SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Canada-United States Law Journal

Volume 23 | Issue

Article 3

January 1997

# Introduction and History of the Canada-U.S. Law Institute

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# INTRODUCTION AND HISTORY OF THE CANADA-U.S. LAW INSTITUTE

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I am Sidney Picker. I am a member of the faculty at Case Western Reserve Law School, and I am the Director of its Russian Legal Studies Program. I am also Chairman of the Canada/United States Law Institute's Advisory Board, as well as the Institute's founder, and I served for about ten years as its initial U.S. director.

Henry King, the current U.S. director, has asked me, as he has in the past, to welcome you to the 1997 annual conference of the Institute. This one is titled, "NAFTA Revisited," and we will review the development of NAFTA's implementation some three-and-a-half years later.

The conference topic for me is particularly meaningful because this past year I had the opportunity to be a part of that implementation process. I served throughout 1996 as one of two Americans on the first five-person panel to deal with a Chapter 20 government-to-government dispute under the NAFTA. Henry has asked me to talk about what the panel process was like with respect to the participant, and I will do that at Sunday morning's session

For now, Henry has asked me to don my founder's cap and begin by giving you some background of the Institute's origins and its activities, and that is what I intend to do for now.

The Institute officially comes of age this year. It was founded in 1976, which makes it twenty-one years old; we are a certifiable adult. It is a binational entity, a joint creation of the law schools of Case Western Reserve University here in Cleveland and the University of Western Ontario in London, Ontario in Canada.

The Institute has two directors: Henry King here at Case Western Reserve, who is the U.S. Director, and Rande Kostal, who is the Canadian Director at Western Ontario. It was founded with two basic goals in mind: one, to explore legal aspects and legal issues affecting the

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special Canada/United States relationship; and two, to examine each other's legal structures and processes in order to provide comparative law opportunities for the students and faculties of both law schools and for the broader legal communities in both countries.

With respect to the first of these goals, it is interesting to note that, at the time of the Institute's establishment in 1976, there were very few organizational structures in existence that managed the Canada/United States relationship. In the succeeding years, we have seen both the Institute grow up and such organizations grow up.

Perhaps the most significant of these structures in that period was the Canada/United States Free Trade Agreement or the FTA, which has now evolved into a trilateral arrangement, the North American Free Trade Agreement or NAFTA, the subject matter of this conference. It now encompasses not only the special Canada/U.S. relationship, but all of North America. Whether and when it further evolves into a still broader multilateral hemispheric relationship I suspect rests with the residents up and down Pennsylvania Avenue in the next several years.

With respect to the second goal of the Institute, comparative law, the two countries provide an ideal foundation for comparative law opportunities. Canada and the United States share geography, history, a cultural and political heritage, an economy, and they occasionally share a language. They offer the opportunity for students and faculties in both countries to be able to appreciate, understand, and have ready access to the materials available in both countries.

On the other hand, Canada and the United States are sufficiently different to maximize the opportunities for comparisons. They have different constitutions and different Federal structures. They have worked out, in effect, different legal solutions to what are relatively similar social, political, and economic problems. By examining those differences, in light of the different constitutional and Federal structures of the two countries, one not only understands the other country's position much better, but one also gets better insights into their own country's system.

In order to accomplish those two basic goals, we developed six different programs, and I will just briefly run through what they were.

The first was an exchange of law students, so that law students at each of the two participating law schools may spend one semester in a residence at a law school in the other country for full academic credit in the home institution.

Second was an exchange of faculty, for a period ranging from a few days to a semester.

Third was the publication of the first scholarly law journal in either

country which was devoted exclusively to the Canada/United States relationship, that is, the *Canada/United States Law Journal.* The *Journal* publishes the proceedings of this annual conference, and you will all receive it. As we speak, the Canadian alumni of the Canada/U.S. Law Institute are examining a plan which looks to the possible addition of a second issue of the *Journal,* which will provide both academics and practitioners with an opportunity to publish articles of common interest to both countries.

Our fourth program is the sponsorship of an international moot court competition, called the Niagara Moot Court. It is similar to the Jessup International Moot Court Competition in that it is a moot trial before the International Court of Justice. However, while Jessup Moot Court always deals with hypothetical countries, the Niagara Moot Court always deals with Canada and the United States, and the problems we face are real problems. In recent years, the Niagara Moot Court Competition has grown and expanded so that today there are law schools participating in it from coast to coast, and that makes the name of it, Niagara, of more historic than geographic significance.

Fifth, the Institute sponsors scholarly research on comparative law and international law issues affecting both countries.

Sixth, of course, is the organization of conferences on subjects of common interest to both countries. And by looking this year at NAFTA and Mexico, the conference further indicates that the Institute is expanding its scope beyond matters of exclusive interest to Canada and the United States and toward matters of common interest to both countries.

While the Institute has sponsored conferences from its inception in 1976, ever since the coming of Professor King, we have seen a fundamental change in the kinds of conference topics with which we have dealt. There has been a focus on the economic relationship between the two countries. There also has been an interest in a more intensive and a more extensive conference; it has become more serious and more in-depth with more advance preparation. Materials are prepared and circulated in advance, and we require expanded time to put on such a conference. That is why the conference begins today and will run through Sunday morning.

We also intend to provide an environment which is designed to promote both structured and informal interaction among yourselves and with us as well. This year, for the first time, we have moved the conference to an academic setting as well by bringing it to the campus of the Case Western Reserve School of Law.

The Institute owes a great debt of gratitude to a number of organizations and individuals, and I will just mention a few. In particular, we

are grateful for help in our critical founding years from the Canadian Embassy of Washington, D.C. and the Canadian Consulate Office in Cleveland, when we had one. It is now in Detroit, Michigan.

We also owe a great debt to a number of foundations, including the William H. Donner Foundation, the Richard G. Ivy Foundation, the Ontario Bar Foundation, the Gund Foundation, and the Cleveland Foundation. We also owe a debt to a number of corporations, too numerous here to mention.

The Institute, in turn, is owed a debt of gratitude from the Case Western Reserve School of Law, which in 1992 founded the Frederick K. Cox International Law Center. This is a globally oriented international law program, and it borrowed heavily from the operations of the Canada/U.S. Law Institute. It includes the more recent Russian Legal Studies Program, which also borrowed extensively from the Institute.

As the founder of this Institute, I owe a peculiar debt to the person I am about to introduce, Henry King. I should explain that when I first came up with the idea of an Institute, I was and probably still am a fuzzy-headed academic, and I had no experience in what it took to actually be in an organizational operation such as this Institute.

Henry, at that time, was the international corporate counsel at TRW, as many of you may know, and he was the only outside person I could turn to who really gave me the support, the advice, and the guidance that made it possible to bring this Institute into fruition. It would not have happened otherwise. During the first ten years, when I was the fuzzy-headed director, he stood behind me and told me exactly what to do and who I should contact.

Henry's background makes him peculiarly qualified for this. In addition to having been TRW's international corporate counsel for a number of years, he has had a most unusual background, beginning, as you may know, with being a part of the prosecuting team in the Nuremberg trials, about which, by the way, he has just written a book, which is scheduled for publication later this year.

In addition and more relevant to the conference here, as you may know, Henry has served in a number of different capacities with respect to Canada and the United States. He was the U.S. Chair of the Joint American Bar Association, the Canadian Bar Association, a working group on the settlement of international disputes between Canada and the United States. More recently, he served with respect to NAFTA as U.S. Chair of the Joint ABA, the CBA, and the Bar Mexicana, a joint working group on dispute resolution for the current subject, the current conference.

It is with great pleasure that I present to you Henry King.