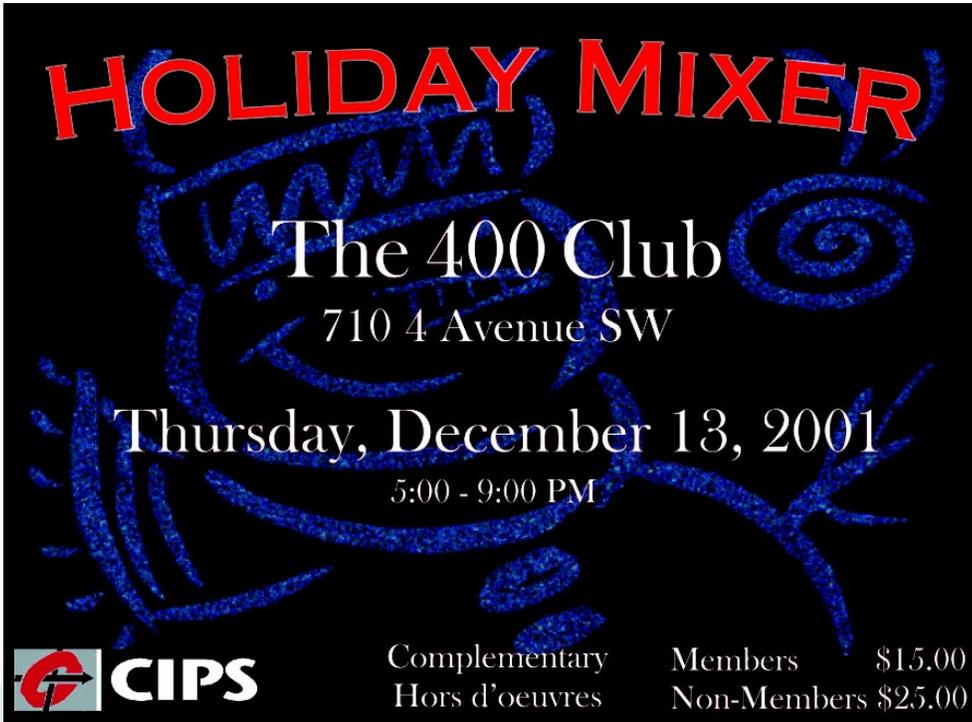


# CIPScene

Canadian Information Processing Society, Calgary Section

DECEMBER 2001



**HOLIDAY MIXER**

The 400 Club  
710 4 Avenue SW

Thursday, December 13, 2001  
5:00 - 9:00 PM

	<b>CIPS</b>	Complementary	Members	\$15.00
		Hors d'oeuvres	Non-Members	\$25.00

The Annual General Meeting will commence at 5:00 pm, with the Mixer to follow. (Details and agenda on page 5)

RSVP: to register by phone 245-0633; by fax 244-2340; or by email [calgary@cips.ca](mailto:calgary@cips.ca).

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Categorizing Your Application Portfolio

What Keeps a Student up at Night?

Tuxedo Thursdays:  
Coming to an Office Near You?

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## **CIPScene**

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200, 1603 - 10 Avenue SW  
Calgary, Alberta T3C 0J7.

Telephone: (403) 245-0633

Fax: (403) 244-2340

Email: [calgary@cips.ca](mailto:calgary@cips.ca)

Website: [www.cips.ca/calgary](http://www.cips.ca/calgary)

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## Categorizing Your Application Portfolio



Some managers have become successful by finding "simple solutions to complex problems." When trying to categorize your software portfolio there may be some benefit in taking a simplistic view. Here is an easy three-step process that categorizes applications according to their relative impact on operations and business strategy.

**Step one:** Simply list every application currently "live" within the organization.

**Step two:** For each application, answer two questions: First, if no one could use this application, would the CEO find out the same day? Within a week? Within a month? Or never?

This question identifies the "operational" importance of the application. By measuring how long it would take for the complete failure of an application to be noticed at the top of the organization, you can determine how critical the application is to the operation of the business.

The second question: Are changes in the application sponsored at the CEO or direct report level? At the VP level? Departmental manager? Or elsewhere?

This question identifies the "strategic" importance of the application. By measuring the seniority of the executives who administer changes to the application, you can determine which applications are considered strategic to the achievement of business goals.

**Step three:** Assign values to each answer based on the importance of the application, add the values, and place each application in a quadrant: high operational/high strategic; high operational/low strategic; low strategic/high operational; and low strategic/low operational.

