



**THE CANADA-UNITED STATES LAW INSTITUTE  
STRUCTURE AND OPERATIONAL GUIDELINES  
(Revisions Proposed September 8, 2010)**

**I. FORMAL STATUS OF THE CANADA-UNITED STATES LAW INSTITUTE**

The Canada-United States Law Institute (CUSLI or the Institute) is a bi-national, not-for-profit, multi-disciplinary entity jointly founded in 1976 and owned and continuously operated by Case Western Reserve University School of Law located in Cleveland, Ohio, USA (Case Western Reserve School of Law) and The University of Western Ontario Faculty of Law located in London, Ontario, Canada (Western Law). As discussed herein, Case Western Reserve School of Law and Western Law jointly own CUSLI, including its intellectual property rights.

**II. MISSION STATEMENT**

The Canada-United States Law Institute serves as a forum where the respective governments, business communities, legal professionals, scholars, non-governmental organizations, and the media examine and resolve the issues confronting the Canada-United States relationship. CUSLI specifically aims: (1) to establish institutional and professional linkages between Canada and the United States; (2) to provide its members with current resources and continuing education regarding the bilateral relationship; (3) to afford comparative law and research opportunities to the students and faculties at member institutions, as well as the private and public bars in each country.

**Proposed:** Revisions by Co-Chairs Gov. Blanchard and Minister Peterson (forthcoming)

**III. STRUCTURE OF CUSLI**

CUSLI is comprised of three sub-entities: (1) the Canada-United States Law Institute Founding Institutions; (2) the Executive Committee of the Canada-United States Law Institute; and (3) the Canada-United States Law Institute Advisory Board. The Founding Institutions own CUSLI and have final authority in all matters. However, the Founding Institutions have delegated operating authority to the Executive Committee, subject to supervision by the National Directors and to ultimate veto powers, as discussed below.

#### IV. THE CANADA-UNITED STATES LAW INSTITUTE FOUNDING INSTITUTIONS

- A. Case Western Reserve School of Law and Western Law are the Canada-United States Law Institute Founding Institutions (“Founding Institutions”).
- B. The dean of the Case Western Reserve School of Law and the dean of Western Law jointly serve as the Presidents of CUSLI.
- C. The dean of Case Western Reserve School of Law and the dean of Western Law appoint one member of their respective faculties to serve as National Directors of CUSLI (ND). The NDs are the Chief Executive Officers of CUSLI. The ND appointed by Case Western Reserve School of Law is the United States Director of CUSLI. The ND appointed by Western Law is the Canadian Director of CUSLI. Both National Directors are ex officio members of the CUSLI Executive Committee, entitled to both voice and vote in Executive Committee decisions. The functions of the National Directors include supervising the operations and decision-making of the Executive Committee, expressing to the Executive Committee (by voice and vote) the views of the Founding Institutions, and keeping the deans of the Founding Institutions fully informed as to the policies, activities and developments at CUSLI.
- D. The NDs are Founding Institution faculty members knowledgeable in International Law, normally with expertise in International Trade/Business Law and Canada-United States Relations.

**Proposed:** The NDs are Founding Institution *tenured or tenured track* faculty members knowledgeable in International Law, normally with expertise in International Trade/Business Law and Canada-United States Relations.

- E. The deans of Case Western Reserve School of Law and Western Law establish the terms of service for their respective ND. Such terms include serving as CUSLI’s representative at the appointing Founding Institution, including at faculty meetings held at the appointing Founding Institution.
- F. The deans of Case Western Reserve School of Law and Western Law have the discretion to provide remuneration and compensation to their respective ND for services performed on behalf of CUSLI. No CUSLI funds are utilized to provide such remuneration or compensation to the NDs.
- G. Each Founding Institution provides to its ND for the performance of CUSLI-related activities all privileges afforded to all other faculty members including, but not limited to, the use of office space, computers, telephone, electronic mail, network and library access.
- H. Each Founding Institution has the right and privilege to undertake activities in the name of CUSLI. During the CUSLI-2004 process discussed in Appendix I, the deans of Case Western Reserve School of Law and Western Law agreed to consult with the Executive Committee prior to undertaking any activities that require the utilization of CUSLI-funds.
- I. The dean of Case Western Reserve School of Law, with the consent of the dean of Western Law and in consultation with the Executive Committee, appoints a

Managing Director to assist in the performance of all CUSLI-related activities. The Managing Director is a member of the Adjunct Faculty of each Founding Institution and Case Western Reserve School of Law accordingly provides compensation to the Managing Director. The term of the Managing Director is determined by the dean of Case Western Reserve School of Law, with the consent of the dean of Western Law and in consultation with the Executive Committee.

**Proposed:** *The Executive Committee, upon consultation and with the approval of the co-Presidents of CUSLI, appoints a Managing Director to assist in the performance of all CUSLI-related activities. The Managing Director is a member of the faculties (fulltime, visiting, or adjunct) or administration of each Founding Institution. The Executive Committee, upon consultation and with the approval of the co-Presidents, determines all terms and conditions of employment for the Managing Director.*

- J. The dean of Case Western Reserve School of Law, with the consent of the dean of Western Law, appoints a member of Case Western Reserve School of Law's administrative staff to serve as the Program Coordinator of CUSLI. The Program Coordinator performs administrative work on behalf of CUSLI. The dean of the Case School of Law has authorized the payment of the Program Coordinator's total salary to be paid from CUSLI funds for work performed on behalf of CUSLI. The Executive Committee, in consultation with the dean of Case Western Reserve School of Law, shall determine the percentage of the Program Coordinator's total work performed on behalf of CUSLI.

