

**March 30 & 31,  
2011,  
Toronto**

**Inaugural  
Two-Day  
Event!**

**Course Leader**  
Duncan Card,  
Bennett Jones  
LLP



Lisa Abe,  
Fasken Martin-  
eau DuMoulin  
LLP



Richard Corley,  
Blake, Cassels  
& Graydon LLP



Michael  
Davenport,  
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C. Ian Kyer,  
Fasken Martin-  
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LLP



Lisa R. Lifshitz,  
Gowling Lafleur  
Henderson LLP



Donald F. Luck,  
Fraser Milner  
Casgrain LLP



**Hear about getting low-cost access  
to powerful computer resources**

# Cloud Computing Law

**Be aware of the risks & legal pitfalls**

***Workshop Included: Addressing Data Ownership,  
Privacy, Security and Compliance Concerns***

## **participating organizations**

Accenture Inc.	Fraser Milner Casgrain LLP
AccessPrivacyHB	Gahtan Law Office
Bank of Nova Scotia	Gowling Lafleur Henderson LLP
Bennett Jones LLP	McCarthy Tétrault LLP
Blake, Cassels & Graydon LLP	Ogilvy Renault LLP
Blaney McMurtry LLP	Rogers Communications Inc.
Cassels Brock & Blackwell LLP	Torys LLP
Fasken Martineau DuMoulin LLP	Trapeze Group

## **course highlights**

- Hear from Canada's top IT lawyers as well as in-house counsel from top companies on the risks & legal pitfalls of cloud computing
- Explore what cloud computing is and the related legal and compliance issues
- Assess the implications of virtual storage on legal jurisdiction questions
- Examine the key issues that need to be addressed when negotiating and drafting a cloud computing agreement

## **who should attend**

In-house Counsel, CIOs; CTOs, VPs, Directors & Managers in involved in IT, IM, IP, technology procurement, vendor/contract management, risk management, compliance; Technology Lawyers & Consultants

David Ma,  
Blaney  
McMurtry LLP



Ebad Rahman,  
Torys LLP



Joel Ramsey,  
McCarthy  
Tétrault LLP



Parna Sabet-  
Stephenson,  
Blake, Cassels  
& Graydon LLP



Bobby Singh,  
Rogers Com-  
munications Inc.



Stephen I.  
Selznick,  
Cassels Brock  
& Blackwell LLP



Pamela Snively,  
AccessPriva-  
cyHB



Robert  
L. Percival,  
Ogilvy  
Renault LLP



**as well as:**

Elena V.  
Reshetnikova,  
Accenture Inc.

Steve Cimicata,  
Trapeze Group

## FACULTY

### COURSE LEADER

#### DUNCAN CARD

Duncan Card, Partner at **Bennett Jones LLP**, is one of Canada's leading technology and e-Commerce lawyers. He was the lawyer for the first franchise of Yahoo! in the world, for the first sale of insurance over the Internet.

### CO-LECTURERS

#### LISA ABE

Lisa Abe is a senior partner in **Fasken Martineau's** Technology and Intellectual Property practice group and one of Canada's leading experts in technology law and commercial transactions related to technology.

#### STEVE CIMICATA

Steve Cimicata is General Counsel at the **Trapeze Group**, which provides advanced software and mobile technologies to the passenger transportation industry.

#### RICHARD CORLEY

Richard Corley is a partner in the **Blake, Cassels & Graydon LLP's** CleanTech, IT, Business and Competition Groups and co-head of the Information Technology Group.

#### MICHAEL DAVENPORT

Michael Davenport is Associate General Counsel with **The Bank of Nova Scotia** with responsibility for the Retail & Commercial Banking, Insurance and Electronic Banking divisions.

#### ALAN M. GAHTAN

Alan Gahtan is the founder of **Gahtan Law Offices** practices primarily in the IT and IP law field. His practice emphasizes technology contracting, outsourcing, Internet and electronic commerce issues.