This may be too simplistic to work in all cases but it might give you a quick overview of your application portfolio and an idea of how the applications rank in impact and strategic value. ☛

## CIPS Calgary Awards Scholarship

Congratulations to **Hubert Lee**, recipient of the Canadian Information Processing Society (Calgary Section) Scholarship for 2001. Hubert is a student of the Computer Technology program at SAIT. He has been awarded \$500 toward his studies. ☛



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## The Public Service: Opportunity Knocking?



In 1980, the Kennedy School of Government at Harvard University sent approximately three-quarters of its graduates into the public service. The comparable figure today is below 25%.

The federal public service continues to be gripped by downsizing, layoffs, and hiring freezes, and has seen its proportion of employees under 34 fall to approximately 21% of the public service.

Here in Alberta, a hiring freeze has been imposed on the Alberta public service, and the demographics are tilted toward the boomers. Similarly, the civic service is canted towards mature individuals.

With all these negatives, can we realistically consider careers in public service? Can the public service survive and attract the cream of the crop?

The federal public service and external commentators, among others, identified an entry-level recruitment problem as early as 1997. Its genesis can be traced back to three major factors:

- A decline in trust, faith, and confidence in government;
- A significant real decline and a greater perceived decline in wages vis-à-vis the private sector; and
- Recent downsizing, layoffs, and shrinkage of the public service through the recessionary years of the early nineties.

Employers' ability to hire is dramatically impacted by their public perception. As an example, many technical workers will reputedly give their non-dominant arm to work at Microsoft, because it has a reputation for being a particularly attractive place to work. Similarly, companies such as IBM, Compaq, CP Rail, and General Motors, among others, have a disproportionate mindshare, which may be a recruiting incentive.

Certainly, it's hard to argue with the idea that the government doesn't have mindshare, but it's generally far from positive. This engenders negative attitudes, emotions, and feelings towards the government, which hinders

its ability to attract talented and qualified recruits.

Traditionally, the public sector has been seen as being overpaid and underworked, especially in light of raises that exceeded private sector raises. However, with pay freezes in the public sector that lasted several years in the early to mid nineties, the wage gap intensified, and the public sector fell significantly behind their private sector counterparts.

However, the media attention focused on the public sector negotiations may have poisoned the well, so to speak. This may well have led young graduates to the erroneous conclusion that the public sector paid significantly less than the private sector. I cannot say that this is absolutely true, but I'm speaking from personal experience. I made it to the final selection stages of a computer systems specialist position with the federal public service, and the salary was certainly comparable to private sector opportunities I explored.

The uncertainty within the public service in the early nineties didn't help recruitment. Because of the relatively strict seniority and bumping provisions in the PSAC, CUPE, and AUPE contracts, young, motivated, potential recruits may well have looked elsewhere, knowing that they would be first to be dumped in any restructuring exercise.

Of course, the same situation exists at many private sector employers, but they are generally not as bound by union contracts as their public sector counterparts, so there exists some flexibility to tailor the layoffs. In addition, to the best of my knowledge, there haven't been widespread staff reductions in the public service in a number of years.

It looks as if a change in the underlying fundamentals



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of public service may be underway, based on the evidence above. But, the most important questions of all have yet to be answered, those regarding the quality and variety of work, and the viability of a career within the public service.

From personal experience, I can say that I've had an incredible variety of work in my public service career. I have had the opportunity to deploy multi-national accounting packages across Canada. I've analyzed 9-1-1 dispatch data and worked extensively with the communications professionals there. I've been involved in long-range fire risk analysis for the City of Calgary. Today, I'm involved in several projects that are pretty unique.

Longer-range, my path within the public service is limited only by my own imagination. Once you break into the public service, the opportunities available multiply nearly exponentially, as with any company or organization.

I've spoken with many people who have "fallen into"

public service as a career, and a common thread runs through their thoughts: the ability to help people directly is a critical factor in their job satisfaction. Many people have come into the public service with the expectation that they'd move to the private sector when the time was right – and they've never found the right time.

Does the public service have obstacles to overcome in recruiting and retaining the best and brightest? Sure it does. Do they have a plan for overcoming those obstacles? Yes. Will there be an unprecedented level of opportunities within the public sector in the next ten years? Yes.

What does this add up to? Check out the public service as a career option – you may be pleasantly surprised. Many CIPS members are public servants, and they're usually pleased to talk about their work and the value it brings to society. ☛

## **CIPS Calgary Annual General Meeting**

There will be an Annual General Meeting held on Thursday, December 13, 2001 in the McDougall Room at the 400 Club, 710 - 4 Avenue SW at 5:00 pm. Immediately following the AGM will be a Holiday Mixer.