**Proposed:** *The dean of Case Western Reserve School of Law, with the consent of the dean of Western Law, appoints member(s) of Case Western Reserve School of Law's administrative staff to administer the CUSLI Secretariat. The dean of Case Western Reserve School of Law shall determine the percentage of the staff members' total work performed on behalf of CUSLI and advise the Executive Committee of the appropriate amount of compensation to be drawn from CUSLI funds.*

- K. Each Founding Institution utilizes all reasonable efforts to promote CUSLI activities including a permanent posting on its internet site, periodic reports in alumni mailings, and descriptions in annual reports.
- L. Each Founding Institution has the right and privilege to utilize the CUSLI name and mark, brand or designation in promoting CUSLI and the Founding Institution.
- M. The name and mark, brand or designation of each Founding Institution appears on all materials bearing the CUSLI name and mark, brand or designation.

## V. THE EXECUTIVE COMMITTEE OF THE CANADA-UNITED STATES LAW INSTITUTE

- A. The Executive Committee of the Canada-United States Law Institute (the Executive Committee) is the governing body of the Institute and is responsible for

all CUSLI policies, programs and other activities, subject to the supervision by the National Directors and possible veto by the Founding Institutions, as set forth in paragraph V.H below.

- B. The National Directors requested nominations from Advisory Board members for initial appointments to the Executive Committee. Upon receiving the nominations, the National Directors appointed the initial Executive Committee in May 2005.
- C. The Executive Committee is comprised of eight Advisory Board members and a Chair. Among the eight Advisory Board/Executive Committee members, four members are Canadian, and four members are from the United States. In addition, the National Directors are ex officio members of the Executive Committee.

**Proposed:** The Executive Committee is comprised of eight Advisory Board members and *the two co-Chairs*. Among the eight Advisory Board/Executive Committee members, four members are Canadian, and four members are from the United States. *One co-Chair will be Canadian, the other co-Chair will be from the US*. In addition, the National Directors serve as ex officio members of the Executive Committee, *entitled to both voice and vote in Executive Committee decisions*.

- D. Executive Committee members serve two (2) year terms. Executive Committee members do not receive any compensation or remuneration from CUSLI for their service as members.
- E. The Executive Committee meets telephonically or otherwise at least three times per annum. The National Directors of each Founding Institution must be present at the meeting unless the dean of the Founding Institution is present. The National Directors may invite other members of the Founding Institutions' faculties to attend the Executive Committee meetings.

**Proposed:** *The Executive Committee meets telephonically or otherwise at least three times per annum. One such annual meeting shall be in person. The National Directors of each Founding Institution must be present at the meetings unless the dean of the Founding Institution is present. A quorum for the transaction of business at any meeting of the Executive Committee shall be the National Directors or deans, one-half of the members (not including the National Directors or deans) and at least one member must be from the four Canadian members and at least one member must be from the four United States members. The National Directors may invite other members of the Founding Institutions' faculties to attend the Executive Committee meetings.*

- F. Every three years, the Executive Committee shall elect a Chairman of the Executive Committee for a term of three years. If the elected Chairman is a member of the Executive Committee, a new Member shall be appointed by the National Directors. A quorum for the transaction of business at any meeting of the Executive Committee shall be one-half of the members (not including the National Directors) and at least one member must be from the four Canadian

members and at least one member must be from the four United States members. At all meetings of the Executive Committee, every question shall be decided by a majority vote. The Chairman of the Executive Committee shall vote in the event of a tie.

**Proposed:** *Every three years, the Executive Committee shall elect two co-Chairs of the Executive Committee for a renewable term of three years. One co-Chair will be Canadian, the other co-Chair will be from the US. If an elected Chair is a member of the Executive Committee, a new Member shall be appointed by the National Directors. At all meetings of the Executive Committee, every question shall be decided by a majority vote. The co-Chairs of the Executive Committee shall vote in the event of a tie.*

- G. Each July, the Executive Committee will submit to the Presidents (a) an annual report on CUSLI's ongoing and proposed operations (b) a statement of CUSLI's finances, and (c) a budget for the forthcoming year.

**Proposed:** *Each Fall, the Executive Committee will submit to the Presidents (a) an annual report on CUSLI's ongoing and proposed operations (b) a statement of CUSLI's finances, and (c) a proposed budget for the forthcoming year.*

- H. The National Directors shall promptly report to the deans of the Founding Institutions concerning all deliberations, decisions and actions of the Executive Committee. Procedures addressing communications between the Executive Committee and the Founding Institutions are addressed in Appendix III. In the event that any member of the Advisory Board has comments regarding CUSLI's current or future operations, they may present the same to at least one member of the Executive Committee. The receiving Executive Committee member(s) present such comment(s) during a regular meeting of the Executive Committee, or in the event that time is of the essence, request the co-Chairs of the Executive Committee to call a special meeting at which the Executive Committee shall consider the matter. In the event a response is required from the Founding Institutions, the NDs shall present the matter to their respective Founding Institutions. The Executive Committee may request that the Founding Institutions consider the matter within a prescribed period and present a joint or separate response to the Executive Committee, in writing if so requested. The response shall indicate the matter raised and the Founding Institution's support or rejection of the matter, as well as the reasons supporting that position. In the event that time is of the essence, or the Founding Institutions require additional time to consider the matter, the Executive Committee shall establish procedures to address such matters.
- I. Procedures regarding the qualifications, selection, resignation and removal of members of the Executive Committee of the Canada-United States Law Institute are established in Appendix II, attached hereto and incorporated by reference.

