAL UPDATE - PRIVACY AND ACCESS**

**Moderator :**      **Alex Cameron**, Fasken Martineau LLP (Toronto)  
**Speakers :**      **David Goodis**, Assistant Ontario Information and Privacy Commissioner  
   **Sean Murray**, Director of Special Projects, Office of the Information and Privacy Commissioner for Newfoundland & Labrador (St. John's)  
   **Francois Lebel**, Langlois Kronstrom Desjardins S.E.N.C.R.L. (Montréal)

This session will review recent significant developments at the court and regulator levels within provincial jurisdictions, including the Newfoundland Access to Information and Protection of Privacy Act, 2015, Ontario health care snooping cases and class actions ( Rouge Valley; Peterborough Hospital), and the recent Alberta Court of Appeal decision regarding solicitor-client privilege.

**12:15–14:00**      **LUNCH WITH KEYNOTE SPEAKER**

**Professor Tom Keenan (Univ of Calgary), author of Technocreep: The Surrender of Privacy and the Capitalization of Intimacy**

Professor Keenan will explore some of the most troublesome privacy-invasive scenarios encountered on the web and offer practical ideas on how users can best protect their privacy and identity online.

**14:00–15:15**      **CONCURRENT SESSIONS**

**SESSION I: PRIVACY KEY ISSUE #1: PRIVACY AND TECHNOLOGY – ONLINE ACCESS TO COURT AND OTHER PUBLIC RECORDS**

**Moderator :**      **Gary Dickson, Q.C.**, Privacy Consultant, former Saskatchewan Information and Privacy Commissioner  
**Speakers :**      **Madame Justice J.B. Veit**, Alberta Court of Queen's Bench (Alberta)

**Chantal Bernier**, Counsel, Dentons (Ottawa)  
**Carlos Martins**, Bersenas, Jacobsen (Toronto)  
**David Loukidelis**, Chair, Alberta Law Enforcement Review Board (Alberta)

Should court records and other public documents containing sensitive personal information be available online or should limitations be imposed? Are such records privacy invasive? Should there be restrictions editing out personal information contained in such records? Should searchability be limited? Does the right to be forgotten have application? This session will examine these issues as well as proposals for change in this controversial area.

## **SESSION II: ACCESS TO INFORMATION KEY ISSUE #1: THE ACCESS TO INFORMATION ACT - MODERNIZATION REPORT – DIFFERENT PERSPECTIVES**

**Moderator:** **Tim Banks**, Dentons (Toronto)  
**Speakers :** **Suzanne Morin**, VP & Associate General Counsel, Quebec, & Enterprise Chief Privacy Officer, SunLife Financial Canada  
**Colonel Michel Drapeau**, Michel Drapeau Law Office (Ottawa)

On March 31, 2015 the federal Information Commissioner tabled her long-awaited report addressing modernization of the Access to Information Act. In the Commissioner's words, the report addresses « the steady erosion of access to information rights in Canada over the last 30 years ». The Report contains some 85 recommendations proposing fundamental changes designed to address recurring issues of access and to strike the right balance for transparency. This session will provide an in-depth analysis of the strengths and weakness of the Report's recommendations.

**15:15–15:30**

### **REFRESHMENT BREAK**

**15:30–16:45**

### **CONCURRENT SESSIONS**

#### **SESSION I: TELEMATICS, BLACK BOXES AND SMART METERS : AN UPDATE**

**Moderator:** **David Young**, David Young Law (Toronto)  
**Speakers :** **Sasha Sud**, Ontario's Energy Data Access Project at MaRS Data Catalyst (Toronto)  
**Philippa Lawson**, Philippa Lawson, Barrister & Solicitor (Ottawa)  
**Mario Fiorino**, Insurance Bureau of Canada (Toronto)

"They call it "telematics" – a fancy word for spying" (Globe and Mail, Aug. 28 2013.

"Smart meters could be 'spy in the home'" (The Telegraph, May 23, 2015)

Telematics is the blending of computers and wireless telecommunications technologies, with the goal of efficiently conveying information over vast networks to improve a host of business/government services. Similarly, smart meters enable utility customers to share their electricity data with utilities, using mobile and web-based applications. While the evolution of both of these technologies has presented the opportunity for positive outcomes - in the case of telematics, the development of new consumer centric insurance products, and in the case of smart meters, increased efficiencies in energy usage - at the same time they have presented potential challenges to privacy and its regulators. This session will review how the development and evolution of telematics and smart meters has presented both opportunities and privacy challenges, and lessons learned.