### **Annual General Meeting Agenda**

1. Call to Order/Verification of Quorum – 5:00 pm
2. Review of the Agenda
3. Approval of Minutes from the Annual General Meeting, November 8, 2000
4. Highlights of the Annual Report
5. Treasurer's Report and Financial Statements
6. Appointment of Auditor
7. Introduction of Board Members for 2001/02
8. Closing Remarks
9. Adjournment – 5:30 pm



A copy of the Annual Report will be posted on the CIPS website as soon as it is available. Members will be advised by email. Please review the Annual Report prior to the meeting. Only a limited number of printed copies will be available at the meeting.



## CIPS Calgary Section

Future Meeting Dates – 11:30 am

Thursday  
January 10, 2002

Tuesday  
February 5, 2002

Wednesday  
March 6, 2002

Wednesday  
April 3, 2002

Wednesday  
May 1, 2002

Wednesday  
June 5, 2002

*All meetings are held at the Calgary Chamber of Commerce  
4 Floor, 517 Centre Street S.*

### CIPS Events

- December 13, 2001 **CIPS CALGARY AGM & HOLIDAY MIXER**  
5:00 pm - 9:00 pm  
The 400 Club  
McDougall Room  
710 - 4 Avenue SW
- January 17, 2002 **2002 SEMINAR SERIES**  
*Business Process Re-engineered*  
7:30 am - 9:00 am  
Fifth Avenue Place  
Conference Centre  
202, 237 - 4 Avenue SW  
(Note new address)

**For the latest information on CIPS SIGs events, please refer to the contact listings on page 9.**

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derek@mainland.ab.ca

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267-1801  
rcarruthers@deloitte.ca

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263-2272  
m.teja@cips.ca

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319-7483  
barrie\_cameron@cpr.ca

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543-0397  
matthew.hillhouse@powerpool.ab.ca

#### Special Interest Group Director

Nguyen Tran  
319-6512  
ntran@cips.ca

#### CIO Liaison

Stuart Quinn  
237-0500  
squinn@compass.ca

#### Publications and Web Presence

Blake Kanewischer  
206-5914  
blakek@cips.ca

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233-6602  
herb.malcomson@eds.com

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Leon Cygman  
207-3107  
lcygman@cal.devry.ca

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drichards@aplin.com

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Rob Koski  
210-4057  
rob.koski@sait.ab.ca

#### Student Section Chair

Shilo Beechinor  
569-2773  
shilo@cips.ca

#### CIPS Calgary Office

Pamela Wilson, Executive Director  
245-0633  
pamelaw@incentre.net  
calgary@cips.ca  
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Every organization, whether volunteer-run or for-profit, periodically re-evaluates its strategy and the direction in which it is headed. It's a difficult and time-consuming, but necessary, exercise. Many of the same questions are asked by all organizations: are we meeting the expectations of our members, what can

we do now to anticipate what our members will require in the future, are we providing a worthwhile service to the community at large?

As volunteers, we rarely think about the effort involved in running a national, volunteer-run organization. Yet, that is what CIPS is – a large, national organization run primarily by volunteers with the exception of a few paid administrative staff members. It is difficult to anticipate, especially in the IT sector due to the hectic rate of change, what IT professionals will require from an organization such as CIPS in the future.

I was fortunate enough to be able to attend the CIPS National Board meeting in Winnipeg this past October. While I've been quite active at the local level for some time, this has really been my first exposure to some of the issues at the national level. I thought it was difficult planning for activities and initiatives at the local section, but it pales in comparison to what must be done nationally. The CIPS Calgary Board can plan, with relative accuracy, the programs that members are most interested in. We all live in Calgary so we know what the corporate culture is like. But imagine doing this nationally. Not only is there a much broader audience, but there are also regional differences. Demographics vary across the country so what works in one city may not in another.

The members of the CIPS National Board, and their affiliated sub-committee members, work very hard to provide the local sections, and ultimately all CIPS members, with direction, initiatives, and programs that will benefit members and the IT community as a whole. Each year, these national initiatives are re-evaluated at the Board meeting and everyone who attends has a chance to provide input on the validity and relevance of these initiatives. This year there was quite a lot of lively discussion over many of the initiatives, which forces us as an organization to re-think our priorities.