- J. Proposed:** *The Executive Committee may establish any committees and sub-committees of the Executive Committee and, or the Advisory Board that it deems*

*necessary and appropriate to the discharge of its duties.*

## VI. THE CANADA-UNITED STATES LAW INSTITUTE ADVISORY BOARD

- A. Established in 1983, the Canada-United States Law Institute Advisory Board (Advisory Board) is comprised of representatives from government, business, legal professionals, non-governmental organizations, academia, and the media who are interested in Canada- United States relations and the activities of CUSLI. The Advisory Board meets at least once annually to assist in the design and implementation of the Institute's programs.
- B. The co-Chairs of the Executive Committee shall also serve as co-Chairs of the Advisory Board.
- C. CUSLI has Honourary Members of the Advisory Board. Honourary Advisory Board members do not vote but may otherwise receive notice of and attend all meetings of the Advisory Board.
- D. Advisory Board members and Honourary Advisory Board members are jointly appointed by the National Directors upon consultation with the Executive Committee of the Canada-United States Law Institute. Nominations for Advisory Board membership may be made to a National Director until thirty days prior to the annual Advisory Board meeting.

**Proposed:** Advisory Board members and Honourary Advisory Board members are jointly appointed by the National Directors upon consultation with the Executive Committee of the Canada-United States Law Institute. *The National Directors, upon consultation with the Executive Committee, will establish a schedule and procedures annually to accept and review nominations to the Advisory Board.*

- E. Appointments of Advisory Board members and Honourary Advisory Board members occur on a regular and defined basis.
- F. The National Directors use all reasonable efforts to appoint Advisory Board members and Honourary Advisory Board members in pairs or sets of pairs - one representing the United States and one representing Canada.
- G. In the event a dispute arises between the National Directors as to the appointment of a nominee, the matter is referred to the co-Chairs of the Canada-United States Law Institute Advisory Board for consultation.
- H. Advisory Board members and Honourary Advisory Board members serve for a renewable term of three (3) years without remuneration or other compensation from CUSLI. During the three-year term, Advisory Board members must satisfy the following criteria in order to be considered for renewal:
  - 1. Attend at least one annual Advisory Board meeting; and
  - 2. Provide annual membership fees to CUSLI as established by the National Directors, or attend two CUSLI-sponsored events, or obtain grants or other foundational funding for the Institute in a minimum amount to be determined annually by the Executive

Committee.

3. The foregoing criteria are not applicable to Honourary Advisory Board Members.
- I. In the event an Advisory Board member is unable to satisfy the foregoing criteria during the three year term and nevertheless desires to have the National Directors renew such term, the Advisory Board member may request in writing to have such term renewed and explain the reasons for the failure to meet the criteria. Any Advisory Board member subject to non-renewal shall be notified by the National Directors in writing of the same.
  - J. An annual meeting of the Advisory Board is held contemporaneously with CUSLI's Annual Conference and otherwise at such time, at such place, and on such day in each year as the National Directors may determine. The Advisory Board meets not less than annually for the following purposes:
    1. To receive and comment on CUSLI's Annual Report;
    2. To propose programs to be undertaken by CUSLI; and
    3. To conduct other such businesses as may properly be brought before each such meeting.
  - K. The National Directors or the co-Chairs of the Executive Committee may at any time call a special meeting of the Advisory Board for the transaction of any business which may be properly be brought before such a meeting. Notice of the time and place of each meeting of the Advisory Board is given to each Advisory Board member and Honourary Advisory Board member not less than thirty (30) days before the date of the meeting. Notice of a special meeting of the Advisory Board shall state the nature of the business to be transacted at the meeting.
  - L. A quorum for the transaction of business at any meeting of the Advisory Board shall be one-third of the voting members thereof, present in person. At all meetings of the Advisory Board, every question shall be decided by a majority vote on a show of hands.

## **VII. THE CANADA-UNITED STATES LAW INSTITUTE SECRETARIAT**

- A. CUSLI shall establish a Canada-United States Law Institute Secretariat at Case Western Reserve School of Law. The CUSLI Secretariat shall serve as the administrative home of CUSLI.
- B. Case Western Reserve School of Law shall agree to provide at least the following to CUSLI:
  1. One office for joint use by the Managing Director and the Chair of the Executive Committee;
  2. The services of at least one-half the time of a member of its administrative personnel staff to serve as the Program Coordinator and office space for such member(s);
  3. Computers for the Managing Director and Program Coordinator;
  4. Communication services and infrastructure, including telephone, facsimile, network, and electronic mail account(s);

5. Links to the CUSLI website;
6. Access to mailing services and postage, including express delivery services; and
7. Procedures in which to order administrative supplies, including, but not limited to, letterhead, writing instruments and paper.

