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CASE CONCERNING ARCTIC WATERS

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FEBRUARY 24-26, 2011
TORONTO, ONTARIO
CANADA

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2010 - 2011

NIAGARA INTERNATIONAL
MOOT COURT COMPETITION

Celebrating its 35th year, the Canada-United States Law Institute (CUSLI) is a binational, not-for-profit, multidisciplinary entity created jointly in 1976 by Case Western Reserve University School of Law located in Cleveland, Ohio, USA and The University of Western Ontario Faculty of Law located in London, Ontario, Canada. CUSLI serves as a forum where the respective governments, business communities, legal professionals, scholars, non-governmental organizations and the media explore and address the issues confronting the Canada-United States relationship.



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THE CANADA-UNITED STATES LAW INSTITUTE

43rd Annual Niagara International Moot Court Competition

Case Concerning Arctic Waters

From its origins as an ad hoc moot between three to six schools in the Niagara region to its emergence as the premier binational competition open to all law schools and faculties in Canada and the United States, the Niagara Moot has provided countless law students with the opportunity to examine the issues confronting their counterparts across the border. Along the way, the Niagara Moot has fostered respect and lasting friendships between practitioners living on each side of the 49th parallel and, consequently, has further strengthened the ties between our two nations.

The Canada-United States Law Institute has served as the administrative home of the Niagara Moot since 1979—recruiting teams and judges, promulgating rules, settling disputes, and approving the Problem and Bench Brief.

The 2010-11 Niagara International Moot Court Problem focuses on issues of sovereignty, international environmental law, and law of the sea related to regulation of commercial fishing, oil exploration, and transit in the Northwest Passage and other arctic waters.

The Canada-United States Law Institute extends its deep appreciation to the law schools and faculties competing in this year's moot, as well as our sponsors.





NIAGARA INTERNATIONAL
MOOT COURT COMPETITION

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2011 SCHEDULE OF EVENTS

THURSDAY, FEBRUARY 24, 2011

The Fairmont Royal York
100 Front Street W
Toronto, Ontario

Team Registration and Check-in:

6:00 p.m. – 8:00 p.m.

Faculty and Coach Meeting

7:30 p.m.

FRIDAY, FEBRUARY 25, 2011

Preliminary Rounds
*See Pages 10-11 for
Pairings and Locations*

Preliminary Round I:
9:00 a.m. – 11:00 a.m.

Preliminary Round II:
11:30 a.m. – 1:30 p.m.

Preliminary Round III:
2:00 p.m. – 4:00 p.m.

Preliminary Round IV:
4:30 p.m. – 6:30 p.m.

Preliminary Round V:

7:00 p.m. – 9:00 p.m.

Announcement of
Quarterfinal Pairings
10:00 p.m.

The Fairmont Royal York

Attire: Business for all Friday events

SATURDAY, FEBRUARY 26, 2011

Final Rounds
*See Pages 10-11 for
Pairings and Locations*

Quarterfinal Round:
9:00 a.m. – 11:00 a.m.

Semifinal Round:
12:30 p.m. – 2:30 p.m.

Championship Round:
3:30 p.m. – 5:30 p.m.

Awards Reception

7:00 p.m. – 9:00 p.m.

Location to be announced

*Attire: Business for all
Saturday events*

PARTICIPATING SCHOOLS

American University Washington College of Law

Case Western Reserve University School of Law

Chicago-Kent College of Law

Cornell University Law School

Georgetown University Law Center

Michigan State University College of Law

Queen's University Faculty of Law

Seattle University Law School

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Kurt Kruckeberg	Kristina Wilburn
Daniel Marchese	

2011 COMPETITION PAIRINGS

Courtroom Locations

Courtrooms A1-A2

McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario

Courtrooms C1-C2

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario

Courtrooms B1-B2

Torys LLP
79 Wellington Street West
Suite 3000, TD Centre
Toronto, Ontario

Courtrooms D1-D2

Fasken Martineau
333 Bay Street, Suite 2400
Bay Adelaide Centre
Toronto, Ontario

PRELIMINARY ROUNDS – FRIDAY, FEBRUARY 25, 2011

9:00 am – 11:00 am	Preliminary Round I	Courtroom
	2011-01 v. 2011-11	A1
	2011-02 v. 2011-12	A2
	2011-03 v. 2011-13	B1
	2011-04 v. 2011-14	B2
	2011-06 v. 2011-15	C1
	2011-07 v. 2011-16	C1
	2011-08 v. 2011-17	D1
	2011-09 v. 2011-18	D2
11:30 am – 1:30 pm	Preliminary Round II	Courtroom
	2011-12 v. 2011-01	A1
	2011-11 v. 2011-02	A2
	2011-05 v. 2011-03	B1
	2011-13 v. 2011-04	B2
	2011-15 v. 2011-07	C1
	2011-16 v. 2011-06	C2
	2011-18 v. 2011-08	D1
	2011-17 v. 2011-10	D2

2:00 pm – 4:00 pm	Preliminary Round III	Courtroom
	2011-02 v. 2011-13	A1
	2011-01 v. 2011-17	A2
	2011-10 v. 2011-05	B1
	2011-03 v. 2011-11	B2
	2011-08 v. 2011-16	C1
	2011-14 v. 2011-15	C2
	2011-07 v. 2011-18	D1
	2011-06 v. 2011-09	D2

4:30 pm – 6:30 pm	Preliminary Round IV	Courtroom
	2011-13 v. 2011-01	A1
	2011-15 v. 2011-02	A2
	2011-05 v. 2011-14	B1
	2011-04 v. 2011-10	B2
	2011-09 v. 2011-08	C1
	2011-16 v. 2011-12	C2
	2011-17 v. 2011-06	D1
	2011-11 v. 2011-07	D2