#### **SESSION II: MASTER CLASS : TOP TEN ISSUES IN ACCESS FOR THIRD PARTIES:**

**Moderator** **Gabriel Stern**, Fasken Martineau LLP (Toronto)  
**Speakers** **Lorne Randa**, Brownlee LLP (Edmonton)  
**Catherine Beagan Flood**, Blake, Cassels & Graydon LLP (Toronto)  
**Andrea Rousseau**, Office of the Privacy Commissioner of Canada (Ottawa)

The third party notice provisions in access to information legislation are there in order to balance the rights of third parties whose information has been provided, against the right of access of information held by public institutions. However, in practice the operation of these provisions can raise significant challenges for third parties. The panel explores the extent to which these provisions as they have been interpreted and operated in practice have or have not achieved that balance. Issues to be address include: What challenges arise for "third parties of third parties" whose information is subject to an access request? Where private entities are considered public bodies due to the operation of FOI legislation, should such entities have third party notification rights? Based on the trend in interpretation towards imposing severe limits on the scope of this provision, is it still serving the role it was intending to serve in the Acts?

**17:00–18:30**

### **NETWORKING RECEPTION**

## SATURDAY, OCTOBER 3

**8:00–8:30**      **CONTINENTAL BREAKFAST**

**8:30–10:00**      **PLENARY SESSION: PRIVACY KEY ISSUE #2: PRIVACY & TECHNOLOGY: THE INTERNET OF THINGS**

**Moderator:**      **Mandy Woodland**, Mandy Woodland Law (St. Johns)

**Speakers:**      **Dan Caron**, Counsel, Office of the Privacy Commissioner of Canada (Ottawa)  
                         **Kristen Anderson**, Division of Privacy and Identity Protection, FTC, (Washington DC)

The US Federal Trade Commission in January issued a detailed report on the Internet of Things - Privacy & Security in a Connected World, in which the FTC recommends a series of concrete steps that businesses can take to enhance and protect consumers' privacy and security, as consumers start to reap the benefits from a growing world of Internet-connected devices. In addition to the report, the FTC also released a new publication for businesses - Careful Connections: Building Security in the Internet of Things - which contains advice on how to build security into products connected to the Internet of Things and encourages companies to implement a risk-based approach and take advantage of best practices developed by security experts, such as using strong encryption and proper authentication. In Canada, the Office of the Privacy Commissioner also has addressed these issues.

This session critically reviews the numerous privacy issues raised by the Internet of Things, and the FTC recommendations regarding same, including that manufacturers build security into devices at the outset, rather than as an afterthought in the design process; that companies consider data minimization – that is, limiting the collection of consumer data, and retaining that information only for a set period of time, and not indefinitely; and that companies notify consumers and give them choices about how their information will be used, particularly when the data collection is beyond consumers' reasonable expectations.

**10:00–10:15**      **REFRESHMENT BREAK**

**10:15–11:45**      **PLENARY SESSION: BIG PICTURE ISSUES – THE REGULATORS PERSPECTIVES**

**Moderator:**      **Gary Dickson, Q.C.**, Privacy Consultant, former Saskatchewan Information and Privacy Commissioner

**Speakers :**      **Sherry Liang**, Asst. Ontario Information and Privacy Commissioner  
                         **Sean Murray**, Director of Special Projects, Office of the Information and Privacy Commissioner for Newfoundland & Labrador (St. John's)  
                         **Jill Clayton**, Information and Privacy Commissioner of Alberta (Alberta)

Canada's Information and Privacy Commissioners have a unique vantage point to track new developments and challenges in the area of 'information rights'. This panel will consider such issues as the proliferation of data sharing schemes that involve large volumes of personal information being shared with many agencies, how to achieve meaningful accountability in a shared service environment, the tension between the traditional 'notice & consent' model or a shift in focus to stronger oversight & enforcement.

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

**Speaker:**      **Laura Davison**, Chief Privacy Officer, Institute for Clinical Evaluative Science (ICES)

**12:15**              **CLOSING REMARKS**