**Proposed:** *Case Western Reserve School of Law shall agree to provide at least the following to CUSLI:*

1. *One office for use by the Managing Director;*
2. *The services of administrative personnel staff and office space for such member(s);*
3. *Computers for the Managing Director and administrative personnel;*
4. *Communication services and infrastructure, including telephone, facsimile, network, and electronic mail account(s);*
5. *Links to the CUSLI website;*
6. *Access to mailing services and postage, including express delivery services; and*
7. *Procedures in which to order administrative supplies, including, but not limited to, letterhead, writing instruments and paper.*

- C. Case Western Reserve School of Law may impose a fee against CUSLI funds for the salary and benefits for the services of administrative personnel. The fee request shall be submitted in writing to Western Law and the Executive Committee for consultation. The deans of Western Law and Case Western Reserve School of Law shall enter into a written agreement for the fees in the event any fee is authorized following consultation.
- D. The deans of Western Law and Case Western Reserve School of Law, upon consultation with the Executive Committee, shall establish the terms and conditions of the Managing Director's service that shall include:
  1. That the Managing Director serve as a member of the adjunct faculties of the Founding Institutions, subject to such requirements as those institutions may require;
  2. That the Managing Director meet no less than monthly with the National Directors;
  3. That the Managing Director present each July a financial statement to the Founding Institutions and the Executive Committee for the past fiscal year of CUSLI operations.
  4. That the Managing Director present each Spring a budget to the Founding Institutions and Executive Committee detailing CUSLI's ongoing and proposed operations.
  5. That the Managing Director present each April a report of CUSLI's ongoing and proposed activities to the Executive Committee; and

6. That the Managing Director prepare all proposals for endowments, grants and other fundraising activities on behalf of CUSLI, unless otherwise determined by the Executive Committee.
7. **Proposed:** *The Executive Committee, upon consultation and with the approval of the co-Presidents of CUSLI, appoints a Managing Director to assist in the performance of all CUSLI-related activities. The Managing Director is a member of the faculties (fulltime, visiting, or adjunct) or administration of each Founding Institution. The Executive Committee, upon consultation and with the approval of the co-Presidents, determines all terms and conditions of employment for the Managing Director and will include:*
8. That the Managing Director serve as a member of the faculties (fulltime, visiting, adjunct) or administration of the Founding Institutions, subject to such requirements as those institutions may require;
9. That the Managing Director meet no less than monthly with the National Directors;
10. That the Managing Director present each *Fall* a financial statement to the Founding Institutions and the Executive Committee for the past fiscal year of CUSLI operations;
11. That the Managing Director present each *Fall* a budget to the Founding Institutions and Executive Committee detailing CUSLI's ongoing and proposed operations.
12. That the Managing Director present each April a report of CUSLI's ongoing and proposed activities to the Executive Committee; and
13. That the Managing Director prepare all proposals for endowments, grants and other fundraising activities on behalf of CUSLI, unless otherwise determined by the Executive Committee.

## VIII. PARTNER INSTITUTION

- A. The Founding Institutions acknowledge that additional faculties of law of recognized and accredited universities in Canada and the United States may be invited to join CUSLI and shall be known as Canada United States Law Institute Partner Institutions (Partner Institutions).
- B. Partner Institutions shall be admitted to CUSLI upon the satisfaction of the following two requirements:
  1. Upon the unanimous consent of the Canada-United States Law Institute Executive Committee; and
  2. Upon the agreement of each said faculty of law to be subject to these Operational Directives.
- C. Unless otherwise determined by joint agreement of the Founding Institutions,

Partner Institutions shall join in pairs - one from the United States and one from Canada.

- D. Upon the satisfaction of the foregoing conditions, the Founding Institutions shall jointly issue an invitation to the Partner Institution setting forth the terms and conditions of participation in CUSLI.
- E. These Operational Guidelines shall be amended upon the introduction of the Partner Institution(s) to make necessary corresponding changes.

## **IX. FINANCING**

- A. CUSLI receives funding at any time and from time to time from its Founding Institutions. CUSLI also solicits funds from any person or legal entity by way of donation for its operating expenses, to fund an endowment or otherwise for the promotion of its objects and activities. CUSLI may solicit funds for its own purposes (subject to the charges set forth in paragraph IX.C, below), from individuals, corporations, foundations, governments, law firms, associations or any other entities permitted by law to contribute to charitable organizations. However, the National Directors shall be informed in advance of all solicitations directed other than to individuals, and the Founding Institutions reserve the right to veto any proposed solicitation that would conflict with either of the Founding Institutions' own fundraising or that conflicts with the policies of either Founding Institution. Such veto shall be explained to the Executive Committee and the objecting Founding Institution shall give full and sympathetic consideration to the views of the Executive Committee as to the appropriateness of the proposed veto. All solicitation materials used by CUSLI will bear the names of the Founding Institutions.
- B. Such donations are made to one Founding Institution (in the name of Case Western Reserve School of Law or Western Law) and the donors receive receipts therefrom confirming the status of each such donation as a charitable gift to a recognized charitable, educational institution in the relevant country. Donations may also be made out to "Canada-United States Law Institute". When any donation is made to CUSLI, or is accompanied by a designation made in any manner (including a note or initials on a cheque) that it is being donated to a Founding Institution, or an institution of which the same are constituent parts, for CUSLI, said funds are segregated and designated by such institution as funds for the sole benefit of CUSLI and be held in separate or special account for CUSLI. The Founding Institutions keep full and accurate financial records of receipt and disbursement of all CUSLI funds. The Executive Committee has the right to review, receive copies of, and have audited the financial records respecting CUSLI funds held by the Founding Institutions.
- C. Any direct funding of CUSLI may be subject to a charge not exceeding fourteen percent (14%) by Case Western Reserve School of Law to defray the general administrative and operating expenses associated with accounting and holding said funds as well as the costs of the CUSLI Secretariat. Any direct funding of CUSLI may be subject to a charge not exceeding five percent (5%) by Western Law to defray the general administrative and operating expenses associated with

accounting and holding said funds. In the event any Founding Institution desires to assess any additional fee, they must submit such request in writing to the National Director, who in turn, will present the request to the Executive Committee for consultation.

