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Conference Opening

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Conference Opening

*Henry T. King, Jr.**

I cannot think of a nicer person to work with than Sidney throughout the years, and so the feelings he expressed here today are very reciprocal.

I want to say a word about the Conference and its scope. Of the eight conferences the Institute has sponsored dealing with the relationship between law and economics in the Canada-U.S. context, this Conference is, without question, the most significant. We will be discussing issues which affect all of us now and in the future.

This Conference is concerned with the air we breathe and the water we drink. It is concerned with climate change and the survival of animal and plant life on this planet as we know it today. We will look at the sources of pollution in the air, on the land and in the water, as well as the regulatory steps that have been taken to correct or eliminate such pollution. We will focus in on the problems of waste disposal and the trans-border flow of wastes. We will also examine the impact of environmental regulation on business transactions in Canada and the United States, which is indeed very far-reaching and most intensive.

Some fundamental issues are emerging as we try to reconcile our desire for environmental protection, on the one hand, and the concepts of the free flow of goods across borders and free market-driven economies, on the other. As a complicating factor, the world is by no means one in terms of national levels of environmental protection, and there are wide variances in today's word in the stringency of environmental regulation.

Some countries have very tough laws dealing with environmental regulation, while in others, the rules are either looser or they are not effectively enforced. These varying levels of effective environmental regulation have bottom-line cost effects, and we will look at this aspect in depth.

Our scrutiny of the economic consequences of environmental regulation will not only be done on a comparative basis between the U.S. and Canada, but we will also compare the Canada-U.S. context with that of other competitive countries in Europe and that of Japan.

Now, I want to say a word about the specifics of our program. First, with David Buzzelli of Dow Chemical and Roderick McLeod of Miller Thomson as our guides, we will look at the key environmental

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issues for the 1990s and beyond in Canada and the U.S. In this session, we will draw with broad strokes the key issues in today's world and those which are on the future horizon.

In order to get our bearings for future discussions and to give us a sense of the total regulatory context in Canada and the United States, we will take an overall look at the basic legal framework for environmental regulation on both sides of the border. Both countries have federal systems of government, and we will examine the jurisdictional limits between federal authorities, on the one hand, and state and provincial authorities, on the other. Bill Falsgraf of Baker & Hostetler, and a former president of the American Bar Association, and Roger Cotton of Fasken, Campbell, Godfrey, will be our speakers at this session.

We live in a very competitive world, and Canada and the United States do not operate in a competitive vacuum. Many of the competitors of U.S. and Canadian firms are located in Europe. Cost differences can make or break our ability to secure sales, and to be competitive, we need to know what we are up against in terms of the cost effects of environmental regulation on our competitors. Dale Stephenson — subbing for Brian Hartnett, who was unfortunately detained by a hearing before the EEC in Brussels — will guide us in this analysis. Dale is a partner of the Cleveland office of Squire, Sanders & Dempsey.

An area which has high visibility is the transportation of hazardous waste across the border. Here, we shall be concerned with the statutory framework in the U.S. and Canada affecting exportation or importation by private parties of hazardous waste to and from Canada and the United States. We shall also be concerned with the implications of contaminants flowing across the border. Jane Seigler of Waste Management, the largest waste disposal company in the world, and Bob Redhead of Laidlaw, Canada's largest waste disposal firm, will be our guides through this complex area.

Environmental laws are replete with teeth, and this is the focus of our next session. The comparative aspects of liability for environmental change in Canada and the United States deserve our attention. We need to look at the comparative liability aspects of cleanup statutes and regulations, standards and enforcement practices. We also need to look at crossborder aspects of this subject, as well as the intraterritorial phases. In this important session, John Hanson of Beveridge & Diamond, in Washington, D.C., and Michael Jeffrey of Fraser Beatty, in Toronto, will be our speakers.

Sooner or later it seems likely we will have a North American Free Trade Agreement. A critical issue related to the Agreement is the matter of environmentalists' concerns. This is so because of the influence of the environmentalists, particularly on the U.S. Congress. They are concerned with protecting border areas from adverse environmental consequences of increased trade, reflected in increased crossborder trade flows. We are also concerned with environmentally-based restrictions on trade

flows and with the crossborder competitive effects of varying levels in environmental regulation in the U.S., Canada and Mexico. To apprise us of this context, we have speakers from all three countries involved in the proposed North American Free Trade Agreement: namely, Professor Edith Brown-Weiss of Georgetown Law School and formerly Associate General Counsel of EPA; Michael Hart of the Department of External Affairs of Canada; and Aureliano Gonzalez-Baz, who heads up Mexico's largest law firm.

With the dawn of the new day, we shall explore the intergovernmental aspects of environmental regulation in the air pollution area. Canada and the United States signed not long ago a precedent-setting Air Quality Agreement. We shall be looking at the effects of this agreement with Dennis Leaf of the U.S. Environmental Protection Agency and Alex Manson of Environment Canada.

