

2002

## Volume 28

Canada-United States Law Journal

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# Canada- United States Law Journal

Volume 28

2002

## **ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES IN THE CANADA/U.S. CONTEXT**

**Conducted Under the Auspices of**

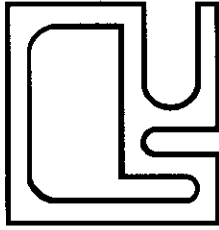
**THE CANADA-UNITED STATES LAW INSTITUTE**

**and**

**CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW**

**Cleveland, Ohio  
April 19-21, 2002**

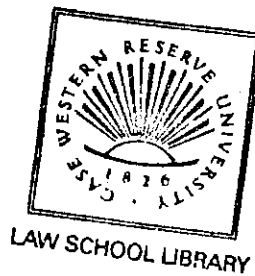
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Canada-  
United States  
Law Journal

Volume Twenty-Eight  
2002

Case Western Reserve University  
School of Law



31 40 CW 1009  
01/03 XL  
00-104-06 GBC

**Cite as:  
CAN-U.S. L.J.**

The *Canada-United States Law Journal* (ISSN 0163-6391) is published by the Case Western Reserve University School of Law on behalf of the Canada-United States Law Institute. The *Canada-United States Law Journal* is an annual publication, and subscription rates are \$30.00 per volume (domestic and foreign). Subscriptions are payable in advance. Subscriptions are renewed automatically unless timely notice of cancellation is received. Back volumes may be purchased by contacting William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14290.

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On behalf of the Canada-United States Law Institute, the *Journal* gratefully acknowledges a grant of support for the 2002 Conference from the Government of Canada through the Canadian Studies Grant Programs of the Department of Foreign Affairs and International Trade/International Academic Relations Division, as well as additional support from the Canadian Consulate in Detroit, Michigan.

## EDITOR'S NOTES

Published in this issue of the *Canada-United States Law Journal* are the proceedings of a Conference held under the auspices of the Canada-United States Law Institute and Case Western Reserve University School of Law. The Conference, its theme being *Energy, the Environment and Natural Resources in the Canada/U.S. Context*, took place on April 19-21, 2002.

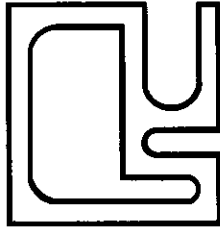
The articles and discussions printed here have been compiled from transcripts of the Conference and papers submitted by the speakers. Our editing process attempts to strike a balance between retaining the spirit of the Conference and maintaining the *Journal's* overall readability. Questions regarding factual assertions in the text should be addressed to the authors.

We have strived to make this volume of the *Journal* the best-edited and most carefully-researched volume in the Institute's nearly 30-year history. As a default rule, footnotes in the *Journal* comply with the format suggested by *The Bluebook: A Uniform System of Citation* (17th ed.), and, when necessary, have been amalgamated with citation forms adapted from the *Canadian Guide to Uniform Legal Citation* (4th ed). The text generally conforms to the *Chicago Manual of Style* (14th ed.).

The creation of Volume 28 of the *Canada-United States Law Journal* has been a "labor of love," but it would not have been accomplished without substantial contributions from everyone involved in the process. Special thanks go to Kelly Cusick, Executive Articles Editor for this Volume, who is one of the best text editors I have ever worked with, catching syntax errors that neither my authors nor I found or corrected. Many thanks also go out to Julianna Herrick, editor in chief of Volume 27, who taught me most of the things I know; to Julie Kraus, for being an ear for my concerns; to Professor Henry King, who has been extraordinarily patient with me and whose dedication to the Institute is an inspiration to all who follow his lead; to Alice Simon, for answering various and sundry questions; to Andy Dorchak, who assisted me in finding a few obscure references; and to all the members of the executive board of *Case Western Reserve Journal of International Law*, for putting up with my virtually continuous occupancy of the editing computer over these last few months. Of course, this Volume would have not been possible without the willingness of the many leaders in business, law and government from both sides of our vast northern border to come to the Conference and share their thoughts with those of us who were fortunate enough to have the opportunity to listen to them.

May all who read this book gain knowledge.