**Proposed:** *Any direct funding of CUSLI may be subject to a charge not exceeding five percent (5%) by Case Western Reserve School of Law and, or, Western Law to defray the general administrative and operating expenses associated with accounting and holding said funds as well as the costs of the CUSLI Secretariat. In the event any Founding Institution desires to assess any additional fee, they must submit such request in writing to the National Director, who in turn, will present the request to the Executive Committee for consultation.*

- D. The financial or fiscal year of CUSLI ends on the last day of June in each year.
- E. All debts and financial obligations of CUSLI shall be deemed the joint debts and obligations of the Founding Institutions and their affiliated universities.

## APPENDIX I – HISTORY OF THE CANADA-UNITED STATES LAW INSTITUTE

- A. The Canada-United States Law Institute (CUSLI or the Institute) was founded in 1976 as a bi-national entity, the joint creation of Case Western Reserve University, School of Law, Cleveland, Ohio, U.S.A. (Case Western Reserve School of Law) and the Faculty of Law, University of Western Ontario, London, Ontario, Canada (Western Law). Case Professor of Law, Sidney A. Picker, Jr., was the individual founder of CUSLI. As discussed herein, Case Western Reserve School of Law and Western Law have jointly owned the Institute, including its intellectual property rights.
- B. Upon the establishment of the CUSLI, the faculty of Case Western Reserve School of Law adopted the curriculum of Western Law, and the faculty of Western Law adopted the curriculum of Case Western Reserve School of Law. This was intended to facilitate the exchange of students and faculty between the two academic institutions.
- C. As indicated in a Memorandum Summary Description of CUSLI Programs issued in 1976 by the deans of the two law faculties, Case Western Reserve School of Law and Western Law agreed to sponsor the following programs under the auspices of CUSLI:

### Student Exchange

Open to second and third year law students, in good standing, for one semester at the other academic institution. Students would remain formally enrolled at their home school, with credit and grades earned during the exchange semester transferred to the home school.

### Faculty Exchange

Exchange of one faculty member per year, to offer a “foreign law” course in his or her area, at the other participating law school. Exchange of faculty for brief guest lecture appearances in regularly scheduled courses at each law school.

### Curriculum Enrichment

The addition at each law school of courses in the areas of Comparative Constitutional Law and Comparative Federalism to be made part of the regular curriculum of each such school

### Joint Course Offerings

Cooperative courses offered jointly by both law schools for students of both law schools. Such courses would bring students of the two law school together periodically, as for example, moot court experience, mock negotiation experience, or joint international business planning.

### Annual Conference

Annual sponsorship by the Institute of a conference on a legal subject of interest to the United States and Canada. The conference was designed to involve the law schools of the two countries but also governments and private practitioners in each country. The location would alternate between Cleveland and London.

### Joint Publication

The establishment of a student operated publication on particular issues of the existing *Case Western Reserve Journal of International Law* dealing with Canada-U.S. problems.

### Advanced Degrees

The eventual establishment of a program of advanced Canada-U.S. legal studies in which the two law schools would confer a joint advanced law degree.

- D. The deans of Case Western Reserve School of Law and Western Law agreed to appoint a faculty member at each academic institution to administer CUSLI’s programs. The

faculty member appointed by Case Western Reserve School of Law was the United States Director. The faculty member appointed by Western Law was the Canadian Director. Prof. Picker was CUSLI's first U.S. Director. Western appointed Prof. R.J. (Jack) Roberts as CUSLI's first Canadian Director.

- E. Prof. Picker and Prof. Roberts thereafter appointed an Advisory Committee comprised of non-university affiliated persons to assist in the design on the Institute's programs. The first Advisory Committee was comprised of John Sloan Dickey, Hon. W.Z. Estey, R.M. Ivey, Henry T. King, Jr., C. Calvert Knudson, Monroe Leigh, Myres S. McDougal, and D. Carlton Williams.
- F. CUSLI subsequently implemented the following programs:

### Student Exchanges

In its inaugural year the Institute sponsored the semester exchange for full academic credit, of 4 students, two each from Case School of Law and Western Law. By 1977-78 student exchange participation expanded to the authorized maximum of twelve students, six from each law school.

### Faculty Exchanges/Curriculum Enrichment/Joint Course Offerings

The Institute also implemented faculty exchanges beginning in its inaugural year. These began with up to 6 faculty members each semester from each law school making 2-3 day visits to the other law school, serving as guest lecturers in specific courses in their areas of expertise. These faculty visits occurred on an average of once every two weeks. In addition, faculty at each law school included as foreign examples in their regular courses selected legal principles from the other country. Beginning with the visit of Case Western Reserve School of Law Prof. Ronald Coffey to Western Law in 1978 (who offered a comparative securities regulation seminar), faculty members began to teach semester-long courses across the border and tailor existing courses to the Canada-United States relationship. Examples include the establishment at Case Western Reserve School of Law of a Comparative Canada-U.S. Constitutional Law course and a Comparative Tax Policy seminar taught jointly by a Western Law and a Case Western Reserve School of Law tax professor. Such faculty activities in turn stimulated the production of a number of Institute-sponsored scholarly articles on Canada-U.S. comparative law or selected aspects of the Canada-U.S. relationship, all published in the Canada-United States Law Journal. (See below). Finally, the respective law schools tailored regular course offerings to include Canada-U.S. related subjects or content.