#### BERNICE KARN

Bernice Karn is a partner in the Information, Communications & Entertainment Group at **Cassels Brock** where she practises IP law, with an emphasis on technology and licensing.

#### C. IAN KYER

Ian Kyer is counsel to **Fasken Martineau DuMoulin LLP**, where he practices corporate/commercial law with an emphasis on serving IT companies. He is former Director of the firm's Technology and IP practice group.

#### LISA R. LIFSHITZ

Lisa R. Lifshitz is a partner in **Gowlings'** Toronto office, practising in the areas of IT and business law. She is currently the vice chair, subcommittees, of the Cyberspace Law Committee of the Business Law Section of the ABA.

#### DONALD F. LUCK

Don Luck is a partner in the Business Law Group in the Toronto office of **Fraser Milner Casgrain LLP**. He has extensive experience in outsourcing and technology transactions.

#### DAVID MA

David Ma of the **Blaney McMurtry LLP's** Corporate/Commercial group maintains a practice focusing on commercial transactions involving technology and corporate matters.

#### EBAD RAHMAN

Ebad Rahman is a member of the **Torys LLP's** Business and Technology Sourcing Practice Group. He has extensive experience advising on patent matters.

#### JOEL RAMSEY

Joel Ramsey is a partner in the Technology Group of **McCarthy Tétrault LLP**. His practice focuses on commercial & corporate transactions involving technology.

#### ELENA V. RESHETNIKOVA

Elena V. Reshetnikova is in-house legal counsel at **Accenture Inc.**, where she supports the Communications and High Technology industry group in both Canada and the US.

#### PARNA SABET-STEPHENSON

Parna Sabet-Stephenson is a Partner in the Information Technology Group at **Blake, Cassels & Graydon LLP**. Her practice focuses on all aspects of outsourcing and technology law.

#### STEPHEN I. SELZNICK

Stephen I. Selznick is a Partner at **Cassels Brock & Blackwell LLP**. His practice focuses on intellectual property, media, advertising, regulatory and trade and technology law.

#### ROBERT PERCIVAL

Robert Percival is a Partner in the Toronto office of **Ogilvy Renault LLP** and is the National Co-Chair of the firm's Technology Business Law Group. His practice is principally devoted to information technology and electronic commerce.

#### BOBBY SINGH

Bobby Singh, Director of Information Security and Risk Management at **Rogers Communications**, has extensive experience in information security, including risk management, business operations, public relations, consulting and auditing.

#### PAMELA SNIVELY

Pamela Snively is Managing Director with **AccessPrivacyHB**, an information management consultancy affiliated with Heenan Blaikie's Access and Privacy Law Practice.

### SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Technology Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Technology topics as delivered at our many recent Technology conferences and courses.



**Attendance at this program can be reported as 12.0 hours of Continuing Professional Development (CPD) to the Law Society of B.C.**

**This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.**

## COURSE PROGRAM

### UNDERSTANDING CLOUD COMPUTING: THE LEGAL RISKS AND COMPONENTS

Cloud computing refers to the provision of web-based services that allow businesses the use of software and hardware managed by third parties, with the services located on remote computers. While this gives business low-cost access to powerful computer resources, without having to purchase these resources themselves, the process is not without its risks and legal pitfalls. This session will explore what cloud computing is, various cloud computing service models and the related legal and compliance issues.

- Cloud computing infrastructure, platforms and software issues
- Fundamental characteristics of cloud computing as a service model
- Key legal issues for businesses engaging in cloud computing
- Developing licensing and service agreements

### JURISDICTIONAL ISSUES IN CLOUD COMPUTING: DEALING WITH DIFFERENCES IN LAW

With cloud computing, data may be physically located in one or more remote servers, and may be widely distributed and frequently moved across many legal and international jurisdictions. This transborder transfer of data within the cloud is a complex legal issue. This session will assess the implications of virtual storage on legal jurisdiction questions.