So, what are some of the issues that CIPS is struggling with nationally? Well, one of the major issues is, of course, the role of the I.S.P. professional designation. Do we want to be an association of IT

professionals where certification is voluntary or do we want to be an organization that regulates a mandatory designation in the field much like APEGGA? It is a difficult question – one that is not easily answered. But CIPS is at the stage where a decision is now required which will set the strategic direction for years to come for CIPS and the IT profession in general. Barrie Cameron, the southern Alberta Regional Director and our representative on the CIPS National Board, will be providing updates on this, and other issues, as they become available.

What I would like to emphasize is that, whatever direction CIPS chooses, it will make for an interesting and fun, yet complicated, journey. While it may be easy to stand back and criticize, the fact is that CIPS is a large organization that must make decisions and set strategic direction. It may not be popular with everyone in the organization, but what we need to remember is that these decisions are made by hard-working people who truly believe in the IT profession and CIPS.

In closing, my wish for a joyous and safe Holiday Season goes out to all CIPS members. Have a safe and happy Christmas and all the best in the New Year. See you all in January 2002! ☺

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## Student Bits

The student section has been a whirlwind of activity this month. The first exciting thing that has happened is that Soft Office Solutions has agreed to sponsor a student to every CIPS luncheon. Our first lucky student winner was Gavin Gonsalves from SAIT. He went to hear Clive Beddoe

talk about issues in the airline industry. Secondly, thanks to the hard work of Tammy Pieper, the mentoring program had its official kick-off. We have had overwhelming interest from the IT community, but we are always looking for more volunteers. If you are interested in becoming involved, feel free to drop

me a line. I met many of you at the Industry Pub Night, which was a fantastic success. The students gained a lot of knowledge and we got the chance to meet many great people. We are looking forward to starting our Student Speaker nights and have a lot of interesting topics lined up. Another event that we are working hard on is Career Gateway, which is scheduled for February. It will be a wonderful chance for students to meet with IT professionals and for companies to recruit the new face of IT. The year has gotten off to a great start and I foresee great things happening in the student section in the months to come. Happy Holidays! ☺

## What Keeps a Student up at Night?

There are many issues that weigh on the minds of students as they embark on their journey into the IT world. As if it isn't hard enough to have to worry about family and relationships, but add on everything else that a student goes through and it is a wonder that we ever sleep!

The worst part about being a student is trying to have some guilt-free fun. The only time that this actually happens is immediately after you finish final exams and relief washes over you. When this miraculous event occurs, you feel so giddy that if the wind blows the wrong way then it tickles you and you erupt into fits of giggles. Other than that rare occasion, every time you try and kick back with friends, there is the voice of responsibility serenading you back to your books. The work is never done. There are always assignments that need to be started and chapters that haven't been read and exams that creep up too fast.

But what creeps up even faster is graduation and all the uncertainty that comes with it. Everyone tells you a different story. One day you hear that COBOL is a waste of time and nobody uses it any more, except for mainframes. The next day someone else tells you

about Visual COBOL and how COBOL is far from dead. Now which one is it? What is the industry actually looking for? Are any of these skills that I am learning actually going to help in the real world? When you compare the size of the projects you get when you in school – the ones that can be done in a matter of hours – you wonder how you can ever tackle a project that takes dozens of people and hundreds of hours to complete. What is it really going to be like when I get out there?

However, the most important question on a student's mind is this: Am I going to be able to get a job when I graduate? And how much money am I going to make? Is it going to be enough to cover my student loans? Is this school thing really worth my time? Where is the industry going to be by the time I graduate, and will anyone hire a student?

A student's worries are never done. You have limited time for fun and a limited budget. But people tell you that you are lucky not to be out in the real world and that life as a student is just one big party. At least the real world pays you for the work you do instead of you having to pay to do the work. Sure, there are good things about being a student, but give me the real world any day and I will welcome it with open arms. ☺

## Project Management SIG

Our 2001/2002 PM SIG season got off to a great start with our first presentation, given by **Robin Hornby**, a senior IT consultant with Tempest Management Inc. Robin's presentation was "**Oaks and Palms - Flexibility in Project Management**".

Robin raised the issue that flexibility in project management is a subject that needs much more attention and discussion in the project management community. His presentation contributed to this goal by exploring the circumstances and criteria for determining when it's appropriate as the Project Manager to "bend with the breeze" and when it's appropriate to "stand firm". Through real-life experiences, Robin reviewed the considerations of style and politics, process and technique.

