

2015

## Volume 39

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 39*, 39 Can.-U.S. L.J. Iss. (2015)  
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol39/iss/18>

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.

FACULTY  
LOUNGE

Canada • United States  
LAW INSTITUTE

K  
3  
.A48  
c.2  
FACULTY  
LOUNGE



# Canada-United States Law Journal

Annual Open Academic Issue

Edited by the Canada-United States Law Institute at  
Case Western Reserve University School of Law and  
The University of Western Ontario Faculty of Law

NIAGRA MOOT COURT COMPETITION BENCH  
MEMORANDUM

*Chios Carmody & Michael P. Scharf*

ENERGY IN THE GREAT LAKES REGION: IMAGINING A SHARED STRATEGY

*Sara L. Seck*

THE NAFTA ALTERNATIVE: SAVING KORUS FTA DUMPING  
APPEALS FROM THE DUMPS

*Czarina Powell*

Continued on Back Cover



Western  
Law



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

Volume 39, 2015



Canada-United States  
LAW INSTITUTE

JAN 27 2016

**Canada-  
United  
States  
Law Journal**

Volume 39  
2015

CWRU LAW LIBRARY



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

Western  Law

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 twice 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 William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14290 or online through HeinOnline at <http://www.heinonline.org>. The *Journal* is indexed in the *Index to Legal Periodicals* and is available on *Westlaw*<sup>TM</sup> and *LEXISTM*. 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 Matthew Rish, Assistant Dean of Finance and Administration, Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106, email: [mxr467@case.edu](mailto:mxr467@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* (19th 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 November 2015.

# CANADA-UNITED STATES LAW JOURNAL

## 2014-2015 EDITORIAL BOARD

### *Editor-in-Chief*

Adam Asgarali

### *Co-Managing Editors*

Patrick Sinclair, Benjamin Wentz

### *Executive Editors*

Matt Aleksic

Taha Qureshi

Matthew Stanley

### *Associate Editors*

Jonathan Aihie  
David Blackett  
Sunny Cohen  
Yu Seon Gadsden-  
Chung

Noah Goldberg  
Sarah Hutnick  
Teodor Kelebay  
Kyungwha Kim

Pamela Odina  
Katelynn Yonce  
Ginger Zhang

### *Faculty Advisors*

Theodore V. Parran III

Chios Carmody

Stephen J. Petras, Jr.

### *Law Journal Editorial Assistants*

Tigger Jourard, Vera van Diepen

### *International Research Librarian*

Andrew Dorchak

### *Director of Law Journals*

Dean Matthew Rish

### *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

W. Iain Scott  
*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 AND ADVISORY BOARD

### *Co-Chair*

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

### *Co-Chair*

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

## EXECUTIVE COMMITTEE

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

Ross Hornby  
*Vice President, Government*  
*Affairs & Policy*  
*GE Canada*  
*Toronto, ON*

Laura Dawson  
*President*  
*Dawson Strategic*  
*Ottawa, ON*

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

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

Stephen J. Petras, Jr.  
*Partner*  
*International Team Leader*  
*Baker & Hostetler, LLP*  
*Cleveland, OH*

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

## ADVISORY BOARD

The Hon. Randolph Baxter\*\*  
*United States Bankruptcy Judge  
United States Bankruptcy Court for  
the Northern District of Ohio  
Cleveland, OH*

Timothy E. Boyle  
*Vice President and Chief Counsel-  
Competition and Trade Regulation  
Eaton Corporation  
Cleveland, OH*

David Crane  
*Syndicated Columnist  
Toronto, ON*

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

Douglas Dimitroff  
*Phillips Lytle, LLP  
Buffalo, NY*

Stephen de Boer  
*Director General  
Trade Controls Bureau  
Department of Foreign Affairs, Trade  
and Development Canada  
Ottawa, ON*

Paul Durbin  
*Senior Counsel  
Miller Canfield PLC  
New York, NY*

The Hon. William C. Graham, P.C.,  
Q.C.  
*Chancellor, Trinity College,  
University of Toronto  
Chair of the Atlantic Council of  
Canada  
Co-Vice Chair of the Canadian  
International Council  
Toronto, ON*

James Graham  
*General Counsel  
Cliffs Natural Resources  
Cleveland, OH*

Jon Groetzinger  
*Visiting Professor of Law  
Director of China Legal Programs  
Case Western Reserve University  
School of Law  
Cleveland, OH*

Richard Gordon  
*Professor of Law  
Case Western Reserve University  
School of Law  
Cleveland, OH*