- Providing a framework for analyzing legal jurisdictional challenges
- Risks in data flows among different national jurisdictions
- Impact of differences in privacy, security and confidentiality concepts and regulations
- Assessing the risk of having data switched without your knowledge

### NEGOTIATING AND DRAFTING CLOUD COMPUTING CONTRACTS: A CHECKLIST FOR CC DEALS

Due to the complexities involved and lack of experience in dealing with this evolving practice, cloud computing raises a host of essential contractual issues that must be addressed by the parties' contract or licensing arrangements. This session will examine the key issues.

- Cloud contracting models: avoiding use of "standard" form contracts
- Establishing a standard of care that the provider must meet
- Contractual obligation regarding uptime
- Addressing remedy limitations that would shield provider from liability

### PRIVACY AND CONFIDENTIALITY IN CLOUD COMPUTING: APPLICABLE LAWS AND STANDARDS

Data privacy and security risks have become increasingly serious business management issues in general. However, the nature of cloud computing raises even more major privacy issues. This session will examine privacy threats that arise due to remote hosting and processing of data.

- Dealing with classified data restrictions
- Potential for increased third-party access to data
- Ensuring compliance with national and local privacy laws
- Dealing with differences in privacy rules in foreign jurisdictions

### ADDRESSING E-DISCOVERY AND LITIGATION ISSUES

Cloud computing offers significant benefits for the businessperson and reflects the ongoing maturation of our digital economy. However, it is not without complication; especially in the context of civil and IP litigation where Courts maintain adherence to evidentiary principals requiring the best evidence, continuity of evidence, preservation of evidence and the discounting of hearsay. Most often a third party cloud computing provider is not a party to the dispute or legal proceeding, yet it may have possession or control over the key or only evidence relevant to the case. In these circumstances, we are forced to revisit and take a fresh perspective on traditional rules of litigation and discovery. In this session we will offer insight into the following topical discovery and litigation issues in a cloud computing environment:

- Who has possession, custody and control of electronically stored data (ESI) in the computing cloud?
- What issues arise in the identification and collection of relevant evidence in a computing cloud?

- Can you obtain, and can you enforce, preservation orders and document holds in a cloud computing environment?
- How do you anticipate preservation orders and document holds from the cloud computing service provider's perspective?
- How can you ensure the authenticity and integrity of evidence in a cloud computing environment?
- What are the rules for preserving, retaining and disposing of data in a computing cloud?
- What issues arise in discoveries involving metadata?
- How should cloud computing service providers respond to legal requests for information?

### DATA SECURITY: DATA PROTECTION LAW REQUIREMENTS

Data security issues, the risk of exposing highly sensitive data to a broad base of internal and external attacks, are a major impediment for many organizations considering the adoption of cloud computing. This session will examine the various security concerns that face both cloud providers and their customers.

- Current security practices being employed in cloud computing
- Effective data security strategies for those engaging in cloud computing
- What should be demanded regarding data security from provider
- How is data breach in the cloud computing environment is currently addressed
- Governance, business process and organizational changes required to be secure in the Cloud environment
- Implementing remote monitoring and providing oversight of the cloud provider

### ESTABLISHING EXIT SCENARIOS

A key component of any cloud computing contract is how it deals with exit scenarios and, in particular, how users can ensure continuity of their operations and preservation and retrieval of data. The session will provide a checklist of issues to cover dealing with exit/termination.

- The different types of exit scenarios and considerations for each
- Rights to continued provision of services in all scenarios
- Data retrieval and portability - how, when and in what form
- Transition assistance - what is needed for a smooth exit

### WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY: ALLOCATING RISKS IN THE CLOUD

Service providers often seek to impose standard-form contracts for the provision of cloud computing services containing weak standard of services that are often characterized on an "as-is" basis, while generally limiting service providers' liabilities. This session will explore the process of negotiating warranties, indemnification and limitation of liability clauses that will satisfactorily allocate risks.