### Conferences

The Institute sponsored its first conference on September 30, 1977 as a one day workshop in London, Ontario addressing the Extraterritorial Application of U.S. Anti-Trust Legislation in Canada. Nearly a month later, it co-sponsored a conference jointly with the Canadian Council on International Law entitled, Canada- U.S. Relations: Cooperation & Dispute Settlement in the North American Context. Thereafter, conferences were scheduled throughout the academic calendar. Examples include conferences on Transnational Taxation, held on April 21, 1978, and Steel Dumping in Canada and the United States, held Sept. 29-30, 1978, both in Cleveland. By 1982 the Institute offered its first off campus conference (an update on the Canada-U.S. Tax Treaty) in Toronto, tailored principally to the practicing bar. In October, 1979, the Institute sponsored a conference entitled Comparison of the Role of the Supreme Court in Canada and the United States. The two principal participants were U.S. Supreme Court Justice Potter Stewart and Canadian Supreme Court Justice Brian Dixon on a panel moderated by Prof. Lawrence Tribe. According to Justice Dixon, this was the first time in the history of the two countries that

justices from the two supreme courts were ever called on to participate in a substantive or scholarly program of any kind.

#### Canada-United States Law Journal (CUSLJ)

By the summer of 1978, with the assistance of the Case Western Reserve Journal of International Law, the Institute established the Canada-United States Law Journal. The first issue published the proceedings of the joint CUSLI-Canadian Council on International Law conference in the first volume of the Canada-United States Law Journal, issued in the summer of 1978. Subsequent CUSLJ issues, published annually, always included the symposia of Institute-sponsored conferences as well as of Institute-sponsored scholarly articles, comments and notes. The first such published article was that of Case Western Reserve School of Law Prof. Lewis J. Katz, comparing police practices with (in the U.S.) and without (in Canada) an exclusionary rule of evidence.

#### Niagara International Moot Court Competition

Prior to the Institute's involvement in the Niagara International Moot Court, the event was an ad hoc competition operated informally between six to eight law schools located in the Niagara Falls region. The Niagara was a moot court experience before the World Court. It differed from the American Society of International Law sponsored Jessup Moot Court competition in that the countries were Canada and the U.S., not hypothetically made up states, and the problem, though hypothetical, related to the Canadian- American experience. Unlike the Jessup, participation was not worldwide, but rather confined to Canadian and American law schools. Given the name and interest, it normally involved six to eight law schools in the Niagara Falls/ Great Lakes region. By 1979 the participants were happy to have the competition absorbed as part of the program offerings of the Canada-United States Law Institute in order to provide continuity, organization, uniformity of rules and an orderly for the structure and judging of the competition as well as a system of dispute resolution.

- G. In 1983, Henry T. King, Jr., a former Nuremberg prosecutor and Chief Corporate International Counsel / General Counsel — Automotive Group at TRW, Inc., became a member of the Case Western Reserve School of Law's faculty and was appointed the Institute's U.S. director. Prof. Picker assumed the Chair of the newly established Advisory Board, an entity comprised of members of the former Advisory Committee, as well as several newly-discovered supporters of the Institute. Prof. Morley Gosky assumed the Canadian directorship.
- H. Under Prof. King's directorship, the William H. Donner Foundation agreed to sponsor three large-scale conferences organized by CUSLI. The first of these conferences was "The Legal Aspects of Sector Integration between the United States and Canada" held April 19-21, 1985 in Cleveland, Ohio. Encouraged by the success of this conference, the Institute subsequently adopted a practice of hosting an annual three-day conference each April at the Case School of Law.
- I. Over the next two decades, the annual conferences served to promote CUSLI's missions by gathering 100-150 prominent members of governmental and nongovernmental organizations, as well as the business, legal, media and academic communities, in three days of seminars and discussions regarding the issues confronting the Canada-U.S. relationship. Over time, the Institute's annual conference emerged as a uniquely influential forum for the identification, examination, and resolution of the issues confronting the Canada-United States relationship.

