

2018

## Volume 42 (2018)

Canada-United States Law Journal

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

 Part of the [Transnational Law Commons](#)

---

### Recommended Citation

Canada-United States Law Journal, *Volume 42 (2018)*, 42 Can.-U.S. L.J. i (2018)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol42/iss1/2>

This Front Matter 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.

(FRONTISPIECE)

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 once annually on behalf of the Canada-United States Law Institute. Annual subscription rates are \$66.00 per volume (\$68.00 foreign). Back issues are \$34.00 each (plus shipping & handling). Subscriptions are payable in advance. Subscriptions are renewed automatically unless timely notice of cancellation is received. Back volumes may be purchased by contacting Katie Haymes, Customer Accounts Service Professional, William S. Hein & Co., Inc., 2350 North Forest Rd., Getzville, New York, USA 14068-1296, by phone: (716) 882-2600 x 132, or by email: [khaymes@wshein.com](mailto:khaymes@wshein.com). The *Journal* is indexed in the *Index to Legal Periodicals* and is available on *Westlaw*<sup>™</sup> and *LEXIS*<sup>™</sup>. The *Journal's* policy requires that, unless a claim for non-receipt of a journal is received within three months after the mailing date, the *Journal* cannot be held responsible for supplying that issue without charge.

Please address all editorial submissions to the *Canada-United States Law Journal*, Faculty of Law, Western University, 1151 Richmond Street, LB-243, London, Ontario, CANADA, N6A 3K7. Please address all subscription matters and inquiries to Sabira Mustaquim, Financial Coordinator, Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106-5409, by phone: (216) 368-4495, by fax: (216) 368-3285, or by email: [sxm28@case.edu](mailto:sxm28@case.edu).

In addition to articles and discussions compiled from the transcripts of the Canada-United States Law Institute's Annual Conference, the *Journal* also welcomes the submission of articles on topics in international and comparative law, especially those that relate to Canada-United States issues and relations. Submissions and manuscripts should be submitted in duplicate and should conform to the *Chicago Manual of Style* (16th ed.). Footnotes should conform to *The Bluebook: A Uniform System of Citation* (20th ed.). Unpublished manuscripts are the property of the *Journal* and cannot be returned to the author.

For all photocopy or republication requests please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, MA 01923, by phone: (978) 646-2600, by fax: (978) 646-8600, by email: [infoat@copyright.com](mailto:infoat@copyright.com), or online: <http://www.copyright.com>.

The opinions expressed are those of the respective authors and do not necessarily reflect those of the *Canada-United States Law Journal*, the Canada-United States Law Institute, Case Western Reserve University School of Law or Western University Faculty of Law.

The *Journal* is printed by The Sheridan Press, 450 Fame Avenue, Hanover, PA 17331. This issue went to press in July 2018.

# CANADA-UNITED STATES LAW JOURNAL

## 2017-2018 Editorial Board

### *Editor-in-Chief*

Holly Ryan

### *Managing Editors*

Stuart Borenovich, Michelle Retief, Taylor Declerico, Ashley Abbasi

### *Senior Editors*

Scott Bobbit, Morgan Helgreen

### *Associate Editors*

Destiny Carter  
Richard Urban  
Kevin Hayes  
Cameron Rinaldi

Alison Finn  
Ben Frazier  
Sarah McMahon  
Philippa Leslie  
Matthew Rebus

Daniel Jin Hyun Park  
Alexander Slonim  
Nabil Mahmood  
Leigh Clark

### *Faculty Advisors*

Theodore V. Parran III

Chios Carmody

Stephen J. Petras, Jr.

### *International Research Librarian*

Andrew Dorchak

### *Subscription Manager*

Sabira Mustaqim

### *Director of Academic Services*

Nancy Pratt

## CANADA-UNITED STATES LAW INSTITUTE

Jessica Berg & Michael P. Scharf  
*Co-Deans*  
Case Western Reserve University  
School of Law

Erika Chamberlain  
*Dean*  
Western University  
Faculty of Law

***United States National Director***  
Stephen J. Petras, Jr.  
*Adjunct Professor of Law*  
Case Western Reserve University  
School of Law

***Canadian National Director***  
Chios Carmody  
*Professor of Law*  
Western University  
Faculty of Law

***Managing Director***  
Theodore V. Parran III  
Planethood Fellow  
Case Western Reserve University School of Law

## EXECUTIVE COMMITTEE

### ***Co-Chair***

Hon. James S. Peterson, P.C.  
*Counsel*  
*Fasken Martineau LLP*  
*Toronto, ON*

Richard O. Cunningham  
*Senior International Trade*  
*Partner*  
*Steptoe & Johnson LLP*  
*Washington, DC*

James Graham  
*Executive Vice President, Chief Legal*  
*Officer & Secretary*  
*Cleveland-Cliffs Inc.*  
*Cleveland, OH*