The session that follows will deal with intergovernmental aspects of environmental regulation in the water pollution area. Here, our focus will be on the Great Lakes and the joint attempts of U.S. and Canada to preserve their pristine purity to the maximum extent possible. The constructive effects of the International Joint Commission will, of course, be a point of focus, and we are indeed fortunate to have both the U.S. and Canadian legal advisors to their respective national sections of the International Joint Commission to update us on this context. Our speakers here will be James Chandler of the United States and Michael Vechsler of Canada. Our luncheon session of the second day of the Conference will deal with Japan, which is a highly critical competitive area for the U.S. and Canada. We will look at the competitive implications for U.S. and Canadian business of environmental regulation in the Japanese context. Many of our businesses, after all, are engaged in dogfights with Japanese competitors. The competitive context with the Japanese is such that all cost elements are important, including, of course, the cost of compliance with environmental regulation which is certainly a significant factor in the cost of doing business in the United States. In this session, it will be important not only to look at the statutes on the books in Japan, but also to the extent to which they are enforced. Laura Campbell of Morgan, Lewis & Bockius in New York, who spent two years in Japan looking at Japan's environmental setup, will be our speaker at that session.

Our afternoon of the second day will start with coverage of a very sensitive area — that of international oil spills. We will look at the legislative and regulatory framework applicable to such spills, as well as the Canada-U.S. Agreements which might be relevant. We will also look at the legal aspects of the role of Canadian and U.S. Coast Guard authorities regarding emergency responses to maritime spills. Above all, we will look at the legal liability of the ship owner and of the cargo owner for such spills. Richard Jarashow and Alfred Popp will be our speakers for

this session, and we look forward to what they have to say on these important subjects.

The session which follows will deal with the New Business Imperatives in the environmental regulation area. Here we will be concerned with the impact of environmental controls, our business transactions and, above all, the critical question of who pays. In terms of specifics, we shall focus on land acquisitions and disposals, financing, SEC and other disclosure requirements, possible incentives and grants, and environmental audits. In addition, we will look at the responsibilities of both primary and secondary parties, including those directly involved as well as lenders, contractors and insurers. Our speakers for this will be Joseph Polito of the Detroit law firm of Honigman, Miller, Schwartz & Cohn and Clive Allen of Northern Telecom, who is also a director of the Institute.

At our dinner session on Saturday evening, we will look at environmental regulation in the larger context: the role of transnational cooperation. Our focus will be on the depletion of the ozone layer, global warming and climate change. Certainly, these are issues that effect all of us not only now, but for the future. We are indeed fortunate to have as a speakers Elizabeth Dowdeswell of Canada and Dan Reifsnyder of the U.S., both of whom are playing a critical role for their respective countries in the current negotiations designed to protect the ozone layer and to reduce the emission of chlorofluorocarbons in the atmosphere.

In our Sunday morning session, we will deal with an issue which is growing significantly in importance, and it is one of the fundamental issues of our time: whether environmental obligations can be reconciled with trade objectives. We will examine the need to address country-to-country variances in environmental regulation as impacting trade and the desirability of creating a more level playing field. We will examine the desirability of a common set of standards to address environment-based restrictions on trade flows. Finally, we will examine all of these questions in terms of the means through which they should be handled; that is, for example, whether through GATT or other multilateral or bilateral trade arrangements or through an international code of conduct. Christopher Thomas of Ladner Downs in Vancouver will be our speaker for this session.

As I said at the outset, we are concerned at this Conference not only about the here and now, but also the hereafter. Our present is with us and we need to understand it better and how it came about, but we have a chance to control our future and to improve the context in which we live for the benefit of future generations.

I agree with Bertrand Russell when he said, "One must care about a world which one will not see," but I also know that Sir Harry Lauder was right when he said, "The future is not a gift, it's an achievement." This is our challenge at this moment, and it is indeed a formidable one.

The challenge, however, promotes growth of the human spirit, and I am personally confident we can rise to meet the challenge.

This program owes much to several individuals whom I hasten to recognize. The significant help in the structuring of the program from Tim Stock of the United States and Clive Allen of Canada, both members of the Institute's Advisory Board, deserves special recognition. John DeMeester of Dow Chemical and Patrick Murphy of Imperial Oil were also helpful. Robert Timberg who is here with us today and Ross Glasgow performed yeoman service in identifying potential conference speakers and constituencies. Mary Torok, Editor of the Canada-U.S. Law Journal, has been an absolute stalwart in assembling conference material and in speaker follow-up. Finally, the Institute's Program Coordinator, Adria Sankovic, deserves our special thanks for the effective job that she has done in coordinating this conference.