Thank you to our session sponsor, **Intergraph Canada Ltd.**

Our next session will feature **Dr. Janice Thomas** who will provide an update on the PMI-sponsored research study on selling project management to senior executives. Janice presented the results from the first

phase of this research to the PM SIG audience in January. This session will be sponsored by **Ethier Associates**. More details will be available in the new year.

The next PM SIG presentation will be held:

<b>Date</b>	TBD (approximately late February)
<b>Time</b>	12:00 noon (sharp) – 1:00 pm
<b>Location</b>	*Fifth Avenue Place Conference Centre has moved. The new location is: 2nd Floor Conference Room Fifth Avenue Place, West Tower 237 – 4 Avenue SW

Should you wish further information please contact:

*Bill Bentley*  
Partner, Corvelle Management Consultants  
Phone: (403) 803-2529  
Email: [BillBentley@corvelle.com](mailto:BillBentley@corvelle.com)

*Karen Wright*  
Partner, Ethier Associates  
Phone: (403) 234-8960  
Email: [kwright@ethierassociates.ca](mailto:kwright@ethierassociates.ca)

## CIPS Special Interest Groups (SIGs)

### Citrix

Alicja Rymkiewicz  
[arymkiewicz@altatraining.com](mailto:arymkiewicz@altatraining.com)  
[www.calgarycitrix.org](http://www.calgarycitrix.org)

### Data Warehouse

Hassan Sherazi  
(403) 228-5423  
[HSherazi@aol.com](mailto:HSherazi@aol.com)  
William Miles  
(403) 233-5810  
[william.miles@eds.com](mailto:william.miles@eds.com)

### Database Administration

Doug Hopkins  
[dhopkins@dbc corp.com](mailto:dhopkins@dbc corp.com)

### e-Business

Yogi Schulz  
(403) 249-5255  
[YogiSchulz@corvelle.com](mailto:YogiSchulz@corvelle.com)  
Deborah Clark  
(403) 862-2716  
[debc@quadrus.com](mailto:debc@quadrus.com)  
[ebiz@quadrus.com](mailto:ebiz@quadrus.com)

### Geographic Information Systems

Allan Benvin  
[abenvin@gds.ca](mailto:abenvin@gds.ca)

### Help Desk

Phil Lalonde  
(403) 292-3204  
[phil.lalonde@royalbank.com](mailto:phil.lalonde@royalbank.com)  
[www.hdi-calgary.org](http://www.hdi-calgary.org)

### Java Users Group

Ralph Bohnet  
(403) 264-5840  
[rbohnet@bigfoot.com](mailto:rbohnet@bigfoot.com)

### Linux

Herman Van Kerr  
[www.calgary.linux.ca](http://www.calgary.linux.ca)

### Network Management

Dana Cusi  
[dana.cusi@cips.ca](mailto:dana.cusi@cips.ca)  
Greg King  
[wgking@cips.ca](mailto:wgking@cips.ca)

### Project Management

Bill Bentley  
(403) 803-2529  
[BillBentley@corvelle.com](mailto:BillBentley@corvelle.com)  
Karen Wright  
(403) 234-8960  
[kwright@ethierassociates.ca](mailto:kwright@ethierassociates.ca)

### Visual Basic

Bob Morton  
(403) 263-1200  
[mortonb@webmaxim.com](mailto:mortonb@webmaxim.com)  
[www.vbusers.net](http://www.vbusers.net)

### Women in Technology

Sarah Hargreaves  
[sarah.hargreaves@kornferry.com](mailto:sarah.hargreaves@kornferry.com)  
[www.witi.org](http://www.witi.org)

**To post your upcoming SIG events, contact Nguyen Tran by phone at (403) 319-6512 or email [ntran@cips.ca](mailto:ntran@cips.ca).**

## Do You Really Own Your Website?

Many companies and businesses have embraced the new millennium by taking their businesses “online”. This often includes the development of a website. Unfortunately, few businesses (or individuals, for that matter) have taken the time to consult with an intellectual property lawyer to make sure they will own their website.

Many who have paid someone else to develop a website for them mistakenly assume they actually own that site and are free to do with it what they will – including making modifications or updates. Too often, this is not the case and lack of ownership is only discovered when the person or business is sued for copyright infringement.

It is crucial to understand that the independent contractor who actually designed the website is generally considered the author of the work (and therefore the first legal owner) under copyright law in both the United States and Canada. In both Canada and the United States ownership of a website, when created by a developer acting as an independent contractor, is determined both by the contract signed with the developer and the applicable Copyright Act.