Donovan M. Steltzner  
Editor In Chief  
October 14, 2002



Canada-  
United States  
Law Journal

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VOLUME 28

2002

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LAW INSTITUTE CONFERENCE  
*on*  
ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES IN THE  
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Cleveland, Ohio  
April 19-21, 2002

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**Henry T. King, Jr.**, the United States Director of the Canada-United States Law Institute, is a graduate of Yale College and Yale Law School. A former United States Prosecutor at the Nuremberg Trials, a former General Counsel of the United States Foreign Economic Aid Program, as well as a former Chairman of the Section of International Law and Practice of the American Bar Association, Mr. King is United States Chairman of the Joint ABA (American Bar Association) CBA (Canadian Bar Association) Barra Mexicana Working Group on the Settlement of International Dispute. He has held the position of Chief Corporate International Counsel of TRW, was a founder of the Greater Cleveland International Lawyers Group, and is a former president of the Cleveland World Trade Association. He has published over seventy articles on international legal subjects, including international business transactions, international arbitration, and Nuremberg related topics. He is currently Of Counsel to the law firm Squire, Sanders & Dempsey and Professor of Law at Case Western Reserve University. He has written a book, entitled *The Two Worlds of Albert Speer: Reflections of a Nuremberg Prosecutor*. Mr. King is a former Chairman and long time member of the Northern Ohio District Export Council. In June 2002, Mr. King was awarded an honorary degree of Doctor of Civil Laws by The University of Western Ontario.

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SPEAKERS AT THE 26<sup>TH</sup> ANNUAL CANADA-UNITED  
STATES LAW INSTITUTE CONFERENCE

*on*

ENERGY, THE ENVIRONMENT, AND NATURAL RESOURCES IN THE  
CANADA/U.S. CONTEXT

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**Peter Janson** is Chairman and CEO of AMEC Inc., and is responsible for running AMEC's North and South American operations. Mr. Janson joined AMEC Inc. (formerly AGRA Inc.) in April 1999 and managed the merger the following year between AGRA, a leading North American professional

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**Martin Kaga** has lead the Legal Services Business Unit of the Department of Energy in the Province of Alberta since 1987. The Legal Services Business Unit provides legal services to the Minister and Department of Energy, represents Alberta in domestic, national and international regulatory proceedings and provides alternative dispute resolution to those paying royalty to the government of Alberta. Mr. Kaga's own preferred areas of practice include legal policy related to tenure and royalty structures, including the preparation of related legislation, regulations and royalty agreements. He currently serves as a member of the Law Society of Alberta's Gender, Equity and Equality Committee. Mr. Kaga holds a Bachelor of Arts degree from the University of Calgary and a bachelor of laws degree from the University of Alberta.

**Frank E. Loy** has most recently served as Under Secretary of State for Global Affairs in the Clinton Administration, from 1998 to 2001. He has served on the boards of various environmental organizations and conferences, serving as chairman of the Environmental Defense Fund and the Conference of the Parties of the Convention on International Trade in Endangered Species in 1994. Mr. Loy has also served on the boards of the Regional Environmental Center for Central and Eastern Europe in Budapest, and Population Services, International. From 1965 to 1970, Mr. Loy served as Deputy Assistant Secretary of State for Economic Affairs; from 1970 to 1973, he was Senior Vice President for International and Regulatory Affairs for Pan American World Airways, and from 1974 to 1979 Mr. Loy served as President of a Penn Central subsidiary, and after a short stay in government in 1980, he served as the president of the German-Marshall Fund of the U.S. He received his bachelor's degree from the University of California, Los Angeles and a law degree from Harvard University.

**David Luff** is Vice President of Stewardship and Public Affairs of the Canadian Association of Petroleum Producers (CAPP), and has held his current position since 1997. Prior to his appointment at CAPP, Mr. Luff has served in various positions in the Alberta Department of Energy since he became a Resource Planner in 1976. Starting in 1982, he became Director of the Mineral Resources Division for seven years, and then served as its Executive director for five. In 1994, Mr. Luff was appointed Assistant Deputy Minister, Operations & Support Division, and in 1995, he became the Assistant Deputy Minister in the Corporate Services Division. Mr. Luff received both his B.A. and M.Sc. degrees from the University of Alberta.

**David J. Manning** is the Senior Vice President of Corporate Affairs of KeySpan, with responsibility for Public Affairs, Government relations, internal and external communications, and environmental policy. Prior to joining KeySpan, Mr. Manning was president of the Canadian Association of Petroleum Producers from 1995 to 1999, Deputy Minister of Energy for the Province of Alberta, Canada from 1993 to 1995; before then he was the Senior International Trade Counsel for the Government of Alberta, based in New York City. Previously, he was in the private practice of law. Mr. Manning is Chairman of the Brooklyn Chamber of Commerce, and is a member of the Long Island Housing Partnership.