Lawrence L. Herman  
*Herman & Associates*  
*Toronto, ON*

Paul Rosado  
*Vice President, Chief Legal Counsel &*  
*Secretary*  
*Formica Corporation*  
*Cincinnati, OH*

### ***Co-Chair***

Hon. James J. Blanchard  
*Partner, Co-Chair*  
*Government Affairs Practice Group*  
*DLA Piper LLP (US)*  
*Washington, DC*

Diane Francis  
*Editor-at-Large*  
*National Post*  
*Toronto, ON*

Kenneth Jones  
*Dean Emeritus*  
*Ted Rogers School of Management*  
*Ryerson University*  
*Toronto, ON*

R. Richard Newcomb  
*Chair, International Trade Practice*  
*Group*  
*DLA Piper LLP (US)*  
*Washington, DC*

Christopher Sands  
*Senior Research Professor*  
*Director of the Center for Canadian*  
*Studies*  
*School of Advanced International*  
*Studies*  
*Johns Hopkins University*  
*Washington, DC*

On behalf of the Canada-United States Law Institute, the *Journal* gratefully acknowledges support from the Government of Canada and Global Affairs Canada. The *Journal* owes a special debt of gratitude for the ongoing support provided by the Consulate General of Canada in Detroit, Michigan, Consul General Douglas George, Public Affairs Officers Mary Lynn Becker and Christine Connell, and Consul Daniel Tremblay.

# CANADA-UNITED STATES LAW JOURNAL

## VOLUME 42

### 2017 CUSLI LAW/BUSINESS CASE COMPETITION

CANADA-UNITED STATES LAW INSTITUTE JOINT LAW-BUSINESS CASE STUDY COMPETITION PROGRAM .....	1
-----------------------------------------------------------------------------------------------	---

### CUSLI EXPERT ROUNDTABLE REPORT

CANADA-UNITED STATES LAW INSTITUTE EXPERT PANEL REPORT ON “IS THERE A PATH FORWARD FOR NORTH AMERICAN FREE TRADE?” <i>Sophie E. Bones &amp; Dena Shayne</i> .....	17
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

### PROCEEDINGS OF THE CUSLI 41<sup>ST</sup> ANNUAL CONFERENCE ON THE STATE OF OUR NATIONS: THE CANADA-UNITED STATES RELATIONSHIP

CONFERENCE SPEAKERS .....	27
---------------------------	----

WELCOME AND OPENING OF THE 41 <sup>ST</sup> ANNUAL CUSLI CONFERENCE <i>Michael P. Scharf</i> .....	41
-------------------------------------------------------------------------------------------------------	----

DISTINGUISHED PANEL: THE CANADA-UNITED STATES RELATIONSHIP AT LARGE <i>The Honorable James J. Blanchard, Consul General Douglas George, Ambassador Bruce Heyman, Ross Hornby &amp; The Honorable James S. Peterson</i> .....	43
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

DISTINGUISHED PANEL: FACE OFF OR FRESH START? INTERNATIONAL TRADE IN TIMES OF TURMOIL <i>Christopher Sands, Terence P. Stewart, John M. Weekes &amp; The Honorable Alan Wm. Wolff</i> .....	63
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

PANEL: BALANCING ACT - ENERGY INNOVATION IN A COMPLEX MARKET <i>David Hulst, Mark Purdon, Gitane De Silva &amp; Chris Zeigler</i> .....	118
--------------------------------------------------------------------------------------------------------------------------------------------	-----

PANEL: PRESERVING FINANCIAL INTEGRITY AND PROMOTING COMPLIANCE <i>Richard Gordon, Diane Francis, Josée Nadeau &amp; Theodore V. Parran III</i> .....	137
---------------------------------------------------------------------------------------------------------------------------------------------------------	-----

### 2017 CANADA-UNITED STATES LAW INSTITUTE DISTINGUISHED LECTURE

OF TRADE AND BEER: NAFTA, THE COMEAU CASE, AND REGULATORY COOPERATION <i>Maureen Irish</i> .....	160
--------------------------------------------------------------------------------------------------------	-----

**SIDNEY PICKER, JR. AWARD REMARKS**

STATES AND BORDERS

*Maureen Irish* ..... 182

**ARTICLES**

HYDRAULIC FRACTURING LITIGATION: THE CASE OF JESSICA ERNST & THE PROBLEM OF FACTUAL CAUSATION

*Oliver Hutchison*..... 185

“THE TIP OF THE ICEBERG:” HUMAN TRAFFICKING, BORDERS AND THE CANADA-U.S. NORTH

*Mike Perry* ..... 205

A TREATY FOR BINATIONAL MANAGEMENT OF THE GREAT LAKES-ST. LAWRENCE MARITIME TRANSPORTATION SYSTEM

*Mike Piskur*..... 228