- J. The annual conference's success and strong repute broadened the scope of individuals supporting the Institute's programs. Legal practitioners from various localities throughout Canada and the United States joined the Institute as members of the Advisory Board. The annual conference's focus on issues relating to the economic and trading relationship between the two countries sparked interest from numerous corporate entities on each side of the border. As a result, these corporate entities provided support to the Institute through the allocation of financial resources and the designation of representatives to serve as Advisory Board members. The federal Government of Canada also recognized the import of the annual conference and provided financial support through its academic and program enhancement grant initiatives. More than 90% of the Institute's income was derived from annual memberships, registration fees and grants from nonuniversity affiliated sources.
- K. The emerging primacy of the annual conference necessarily impacted the Institute's other core programs. CUSLI abandoned the publication of scholarly articles in order to serve as the exclusive edited record of the annual conference. The substantial resources required to sustain the annual conference compelled Prof. King to cease sponsorship of periodic conferences. Prof. King reallocated any income earned from the widely successful Niagara International Moot Court Competition to the annual conference.
- L. During the mid- 1980's, Western Law experienced several changes in administrations that resulted in its gradual withdrawal from Institute-sponsored programs. However, in the late 1990's, Western Law appointed Ian Holloway as dean of the law faculty. Dean Holloway immediately expressed his firm support for the Institute and appointed Prof. Chios Carmody as Canadian Director.
- M. Case Western Reserve School of Law, with the consent of Western Law, appointed Daniel D. Ujczko as Assistant United States Director in 2003. Mr. Ujczko additionally was appointed as Assistant Adjunct Professor of Law and received compensation from Case Western Reserve School of Law.
- N. Prof. King initiated a proposal on April 10, 2003 entitled CUSLI 2004 that sought a broad based review of CUSLI's operations. Following a one-year period of comment and review by Case Western Reserve School of Law, Western Law, and CUSLI's Advisory Board, CUSLI's current Assistant United States Director, Daniel Ujczko, prepared a report entitled *CUSLI-2004 Final Proposal* which was presented at the Advisory Board meeting held April 15, 2004. The deans of Case Western Reserve School of Law and Western Law, as well as the Advisory Board thereafter agreed to expand CUSLI-2004 in order to review the Institute's structure, governance and financing. This review included regular consultations with the administrations of the Case Western Reserve School of Law and Western Law, as well as the Advisory Board.
- O. Prof. King and Mr. Ujczko presented the results of this review to the administrations of the Case Western Reserve School of Law and Western Law. Upon receiving comments from the respective administrations, Mr. Ujczko presented the results to the Advisory Board at the April 15, 2005 Advisory Board meeting. The documents, prepared and circulated to the administrations and the Advisory Board entitled *CUSLI-2004 Final Report and Implementation Strategy* and *CUSLI Financial Summary, June 2002-2004*, are available for review.
- P. These documents, inter alia expressed the various stakeholders' intent over the next several years to expand the presentation of CUSLI programs in both the United States

and Canada. In this effort, CUSLI will include speakers from the Founding Institutions. In addition, the Institute is committed to supporting both Founding Institutions in their desire to sponsor programs, activities and events that relate to US-Canada issues.

Q. The deans of Case Western Reserve School of Law and Western Law, as well as the Advisory Board, determined that it was necessary to continue consultations. In order to facilitate these discussions, the U.S. Director, the Canadian Director and the Advisory Board Chair established the Executive Committee of the Canada-United States Law Institute Advisory Board. The Executive Committee's mandate was fourfold:

1. to provide the respective universities and the Institute's staff with the opportunity to regularly consult with representatives of the Advisory Board;
2. to assist with the implementation of the Institute's current programs;
3. to collaborate with the Institute's staff in the design of new programs for the Institute; and
4. to participate in the Institute's annual financing efforts.

R. Upon receiving nominations from the Advisory Board, the U.S. Director, the Canadian Director, and the Advisory Board Chair appointed the following members to the Executive Committee:

Canada

Lawrence L. Herman, Cassels Brock & Blackwell, LLP

Selma M. Lussenburg, OMERS

James P. McIlroy, McIlroy & McIlroy, Inc.

J. Michael Robinson, Fasken Martineau DuMoulin, LLP

USA

Dirk K. Barrett, Jr., Pfizer, Inc.

Donald B. Cameron, Jr., Kaye Scholer LLP

Richard O. Cunningham, Steptoe & Johnson, LLP

Graham F. Taylor, The Dow Chemical Company

S. The Executive Committee held three formal meetings (September 16, 2006 and March 9 and April 6, 2006), at which the committee members, the Institute's staff and representatives of the academic institutions pursued the committee's mandate. The Executive Committee also periodically addressed issues by email to and among the members and Institute staff.

T. The Executive Committee determined that it is appropriate and necessary to develop a document, initially entitled Operational Directives, to accomplish the following: (1) to document all current operations of CUSLI, including those implemented during CUSLI-2004; (2) to propose new structures, operations, and programs for CUSLI; and (3) request authorization of these Structural and Operational Guidelines from the administrations of the Case School of Law, Western Law, and the Advisory Board. A draft was prepared by Daniel Ujcz, Assistant United States Director of the Institute, and discussed by the Executive Committee at its meeting of April 6, 2006. At that meeting, Executive Committee member Richard Cunningham was asked to refine the document to reflect

consensus reached by the Executive Committee on certain issues. The result is the present document, which was circulated to Executive Committee members on June 1, 2005, reviewed again on April 13, 2007, May 30, 2007, October 24, 2007 and September 8, 2010.

## **APPENDIX II – STATEMENT REGARDING THE QUALIFICATIONS, SELECTION, RESIGNATION AND REMOVAL OF THE MEMBERS OF THE EXECUTIVE COMMITTEE OF THE CANADA-UNITED STATES LAW INSTITUTE**

- A. The current Executive Committee members shall hold office until the 2009 Advisory Board meeting. Forty-five days prior to that meeting, the Executive Committee shall send via regular mails to all Advisory Board members (not including Honourary members) a list of eight proposed Executive Committee members for a new two-year term. Any Advisory Board member may, at least fifteen days prior to the Advisory Board meeting, propose in writing one or more names to be added to the nomination list. All nominations made by the Executive Committee and by Advisory Board members shall be voted upon by the Advisory Board at the 2009 Advisory Board meeting. The four Canadian and four United States nominees receiving the most votes will be nominated for appointment by the National Directors, who shall appoint the eight Executive Committee members within 30 days after the Advisory Board meeting. If the National Directors determine not to appoint a person nominated by the Advisory Board's vote, they shall consider, in descending order of Advisory Board votes received, the other persons considered by the Advisory Board. If the National Directors, after following this process, decide to appoint a person not considered by the Advisory Board, a full written statement of the reasons for that selection, and for why no person considered by the Advisory Board could be chosen for that appointment, shall be provided to the Executive Committee and the Advisory Board. Any disagreement between the two National Directors shall be resolved by the two Presidents and the Chairman of the Executive Committee.