**John Mills** is the Regional Director General of Ontario for Environment Canada, a position he has held since 1993. He is responsible for the delivery of Environment Canada programs in Ontario, and he is the Canadian lead for the Great Lakes Program. Mr. Mills is the past Chair of the Ontario Federal Council, Ontario's forum for federal government department and agency

senior managers. He joined the Federal Public Service in 1968 as a weather forecaster. Since 1978, he has held a number of management positions in a variety of program areas, most notably as Director General, Weather Services, and as acting Assistant Deputy Minister of the Atmospheric Environment Service (now the Meteorological Service of Canada). Mr. Mills is a graduate of Memorial University in St. John's, Newfoundland.

**William A. Mogel** is a Partner at the law firm of Squire, Sanders and Dempsey, LLP, and focuses his practice on energy law. Mr. Mogel regularly represents clients before federal and state regulatory commissions and courts. He also represents large consumers of electricity and natural gas, such as petrochemical companies, hotels and public institutions, in transactional matters involving energy contracts. He has extensive experience in federal and state issues affecting the electric power and natural gas industries. Mr. Mogel's international energy experience includes privatization and restructuring matters in Ireland, Moldova, Poland, Russia and the Slovak Republic. Mr. Mogel conducts an annual energy law seminar at the University of Tulsa Law School and serves as a professorial lecturer at the American University Law School. In 1980, Mr. Mogel founded the *Energy Law Journal*, and currently serves as its editor-in-chief and as director of its foundation. He is co-editor of *Energy Law and Transactions*, an internationally known, six-volume treatise dealing with every aspect of energy law. The author of numerous law review articles, Mr. Mogel received his B.A., *cum laude*, from Hobart College, and his law degree from the University of Pennsylvania.

**Alan Nymark** is the Deputy Minister of Environment Canada, a position he has held since 1999. Mr. Nymark's career has included positions with the Department of Finance, the International Monetary Fund, and the Royal Bank of Canada. In 1985, Mr. Nymark was appointed Assistant Chief Negotiator with the Trade Negotiations Office on the Canada-U.S. Free Trade Agreement. Between 1989 and 1993 he served as Executive Vice President of Investment Canada and as Assistant Chief Negotiator for NAFTA. In 1993, Mr. Nymark was appointed Deputy Minister, Industry and Science Policy at Industry Canada. He currently serves on the Boards of Directors of the Canadian Policy Research Networks, Canada's Climate Change Voluntary Challenge and Registry Inc., and the International Institute for Sustainable Development. He holds a Master of Economics degree from Queen's University.

**Robert Page** is the Vice President for Sustainable Development at TransAlta, and is responsible for the company's environmental, health, and safety projects as well as TransAlta's renewable energy projects. Dr. Page is

internationally known for his work on energy and the environment in areas such as environmental impact assessment, environment and trade, climate change, and policy regulation. He is a member of the Clean Air Strategic Alliance of Alberta, and member of the Panel of Advisors, Federal Commissioner of the Environment and Sustainable Development, and is also vice-chairman of the International Emissions Trading Association of Geneva, Switzerland. Dr. Page received a bachelor's degree, with honors, and a master's degree from Queen's University and a doctorate from Oxford University.

**Henry A. Regier** is Professor Emeritus at the University of Toronto and is an adjunct professor in Environmental Studies at the University of Waterloo. A world-renown expert on fisheries and the environment, Dr. Regier has served as an advisor and panelist in numerous governmental and non-governmental scientific and environmental organizations and conferences, including the World Food Congress, the 1972 Stockholm Conference of the Human Environment, the Great Lakes Fishery Commission, the Great Lakes Science Advisory Board of the International Joint Commission of Canada and the USA, the Government of Finland, the Anishinabek/Ontario Fisheries Resource Centre, and the Joint Panel of the National Energy Board/Canadian Environmental Assessment Agencies. He has received numerous conservation and professional awards, including an Award of Excellence of the American Fisheries Society. From 1966 to 1995, he served as a professor of zoology and eventually also of environmental studies at the University of Toronto. Dr. Regier received an Honours B.A. from Queen's University, and his doctorate from Cornell University.

**John H. Sargent** is Head of Domestic Emissions Trading Analysis in the Government of Canada's Climate Change Secretariat. He is on secondment from the Department of Finance where, until September 2001, he was Senior Advisor to the Deputy Minister. He has served as a chair of the federal/provincial/non-government Tradeable Permits Working Group and was Executive Director of the Technical Committee on Business Taxation from 1996 to 1998. Mr. Sargent also served as Assistant Deputy Minister, Tax Policy, for an interim period in 1993. From 1971 to 1983, he served in various other positions in the Department of Finance, including an appointment as the Senior Advisor of the Tax Policy and Legislation Branch, and Assistant Deputy Minister of the Financial Sector Policy Branch. Prior to joining the federal government, Mr. Sargent was an assistant professor of economics at Queen's University. He received his bachelor's degree from McGill University.