Timothy L. Horner  
*Partner  
Warner Norcross & Judd LLP  
Grand Rapids, MI*

David Jacobson  
*Vice Chairman  
BMO Financial Group  
Chicago, IL*

Jon R. Johnson  
*Sole Practitioner  
Toronto, ON*

Michael Kramer  
*Dickinson Wright PLLC  
Detroit, MI*

Ian A. Laird  
*Partner  
Crowell & Moring LLP  
Washington, DC*

Jessica LeCroy  
*Senior Advisor  
Bennett Jones LLP  
Toronto, ON*



Rosemary McCarney  
*President & CEO*  
*Plan International Canada*  
Toronto, ON

The Hon. A. Anne McLellan, P.C.,  
O.C.  
*Senior Advisor*  
*Canadian and International Strategic*  
*Planning*  
*Bennett Jones LLP*  
Edmonton, AB

Paul A. Meyer  
*Managing Counsel*  
*Towers Watson*  
Arlington, VA

McDaniel, Michael  
*Associate Professor*  
*Thomas M. Cooley Law School East*  
Lansing, MI

Eric Miller  
*Vice President, Policy, Innovation &*  
*Competitiveness*  
*Canadian Council of Chief Executives*  
Ottawa, ON

Scott Miller  
*Senior Adviser & Scholl Chair in*  
*International Business*  
*Center for Strategic and International*  
*Studies*  
Washington, DC

John D. Negroponte  
*Vice Chairman*  
*McLarty Associates*  
Washington, DC

Michael Nicol  
*Crown Prosecutor*  
*Ontario Ministry of Labour*  
Toronto, ON

Roy B. Norton  
*Consul General of Canada*  
*Consulate General of Canada*  
Chicago, IL

Stephen J. Jr. Petras  
*Partner*  
*International Team Leader, Baker &*  
*Hostetler LLP*  
Cleveland, OH

S. Richard Petry, II  
*Senior Counsel - International (ret'd)*  
*Eaton Corporation*  
*Pepper Pike, OH*  
Smary, Eugene E.  
*Partner*  
*Warner Norcross & Judd LLP*  
Grand Rapids, MI

Thomas A. Piraino, Jr.  
*Vice President, General Counsel &*  
*Secretary*  
*Parker-Hannifin Corporation*  
Cleveland, OH

Davis R. Robinson  
*Senior Managing Director, Richard*  
*C. Breeden & Co. LLC*  
*Fmr. Legal Adviser to the United*  
*States Department of State*  
Washington, DC

Christopher Sands  
*Senior Fellow*  
*Hudson Institute*  
Washington, DC

Michael Solursh  
*Counsel, Legal Services Branch*  
*Ministry of Economic Development,*  
*Trade & Employment*  
*Ontario Ministry of Research &*  
*Innovation*  
Toronto, ON

Paul Vandevent  
*International Trade Attorney*  
*Ford Motor Co.*  
*Detroit, MI*

M. Catherine Vernon  
*Vice President & General Counsel*  
*Formica Corporation*  
*Cincinnati, OH*

Keith E. White  
*Medicaid Budget & Policy Analyst*  
*State Budget Office*  
*State of Michigan*  
*Lansing, MI*

*Note: \*\* indicates Honorary Advisory Board Member*

On behalf of the Canada-United States Law Institute, the *Journal* gratefully acknowledges support from the Government of Canada, and the Department of Foreign Affairs, Trade and Development 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 Dennis Moore and Mary Lynn Becker, and Consul Andrew Hupfau.

# CANADA – UNITED STATES LAW JOURNAL

## VOLUME 39

### 2014 NIAGARA INTERNATIONAL MOOT COURT COMPETITION

#### NIAGARA MOOT COURT COMPETITION BENCH MEMORANDUM

*Chios Carmody and Michael P. Scharf*.....1

### ARTICLES

Energy in the Great Lakes Region: Imagining a Shared Strategy  
*Sara L. Seck*.....20

The NAFTA Alternative: Saving Korus FTA Dumping Appeals from the Dumps  
*Czarina Powell*.....36

Investment Arbitration under NAFTA Chapter 11: A Threat to Sovereignty of Member States?  
*Rep. William L. Owens*.....55

The Law of Native American Hunting, Fishing and Gathering Rights Outside of Reservation Boundaries in the United States and Canada  
*Guy Charlton*.....68

### 2013 CANADA-UNITED STATES LAW INSTITUTE DISTINGUISHED LECTURE

The Boundary Waters Treaty 1909 – A Peace Treaty?  
*Gordon Walker*.....170

### NOTES

An Evaluation of the Effects of the Legalization of Marijuana in Colorado and Washington from an International Law Perspective  
*Aparna Bushan*.....187

CUSLI Expert Roundtable Report: CETA, TPP, TTIP, and the Canada-US Trade Relationship  
*Prepared by the Public International Law and Policy Group (PILPG)*.....202