If the website was designed by a person specifically commissioned to perform this task (a “work made for hire”), the person or business that hired the contractor will be considered the author of the work, with the right to claim copyrights in and to the work. However, there are several stringent requirements under copyright law that must be met for a website created by an independent contractor to be considered a “work made for hire”, whether or not the website designer is a third party or an employee of the company or an individual contracting the design of the website.

First, the website must have been specially commissioned or ordered by the company or individual. Often this first branch of the test will be met if the site has been developed *from scratch* and is

not based on a previously created site of the developer. Secondly, the person(s) or company ordering the website must have maintained some degree of control over the project.

In the United States, there is also a requirement that the work falls within one of nine statutory categories of “work for hire”. These include:

- (1) contribution to a collective work;
- (2) a part of a motion picture or other audiovisual work;
- (3) a translation;
- (4) supplementary work;
- (5) a compilation;
- (6) an instructional text;
- (7) a test;
- (8) answer material for a test; and,
- (9) an atlas.

It is clear that most website creations would not fall within one or more of these categories and therefore would not be considered a statutory “work made for hire” in the United States.

On the remote chance that the website does fall within one or more of these categories, there is still a third hurdle to be overcome before the work is found to be a “work made for hire” – there must be express language in the contract between the parties

**CONTINUED ON PAGE 14...**

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## Tuxedo Thursdays: Coming To An Office Near You?

Casual Fridays have become so *de rigueur* that they've rapidly assimilated the other days of the week, especially in high-

tech industries. In fact, in our office, we have casual days Monday to Thursday – with a special treat for Friday. Jeans make the acceptable list on Fridays.

The City of Calgary's Information Technology Services group only recently made the switch to business casual – within the last two years. Even law firms in New York City have gone business casual.

Business casual is such a nebulous term that countless articles have been written about how to dress in conformity with business casual, but this is compounded by the degree of casualness in different environments.

Law firms regularly suggest to their associates that business casual may encompass sports coats and ties, or, for those more daring, a sports coat and (gasp!) a shirt without a tie.

Many firms seem to have adopted the approach that, if you can wear it on the golf course, you can wear it to the office. This led to a proliferation of khaki pants coupled with virtually any colour polo shirt at the office.

Several software companies represent the opposite extreme: staff wearing torn jeans, ratty T-shirts, and frayed cut-offs to the office.

Proponents of business casual, in its various forms, suggest that it improves productivity, because people are more comfortable. It also engenders improved peer to peer relations, as opposed to the hierarchical, top-down relations of days past.

Opponents of business casual point to the increased stress inherent in deciding what meets the business casual "standard"; the days when the most difficult choice was which tie to put on that day are long past.

For myself, speaking as a former menswear retailer, (There! My bias is out in the open!) I have to confess to giving varying levels of service to the customers who entered my

department. Those individuals who headed straight for our weekend wear (jeans, T-shirts, etc.) section rarely, if ever, received assistance. Customers in the market for our casual clothing received a modicum of assistance, but those who received the full benefit of my services were shopping for suits, shirts, and ties.

Having fitted probably hundreds of suits, I can attest to the fact that a suit can hide imperfections better than any other combination of clothing. A well-cut suit and a properly-fitted shirt and tie are very comfortable. In fact, a suit with braces, as opposed to a belt, is generally even better fitting, because it allows for the proper drape of the pants – but I digress.

Not only does a suit hide imperfections, but it conveys a certain image. It conveys the image of a person who is very exacting, precise, and professional. This combined effect, so long as appropriate

**CONTINUED ON PAGE 13...**

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## IT Executive Breakfast

October 26, 2001 saw CIPS Calgary kick off the first of several planned events for IT executives with a breakfast at the 400 Club. Paul Swinwood, President of the Software Human Resources Council, presented recent research from Statistics Canada on the IT workforce in Canada. Karen Lopez, CIPS National Director of Professional Standards, talked to the group about the I.S.P. designation and the benefits it could bring to their organizations. The breakfast was well attended, with twenty of Calgary's IT leaders present, representing a good cross section of the IT community. The event was sponsored by CIPS Alberta, CIPS Calgary, and Compass Management Consulting. ☛