**Matthew Schaefer** is an Associate Professor at the University of Nebraska College of Law where he teaches courses in International Trade Law, International Law, International Business Transactions and International Trade Law and Policy. In 1999, he served as a director in the International Economic Affairs Office of the National Security Council and the White House, focusing on WTO and sanctions matters. From 1993 to 1995, he served as a consultant to the National Governors' Association and Western Governors' Association during the legislative implementation of the NAFTA and GATT Uruguay Round multilateral trade agreements. He recently became a term member of the Council on Foreign Relations (New York) and an editorial board member of the Journal of International Economic Law. Professor Schaefer has received a B.A. from the University of Chicago, a J.D. (*magna cum laude*, Order of the Coif) and an LL.M. from the University of Michigan Law School.

**Dale E. Stephenson** is a partner in the law firm of Squire, Sanders & Dempsey, and has experience in all aspects of environmental law, including state and federal litigation, international environmental law, and chemical regulatory law. Mr. Stephenson's environmental litigation experience includes a variety of matters involving air, water, hazardous substances, noise, and the defense of companies and municipalities in actions brought pursuant to federal environmental law, including CERCLA (Superfund) and the Clean Water Act. He is a member of the American Bar Association's Section of Environment, Energy, and Natural Resources. Mr. Stephenson received a B.A., *summa cum laude*, from Spring Arbor University and a J.D. from the University of Michigan.

**William W. Taylor** is the Chairperson and Professor of the Department of Fisheries and Wildlife at Michigan State University, where he has served as an instructor and professor for over two decades. An internationally recognized expert in fisheries ecology, population dynamics and Great Lakes fisheries management, he has received numerous accolades and has served in a number of leadership positions, including president of the American Fisheries Society, Associate Director of the Michigan Sea Grant College Program, and Chair of the Great Lakes Fisheries Commission's Board of Technical Experts. Dr. Taylor helped create the Partnership for Ecosystem Research and Management, a cooperative agreement between MSU, the Michigan Department of Natural Resources, and the U.S. Geologic Survey, to use research talent at MSU towards the solution of natural resources management problems. Dr. Taylor received his B.A. from Hartwick College, an M.S. from West Virginia University, and a Ph.D. from Arizona State University.

**Christopher Waddell**, the Carty Professor of Business and Financial Journalism at Carleton University, is an associate professor in the School of Journalism and Communications. Prior to academia, Professor Waddell spent eight years as Parliamentary Bureau Chief for CBC Television News. Prior to television reporting, he spent seven years at the Globe and Mail covering business in Toronto and the free trade negotiations in Ottawa. Dr. Waddell received his B.A. from the University of Toronto and his M.A. and a Ph.D. in Canadian history from York University.



CANADA-UNITED STATES LAW INSTITUTE CONFERENCE  
*on*  
ENERGY, THE ENVIRONMENT, AND NATURAL RESOURCES IN THE  
CANADA/U.S. CONTEXT

*April 19-21, 2002*

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\* - Session Moderator \*\* - Session Speaker





BOB TAFT  
GOVERNOR  
STATE OF OHIO

April 19, 2002

Professor Henry T. King, Jr.  
U.S. Director  
US-Canada Law Institute  
Case Western Reserve University Law School  
11075 East Boulevard  
Cleveland, OH 44106

Dear Professor King:

I would like to extend a warm welcome to the participants of the US-Canada Law Institute Conference. During the conference, I understand you will be focusing on a number of issues, such as, environmental implications of new energy resources, NAFTA and the environment, energy policies for the 21st Century, and the Great Lakes' natural resources. These issues touch the livelihood of both the Canadian and the Ohio citizenry.

Your membership, which spans the United States from businessmen and women to government officials, is very impressive. Solving and resolving issues in a forthright manner for the quality of life that our citizenry expects, is also paramount here in Ohio. I just recently announced my initiative, the *Third Frontier Project* for Ohio, which will focus on and address new emerging technology identification for energy sources, clean environments, boost the economy, and enhance our intellectual property.

We are working in parallel for the betterment of life's issues, and I wish you a most successful conference!

Regards,

Bob Taft  
Governor

BT/tp