

January 1991

Conference Opening

Henry T. King Jr.

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

Recommended Citation

Henry T. King Jr., *Conference Opening*, 17 Can.-U.S. L.J. 221 (1991)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol17/iss2/3>

This Foreword is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Conference Opening

*Henry T. King, Jr.**

Abraham Lincoln once said that "The dogmas of the quiet past are inadequate to the stormy present. We must think anew and act anew." Lincoln's remarks are appropriate for this Conference on dispute resolution. The context of the past requires improvements and I am indeed hopeful that this Conference will generate some fresh thinking in this critical subject area - namely how we resolve disputes both nationally and internationally.

The subject which we shall be dealing with over the next three days ranks high on a comparative basis with those which were the focus of prior conferences. This is because it affects our competitive positions cost-wise in a cost conscious world, and also because the manner in which disputes are resolved affects the maintenance, in an increasingly economically integrated world, of continuing relationships both private and governmental.

The scope of this Conference is ambitious. It covers not only comparative aspects of dispute resolution domestically, in our two countries, but also the resolution of disputes arising from cross-border relationships between public and private parties. Additionally, we shall be looking at, on a comparative basis, how disputes are resolved in the competitive countries of Europe and in Japan. Certainly this is important because it has significant cost effects on our relative competitive positions.

It is appropriate to outline our plan of action for implementing the scope of the conference. We shall start with broad strokes in our opening session. Our speakers, Ambassador Yves Fortier of Canada and Gerald Aksen of the United States, will give their assessments of where we stand both nationally and internationally from the Canadian and United States perspectives.

This session will be followed by one dealing with cross-border litigation, with Bruno Ristau of the United States and T. Bradbrooke Smith of Canada, as our speakers. As the cross-border economic relationship between Canada and the United States intensifies and trade and commerce between the two countries grows, it seems inevitable that cross-border litigation involving Canadian and U.S. litigants likewise will grow in volume and significance.

At our luncheon session, Hans Smit will discuss "The Comparative

* U.S. Director, Canada-United States Law Institute; Professor of Law, Case Western Reserve University; Of Counsel, Squire, Sanders & Dempsey, Cleveland, Ohio.

Context for Dispute Resolution in Europe as Compared With the U.S. and Canada." Here there are significant differences between the way Europeans resolve disputes as compared with the resolution of disputes in the United States, and they bear noting because they do have bottom line effects economically. Professor Smit, who was born in the Netherlands and now lives in the United States, will comment on these differences.

In an extended afternoon session, we will explore the comparative Canada-United States aspects of dispute resolution in key subject areas. These areas include: Technology, with Larry Evans of the United States and Clive Allen of Canada as speakers; Labor, with Eugene Connors of the U.S. and Derek Rogers of Canada as speakers; and, Product Liability, with Malcolm Wheeler of the U.S. and Bruce Thomas of Canada as speakers. There are some substantial differences between the approaches followed in the two countries in at least some of these areas, and we need to identify and fully understand what they are and why they exist.

Our evening session will consider "The Role of Litigation and Alternatives Thereto in Consumer Activism." Our U.S. speaker will be Alan Morrison, Director of the Public Citizen Litigation Group, and Andrew Roman, who was Founding General Counsel of the Public Interest Advocacy Centre, as our Canadian speaker. Professor Wilbur Leatherberry will moderate this session. In this area, again, the differences between the two countries are very material.

On Saturday morning, we shall discuss dispute resolution between governments. As with trade and commerce, the significance of intergovernmental disputes will grow in importance with the passage of time. During our morning session, we shall look at dispute resolution under a structure in place, the Free Trade Area, through the eyes of Jean Anderson of the United States and Jon Fried of Canada; both of whom were involved in the negotiation and the implementation of the Canada/U.S. Free Trade Agreement. In our second morning session concerned with dispute resolution between governments, we shall hear about an area which is fast growing in importance: the environment. Here, our session is particularly timely since the framework of the Canada/U.S. Environmental Context will be changed materially by the Air Quality Agreement signed by President Bush and Prime Minister Mulroney on March 13, 1991. Richard Smith of the United States and Michael Phillips of Canada will tell us about the changes brought forth by these new arrangements, particularly as these changes pertain to dispute resolution.

We shall figuratively travel to Japan at our luncheon session on Saturday with John Haley, who lived for five years in Japan as a lawyer and teacher, as our guide. We shall be looking at "The Comparative Context for Dispute Resolution in Japan as Compared with Canada/U.S." Here there are significant differences which have cost effects, and we need to assess their importance and their reason for existence.

Following Saturday's mid-day meal, we shall be looking at the com-

parative economics of various means of dispute resolution in Canada and the U.S. The choice of available alternatives for dispute resolution does have substantial cost effects and it is imperative to be aware of and assess their impact. This will be a key session. We have excellent speakers in the persons of Clifford Whitehill of the United States and Katharine Braid of Canada.

Arbitration as a vehicle for dispute resolution is growing in importance on both sides of the border. A key to the future growth of arbitration is the ability to enforce arbitral awards, both domestically and internationally. The current context of enforceability must be examined as it stands in both countries. We will do this through the experienced eyes of James Carter of the United States and Jean-Gabriel Castel of Canada.

At our post-dinner session we will assess the current system of dispute resolution and consider where improvements may be made. Our speakers for this session, Robert Coulson of the United States and Justice John Sopinka of Canada are, on the basis of their respective experience and track records, extremely well qualified to address this critical subject.

Appropriately, with the dawn of a new day on Sunday morning, we will be looking at implementing new approaches to the settlement of disputes. George W. Coombe, who until just recently was Executive Vice President of the Bank of America, one of the world's largest banks, will be our speaker. George Coombe has had "hands on" experience with implementing approaches to settling disputes at the Bank of America, and his practical observations will merit close attention by us all.

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, deserve special recognition. Helen Probst, Editor of the *Canada-U.S. Law Journal*, has been an absolute stalwart in assembling Conference materials and in speaker follow-up. Finally, Adele Gandal, the Institute's Coordinator, who has been with this Conference from its early stages last summer to its completion this weekend, is deserving of our special thanks for the hard work she has done in coordinating the Conference logistics.

This Institute holds great promise because of the breadth of its scope and because of its timeliness and relevancy. I hope that when we adjourn on Sunday morning, you will find that this promise has been fulfilled.

