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## INTRODUCTION AND HISTORY OF THE CANADA-UNITED STATES LAW INSTITUTE

*Sidney Picker, Jr.*<sup>\*</sup>

I am Sidney Picker, Jr., a member of the faculty at Case Western Reserve Law School, and Director of its Russian Legal Studies Program. I am also Chairman of the Canada-United States Law Institute Advisory Board, as well as the Institute's founder and initial U.S. Director. Henry King, the current U.S. Director, has asked me to welcome you to the 1998 Annual Conference on *Sovereignty Revisited*, which will review the development (or, some say, the disintegration) of sovereignty in the Canada-U.S. relationship as both countries enter the 21st century. This topic follows logically from last year's topic, *NAFTA Revisited*. Indeed, in the opinion of some who see NAFTA as a sovereignty-slayer, this year's topic is not only logical but inevitable.

This year's conference topic is particularly meaningful for me as I had an opportunity almost two years ago to play a small part in what some saw as "the slaying" when I served as one of the two Americans on the first dispute settlement panel under Chapter 20 of NAFTA. For those of you who follow NAFTA, that case, sometimes referred to as the poultry/dairy case, dealt with the tariffication of NAFTA quota'd agricultural products, and the decision (in Canada's favor) raised enough eyebrows on the south side of the border to suggest that the two American participants laid an egg and should choke on the chickens. Perhaps, therefore, with a rather puckish sense of humor, Henry King, you will notice from the program, has assigned me to preside over Sunday's sole agricultural topic, "Food Safety and Cross-Border Regulations."

Meanwhile, for now, Henry has asked me to don my founder's hat, and, in five minutes or less, briefly describe the origins and activities of the Canada-United States Law Institute.

The Canada-United States Law Institute was established twenty-two years ago, in 1976. The Institute is a binational entity, the joint creation of the law schools of Case Western Reserve University in Cleveland, Ohio, and the University of Western Ontario in London, Ontario. It has two directors, one at each of the two campuses, Professor Henry King, the U.S. Director,

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and Professor Rande Kostal, the Canadian Director. The Institute was the first academic institution or organization in either country designed to:

- (1) explore legal issues affecting the special Canada-U.S. relationship; and
- (2) examine each other's legal structure and processes in order to provide comparative law opportunities for the students and faculties of both participating law schools as well as for the public and private bar 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 few international legal structures designed to manage the Canada-U.S. relationship. However, in the succeeding twenty-two years, we have seen the establishment of a number of international institutional arrangements designed to manage that bilateral relationship, and indeed to expand it to a trilateral, and, inevitably in the 21<sup>st</sup> Century, to what will be a multilateral hemispheric relationship, the current U.S. Congress notwithstanding.

With respect to the second goal, the two countries provide a fertile foundation for maximizing comparative law opportunities. On the one hand, they have a great deal in common, including history, geography, a cultural and political heritage, language, and economy. Thus, students in either country have ready access to, and little difficulty understanding, the relevant literature of the other, and they can readily relate to the societal issues under examination. On the other hand, Canada and the United States are sufficiently different as to maximize the benefits of comparative analysis. Thus, while both countries have constitutions and federal systems, they are not alike. These in turn shape unique legal solutions to similar social, economic, and political problems. An examination of the other country's legal solutions within the context of its own constitutional/federal structures offers unique insights into one's own national legal solutions.

In order to accomplish the two basic purposes or goals of the Institute, six separate programs have been established, which are operated with varying degrees of regularity. These include:

- (1) An exchange of law students between the two participating law schools whereby students from each country may attend, for full credit, one of their six law school semesters in the law school of the other country.
- (2) An exchange of faculty members between the two participating law schools, both for brief (two days to two weeks) and extended (semester or year-long) visits;
- (3) The publication of the first scholarly law journal in either country devoted exclusively to issues of common interest to practitioners,

scholars, and public service personnel in both countries, the *Canada-United States Law Journal*. The *Journal* will publish the proceedings of this conference.

- (4) The sponsorship of an international moot court competition, the so-called Niagara International Moot Court Competition, involving U.S. and Canadian law schools, which always poses a hypothesized problem involving Canada and the United States argued before the International Court of Justice, also known as the World Court. In recent years, the number of participating law schools has expanded, literally from coast to coast, causing some to note that the name "Niagara" assumes historical, rather than descriptive, significance.
- (5) The periodic sponsorship of scholarly research on comparative law and international law issues affecting both countries; and
- (6) The organization of conferences on subjects of common interest to both countries.

The current conference falls within the final program. The Institute has sponsored conferences since its inception in 1976. In its early years, these conferences were of a shorter duration. Perhaps the most significant of these was 1979's *Comparison of the Role of the Supreme Court in Canada and the United States*, which included a panel consisting of Canadian Supreme Court Justice Brian Dickson and U.S. Supreme Court Justice Potter Stewart, chaired by Professor Larry Tribe of Harvard Law School. It was Justice Dickson who pointed out that, until that conference, no members of the two Supreme Courts had ever been called on to participate in any program of any kind. Since then, this has happened periodically in both countries.

In the mid-1980s, after Henry King succeeded to the Institute, the nature of these conferences took on a more significant tack, by focusing annual conferences on examinations of various aspects affecting the Canada-U.S. economic relationship. More important, the conference format was modified to provide a more intensive (as well as extensive) experience. That meant probing in greater depth, which required advance preparation, and circulating extensive background materials at the opening of the conferences. It also meant extending the length of time for each conference, and scheduling each in an environment designed to promote both structured and informal interaction among participants and attendees.

The Institute owes a debt of gratitude to many individuals and organizations who have supported its various activities during the past twenty-two years, both financially and intellectually. Included are the Canadian Embassy in Washington, D.C., as well as the Canadian Consulates General, first in Cleveland, Ohio, and later, after that office was closed, in Detroit, Michigan.

In addition, private non-profit institutions in both countries have contributed generously since the Institute's establishment. These include the William H. Donner Foundation, the Gund Foundation (both directly and through the Cox International Law Center at Case Western Reserve Law School), the Cleveland Foundation, the Richard G. Ivey Foundation, and the Ontario Bar Foundation.

As the founder of this Institute, I in turn owe a particular debt to the person whom I am about to introduce, Henry King, the current U.S. Director of the Institute. At the time I first formulated the Institute concept, Henry was still Chief Corporate International Counsel at TRW. As an academic inexperienced in the ways of establishing such special-focused organizations, I turned to, and relied extensively on, Henry's organizational skills as well as his substantial knowledge of Canadian affairs.

Professor King's background, as you all know, is extraordinary. He has served as Chairman of the Section of International Law and Practice of the American Bar Association, as well as U.S. Chairman of the Joint American Bar Association-Canadian Bar Association (ABA-CBA) Working Group on the Settlement of International Disputes between Canada and the United States. More recently, he served as U.S. Chair of the American Bar Association-Canadian Bar Association-Barra Mexicana Working Group on the Settlement of International Disputes. What you may not know is that Henry's legal career started out with his membership on the prosecuting team at the Nuremberg War Crimes Trials in Germany after World War II, about which he recently wrote and published a book, *The Two Worlds of Albert Speer*,<sup>1</sup> published by University Press. It is a great pleasure for me, therefore, to present to you the U.S. Director of this Institute, Henry King.

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<sup>1</sup> HENRY T. KING, JR., *THE TWO WORLDS OF ALBERT SPEER, REFLECTIONS OF A NUREMBERG PROSECUTOR* (University Press of America, 1997).