**Proposed:** *The current Executive Committee members (excluding the co-Chairs) shall hold office until the 2011 Advisory Board meeting. At least forty-five days prior to that meeting, the Executive Committee shall create at least one vacancy, but no more than three vacancies, from the existing eight members the Executive Committee. The Executive Committee shall send via regular mails to all Advisory Board members (not including Honourary members) a list of proposed Executive Committee members to satisfy the vacancies for a new two-year term. Any Advisory Board member may, at least fifteen days prior to the Advisory Board meeting, propose in writing one or more names to be added to the nomination list. All nominations made by the Executive Committee and by Advisory Board members shall be voted upon by the Advisory Board at the 2011 Advisory Board meeting. The Canadian and United States nominees receiving the most votes will be nominated for appointment by the National Directors, who shall appoint the full Executive Committee members within 30 days after the Advisory Board meeting. If the National Directors determine not to appoint a person nominated by the Advisory Board's vote, they shall consider, in descending order of Advisory Board votes received, the other persons considered by the Advisory Board. If the National Directors, after following this process, decide to appoint a person not considered by the Advisory Board, a full written statement of the reasons for that selection, and for why*

*no person considered by the Advisory Board could be chosen for that appointment, shall be provided to the Executive Committee and the Advisory Board. Any disagreement between the two National Directors shall be resolved by the co-Presidents and co-Chairs of the Executive Committee.*

B. The Executive Committee nomination and appointment procedures described in the preceding paragraph shall be repeated every two years.

**Proposed:** The Executive Committee will develop nomination and appointment procedures each year and may delegate such authority to a Nominating Committee.

C. Executive Committee members appointed on or after 2011 may be re-appointed for terms not exceeding in the aggregate six (6) years. If an appointment of Executive Committee members is not made at the proper time, the members shall continue in office until their successors are appointed. No appointment of a person as a member shall be effective unless he/she consents in writing to act as a member.

D. Each Executive Committee member must be at least twenty-one (21) years of age, not a bankrupt or Honourary member of the Canada-United States Law Institute Advisory Board at the time of his/her appointment or selection and shall remain so at all times while in office.

E. An Executive Committee member may resign at any time upon written notice to the co-Chairs of the Executive Committee, and any Executive Committee member elected or appointed, and not a ND or member of a Founding Institutions' law faculty, may be removed upon a two-thirds vote of the entire Executive Committee for conduct determined by the Executive Committee to be detrimental to the interests of CUSLI or if he/she fails to attend three successive meetings of the Executive Committee. Such removal may be done at any regular or special meeting of the Executive Committee on not less than thirty (30) days notice in writing to all Executive Committee members. Any Executive Committee member subject to removal proceedings shall have the right to appear before the Executive Committee, make representations thereto and vote. Removal of an Executive Committee member shall be by secret ballot. The office of an Executive Committee member is vacated if he/she: resigns his/her office; is removed from office; is declared a bankrupt, or if an order is made declaring him/her to be mentally incompetent.

F. Every Executive Committee member who has, directly or indirectly, any interest in any contract, transaction or other matter to which CUSLI is or is to be a party, other than a contract or transaction limited solely to his/her remuneration as an officer or employee shall declare his/her interest in such contract, transaction or matter at a meeting of the Executive Committee and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of assets by or to CUSLI, the cost of the assets to the purchaser and the cost thereof to the seller, if acquired by the seller within five (5) years before the date of the contract or transaction to the extent to which such information is within his/her knowledge or control, and shall not vote and shall not in respect of such contract, transaction or matter be counted in the quorum.

**G. Proposed: In all appointments, the Founding Institutions, Executive Committee, and Advisory Board will strive to promote and reflect the diversity of its members**

**in terms of race, colour, sex, gender, national origin, religion, and sexual orientation.**

### **APPENDIX III – COMMUNICATION BETWEEN EXECUTIVE COMMITTEE AND FOUNDING INSTITUTIONS**

The National Directors shall promptly report to the deans of the Founding Institutions concerning all deliberations, decisions and actions of the Executive Committee. Either of the Founding Institutions may, within 30 days of any decision or action taken by the Executive Committee, communicate its intent to veto the Executive Committee's decision or action on a matter of clear and important concern to one or both of the Founding Institutions. Normally, such a veto will not be made except as to a matter that represents a significant departure from past policy of CUSLI, that affects the operations, reputation or fundraising of either or both Founding Institutions, that involves a serious question of ethics or of compliance with law, or that involves the expenditure by CUSLI of an amount greater than that held in CUSLI accounts. Such intent to veto shall be communicated to the Executive Committee (including the other National Director) by the vetoing Founding Institution's National Director in writing, including in such written communication a full statement of the reasons for the proposed veto. The Executive Committee shall then have two weeks to respond to the concerns of the Founding Institution and/or to modify or rescind its decision or action. During that two week period, representatives of the Executive Committee shall meet with representatives of the Founding Institutions to seek resolution of the disagreement. In addition, the two Presidents shall make every effort to resolve any difference of views between the two Founding Institutions as to the action or decision at issue. In all such discussions, the Founding Institutions shall give full and sympathetic consideration to the views of the Executive Committee. However, at the end of this two week period, the veto of the Founding Institution will become final unless rescinded in writing.