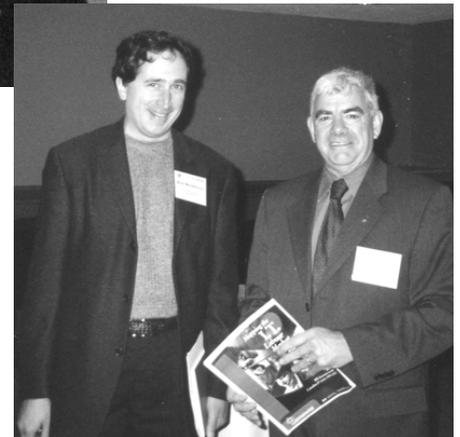
From left to right: Ken Chapman, Mark Montemurro



From left to right: Robin Lynas, Ken Chapman, Robert Austin, Rand Ayres



From left to right: Jess Harding, Sam Tse, Mark Olson



From left to right: Mark Montemurro, Paul Swinwood

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# Managing Your Outsourcer: Carrots and Sticks

Incentive clauses can be effective tools in managing an outsourcing relationship. Linking incentives to the attainment of established service levels, however, is generally a bad idea. After all, why pay a bonus for services you're already paying to receive?

A well-conceived incentive program rewards service providers for going above and beyond – for identifying and implementing cost saving opportunities, or initiatives that contribute to business success.

Specific characteristics of incentive programs can include:

- Key personnel for both the vendor and client organization have individual incentives related directly to organizational incentives which, in turn, are aligned with business goals and objectives.

- Payments are made annually to individuals who have made a significant contribution to the outsourced account – based on nominations from peers, management from both sides, or other agreed upon criteria.
- Payments are based on the mutual attainment of goals by vendor and client where only combined attainment results in payment to either party – thereby motivating both to work together more effectively to realize goals.
- Under a gain-sharing plan, the vendor receives a portion of any additional savings generated from, for example, reduced costs of raw materials, or implementations of new technologies or improvements in operations. Gain-sharing splits typically range from 50/50 to 75/25 in favor of the client and are generally subject to time limits. ■~

*Stuart Quinn, CIO Liaison*

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## CONTINUED FROM PAGE 11...

### TUXEDO THURSDAYS

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accessories are chosen and worn properly, is very powerful.

From my own experience, when I knotted my tie around my neck, I found my brain unconsciously shifting into a different gear – one where I was going to work. It set the tone for the day, and my productivity improved, because I'd turned my brain "on" for the day.

I definitely enjoyed my days wearing a suit or sports coat with a shirt and tie. My closet is a testament to this. I am in the process of moving as I write this article, and I counted eight sports coats and blazers, along with three suits. I also dug out eighteen dress shirts and ten pairs of dress slacks. The real kicker, though, is that I had nearly fifty ties in my closet. What does all this mean, besides that I'm a clotheshorse? It means I believe there is a place for business attire in today's world.

In fact, some retailers are attempting to bring "Dress-Up Thursdays" to the office. Some of it must be economically motivated, but they might just have a point. We have 60 to 120 seconds to make a first

impression – and our clothes are an important part of that first impression. If we wear appropriate clothes, we are removing or minimizing that factor in the first impression.

Why, then, do I wear khakis and polo shirts to the office now? The short answer is to fit in. That being said, I have had discussions with a colleague of mine who falls squarely into the business attire camp, and I would like to see him rule the world – if only so that I can get a little use out of my wardrobe. Seriously, though, I suspect productivity would improve and our respect and visibility with our customers would improve.

Try it some day. Wear a suit one day and your "typical" attire the next. Compare the reactions of those around you from one day to the next. Also make note of your productivity that day. You might just find yourself at a tailor the next time you are clothes shopping. ■~

## WILD ON THE WEB

CONTINUED FROM PAGE 10...

acknowledging that the work *is* a “work made for hire”.

In Canada, our *Copyright Act* does not set out specific categories of work that can be considered “works made for hire”. However, the common or case law developed over the past decade has clarified that computer programs or software development programs are subject to copyright law and are proper subject matter for copyright protection. Since websites are the fixed representations of software programs, logically, they are subject to copyright protection.

As in the United States, a contract made in Canada between parties must clearly set out that the work commissioned is a work made for hire, and all copyright in and to the work will belong to the person who commissioned the work. Unlike the United States, there is a further consideration in Canada – that of the *moral rights* in and to the work.

Moral rights are the rights of the author to the integrity of the work – the idea being that unauthorized alteration or use of the work (even if the copyright has been sold or licensed to another) may negatively affect the status and reputation of the author of the work. In reference to websites, while legal ownership to a website and its supporting computer program may have been obtained from the developer, changes, additions, or deletions to the website and/or its supporting computer program may still be prohibited unless a waiver of those moral rights has been obtained from the author(s).