- Scope of warranties
- Remedies available for breach of warranties
- Scope of customary indemnification obligations
- Identification of customer's vulnerabilities
- Limitation of liability caps and exclusions from the cap
- Contractual remedies and damages

### COMPLYING WITH OPEN SOURCE LICENSES & UNDERSTANDING THE IMPACT OF THEIR USE IN THE CLOUD

An open source license is a copyright license for computer software whose source code is made available for use or modification by users, that is usually developed as a public collaboration and made freely available. This session will examine the most recent developments affecting open source licenses in cloud computing.

- What is "open source"
- Open source licensing schemes
- Differences between various open source licensing schemes
- Concerns/risks for users of open source
- Common contract provisions relating to open source

## COURSE PROGRAM

### PREPARING FOR CLOUD DISPUTES AND LITIGATION

The better prepared you are for litigation, the stronger and better informed your position to negotiate a settlement before delays and costs become excessive will be. This session will offer proactive tips for dealing with common claims and for minimizing legal costs.

- Identifying the essentials required for litigation preparation
- Reasons for identifying expert witnesses early in the process
- Understanding document disclosure requirements and exceptions
- Creating and planning strategies for the plan of attack
- Approaches for strengthening your position in the settlement process

### CLOUD COMPUTING AND COPYRIGHT LAW

Copyright laws are a major worry for businesses considering cloud computing, as there are serious copyright and trade secret concerns when you start putting your data in a cloud computing environment. One of these main concerns involves the concept of fair dealing. This session looks at intellectual property issues that arise in the cloud.

- Enforcing IP rights given the increased anonymity of both users and content providers
- Protecting trade secrets in a cloud
- The impact of jurisdictional and infringement issues on the effectiveness of patent protection for online software
- The potential for patent infringement when cloud providers run software provided by the customer
- Trade secret protection

### BUSINESS CONTINUITY AND STANDARDS OF CARE

Key issues when entering into cloud computing arrangements are the concepts of reliability, availability, business continuity and other service levels. A problem with the service provider's infrastructure resulting in a customer being unable to access its data in the cloud could result in significant business interruption and lost revenues. This session will examine the steps that can be taken by the customer with the service provider to address these issues, such as:

- Perform due diligence on the service provider;
- Establish communication and escalation protocols;
- Periodic testing, benchmarking;
- Cost / benefit analysis

### DUE DILIGENCE IN SELECTING A SERVICE PROVIDER

As with all major service agreements, due diligence of a service provider is a crucial risk mitigation step. Unlike a traditional dedicated outsourcing model, which involves conducting due diligence on a single entity, cloud computing results in data constantly shifting between multiple Cloud providers. This session will examine the challenges in conducting due diligence.

- Key challenges of due diligence in cloud environment
- Data security and disaster recovery policies
- Getting specifics on where their data resides
- Anti-hacking and anti-viral processes the service provider has in place to protect the data

## WORKSHOP

### ADDRESSING DATA OWNERSHIP, PRIVACY, SECURITY AND COMPLIANCE CONCERNS

As more data is stored in the cloud our traditional notions of data "ownership" and "control" are being sorely strained. The ambiguity around ownership and control of data has created challenges for organizations that seek to be responsible and compliant with regulatory and contractual obligations. This interactive workshop will examine data ownership and the increasingly rigorous contracts and due diligence practices needed to address these concerns.

- Addressing data "ownership" and access before the data is stored
- Data breach readiness
- Liability for data breaches
- Data commingling: what is to be done?

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, Ontario, M5E 1W2

**Conditions:** Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

**Time:** This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to March 17, 2011. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

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Payment must be received prior to March 23, 2011

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### TO REGISTER FOR CLOUD COMPUTING LAW

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Approving Manager Name	_____		
Approving Manager Title	_____		
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