One can obtain an assignment of copyrights but one cannot obtain an assignment of moral rights – these legal rights are personal to the author and will remain with him/her for the same term as the copyright in and to the work – a period of time equal to the life of the author plus 50 years. The only way to avoid the potential for an infringement of moral rights suit is to obtain a blanket waiver of moral rights from the author at the time the copyright is assigned. This is most often set out within the Web Development Agreement between the developer and the individual or company.

It is important to establish legal ownership of a website *before* it is posted to the world wide web. Not to do so could result in some very significant and devastating effects to the individual and/or his/her online business, since the author automatically has copyrights in any works s/he produces in a “fixed” form such as a work reduced to writing.

How might this affect businesspersons and/or their online businesses? Consider the scenario where an independent contractor has developed a website and the agreement with the developer does not contain an express “work for hire” clause or a waiver of moral rights. In this situation, the developer would be considered to be the author of the website and its first legal owner. This means the developer has the legal right to assert his copyright in and to the work, even against the person or business that hired him to perform this work.

Some time later in this same scenario, a decision is made to modify the website and not to have the original developer make those changes (for any number of reasons) but, instead, have a third party make the changes. Suddenly, there appears a plethora of registered letters advising the businessperson that

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he has infringed the developer's website by having someone else modify his/her work – this could result in a lengthy and expensive copyright infringement lawsuit.

In the United States, such a plaintiff may have the right to obtain statutory damages from the business person up to \$25,000.00 (US) or \$100,000.00 (US) if he can prove willful infringement. Willful infringement could occur when the website continues to be used, advertised, posted to the world wide web even after the company or business person has been notified of the potential infringement. In Canada, damages awarded are generally smaller, but the costs involved in defending such a lawsuit (and the time lost from business) can be just as devastating.

In another common scenario, the web designer might also be the website host (remember all those ISPs offering to help design a website for "free"?). The web hosting or Internet service agreement might allow for termination of the arrangement with 30 days prior written notice. Suppose the ISP developed the website online, but a business decision is made to change service providers for whatever reason and give the required 30 days written notice. Thirty days after the notice has been tendered, the service provider is switched and the other company starts hosting the website. Almost immediately following the reappearance of this website online via the new host, certified letters from the former provider, alleging copyright infringement, start to be received by the company or businessperson.

Surprisingly, the former service provider may have a very good case against you. One of the exclusive rights of the copyright owner is the right to control all reproduction of the work – in this case, the website. When the website was transferred to the server of the new host, the website was reproduced. To make matters worse, calls from the new service provider start coming in, advising that it was also served with notice of the alleged infringement and consequently, the website will now have to be taken offline – immediately.

In both of these scenarios, a great deal of money will be lost – not just in terms of legal costs in settling or litigating these allegations, but also in terms of lost business while the site is offline and lost hours of employees who will be needed to prepare for litigation.

How can these types of situations be avoided? First, consider what it is you hope to achieve – do you want the freedom to make changes to your website? Would

you prefer to leave all updating and modification to the site with the original designer(s)? Once you have determined what your personal and business objectives are, consult with an experienced intellectual property lawyer – a trained professional who can ensure an individual or business is properly protected by any agreement into which they intend to enter. An intellectual property lawyer can ensure that copyrights in and to a site are properly assigned or licensed to the person or business commissioning the work and that a waiver of moral rights is obtained, if this is required to meet the business plans of the organization or individual.

Ideally, any agreement entered into with a website developer should assign the entire copyright to the person or company commissioning the work. It should clearly set out that any subsequent use by the developer of any component contained within that site would infringe upon the business's copyrights. Many developers will be reluctant to agree to assign all the copyrights to you, since they often start new projects using code developed for a site they have previously developed. However, obtaining such an agreement will clearly establish your rights and forestall any future actions against you for infringement by the developer and/or any others for whom s/he has developed subsequent and similar sites.

If complete assignment of the website copyright is not possible (often because developers start new projects based on prior sites they have developed) then an indefinite licence to use should be obtained from the developer. While the developer may keep the underlying copyright in this situation, a properly drafted license agreement will ensure the business person will retain the rights required to use, copy, modify etc. the website.

There are many ways to negotiate the assignment and licensing of copyright in a website (including the option of licensing some rights back to the developer). Therefore, it is in the business's best interest to have good advice in the review and drafting of a website development agreement **before** one is signed. ☛

*I. Jane Churchill, M.Sc. LL.B. practices in association with Brownlee Fryett's Technology Law Group.*

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