7:00 pm – 9:00 pm	Preliminary Round V	Courtroom
	2011-18 v. 2011-05	A1
	2011-14 v. 2011-09	A2
	2011-12 v. 2011-04	B1
	2011-10 v. 2011-03	B2

FINAL ROUNDS – SATURDAY, FEBRUARY 26, 2011

9:00 am – 11:00 am	Quarterfinal Round	Courtroom
	Seed 1 v. Seed 8	A1
	Seed 4 v. Seed 5	A2
	Seed 2 v. Seed 7	B1
	Seed 3 v. Seed 6	B2

12:30 pm – 2:30pm	Semifinal Round	Courtroom
	Seed 1 v. Seed 4	TBA
	Seed 2 v. Seed 3	TBA

3:30 pm – 5:30pm	Championship Round	Courtroom
	Seed 1 v. Seed 2	TBA

PROBLEM AND BENCH MEMORANDUM AUTHOR

Professor Michael P. Scharf

U.S. Director, Canada-U.S. Law Institute



Michael Scharf is the John Deaver Drinko – Baker & Hostetler Professor of Law and Director of the Frederick K. Cox International Law Center at Case Western Reserve University School of Law. In 2004-05, Scharf served as a member of the international team of experts that provided training to the judges of the Iraqi High Tribunal and in 2008 he served as Special Assistant to the Prosecutor of the Cambodia Genocide Tribunal. In February 2005, Scharf and the Public International Law and Policy Group, a Non-Governmental Organization he co-founded, were nominated for the Nobel Peace Prize by six

governments and the Prosecutor of an International Criminal Tribunal for the work they have done to help in the prosecution of major war criminals, such as Slobodan Milosevic, Charles Taylor, and Saddam Hussein. During the elder Bush and Clinton Administrations, Scharf served in the Office of the Legal Adviser of the U.S. Department of State, where he held the positions of Attorney-Adviser for Law Enforcement and Intelligence, Attorney-Adviser for United Nations Affairs, and delegate to the United Nations Human Rights Commission. A graduate of Duke University School of Law (Order of the Coif and High Honors), and judicial clerk to Judge Gerald Bard Tjoflat on the Eleventh Circuit Federal Court of Appeals, Scharf is the author of over seventy scholarly articles and thirteen books, including three that have won National Book of the Year Awards. His latest book is *Shaping Foreign Policy in Times of Crisis* (Cambridge University Press, 2010). Scharf has also testified before the U.S. Senate Foreign Relations Committee and the House Armed Services Committee, and appears frequently in the national and international media.

CUSLI extends its deepest appreciation to the U.S. Department of Homeland Security, U.S. Coast Guard, Department of Foreign Affairs and International Trade Canada, Commander Andrew Sugimoto (USCG), Lt. Commander Ted Fowles (USCG), and John Burnett for their assistance in guiding the Problem and Bench Brief.

FINAL ROUND PANEL

Honorable Randolph Baxter holds degrees from Tuskegee University (B.S., Political Science) and the University of Akron (J.D.). Since 1985, he has been a U.S. Bankruptcy Judge for the Northern District of Ohio. In 1996, the 6th Circuit Court of Appeals appointed Judge Baxter to serve as a charter member of its Bankruptcy Appellate Panel. He was appointed Chief Judge of the U.S. Bankruptcy Court for the Northern District of Ohio (2004–08). Primarily appointed to sit in Cleveland, Judge Baxter has served as a visiting judge in Delaware, New York, Tennessee, Michigan and Florida. In addition, he was an adjunct professor at the University of Akron's School of Law (1989–99), where he taught the basic bankruptcy law course and an advanced seminar in business reorganization. Earlier, Judge Baxter was an adjunct professor in the College of Business at Kent State University (1974–78). He is currently a member of the Bankruptcy Judges Advisory Group of the Administrative Office of U.S. Courts and formerly was a member of the U.S. Judicial Conference Bankruptcy Education Committee. He is also a member of the American Bankruptcy Institute Law Review Advisory Board, the Council on Foreign Relations, the Honorary Advisory Board of the Canada-U.S. Law Institute, and the Advisory Board for the LLM in U.S. and Global Legal Studies Program at Case Western Reserve University School of Law.

John Crowley was appointed Senior Vice President, Law and Regulatory Affairs for APM Terminals North America Inc. in July 2008. He is responsible for all judicial and regulatory matters, as well as selection and oversight of outside counsel. In addition, he provides legal counsel to the senior management team and takes an active role in environmental compliance, safety, and security and is involved in government relations at local, state, and federal levels. Earlier, he served as Rear Admiral (ret.) in the U.S. Coast Guard. He brings broad knowledge of maritime and legal affairs to his responsibilities. In his previous posts, he served as Judge Advocate General and Chief Counsel for the U.S. Coast Guard. In that capacity, he was principal legal advisor to the Commandant and oversaw all aspects of the Coast Guard's law and regulatory activities. He also served as Special Assistant to the Secretary of Homeland Security and Interim Director of the Homeland Security Center. As head of operational command for the 9th Coast Guard District, known as the Guardians of the Great Lakes, he oversaw maritime security and law enforcement for more than 6,700 miles of shoreline and 1,500 miles of international border. He is a graduate of the U.S. Coast Guard Academy and holds a J.D. from American University Washington College of Law.

FINAL ROUND PANEL

Jon Ragnar Johnson (Hon B.A., LL.B., LL.M.), has extensive experience in international trade law. He was a legal advisor in Canada's Trade Negotiation Office on the automotive provisions of the *Canada-U.S. Free Trade Agreement*. He also advised Canada's Office of the Trilateral Trade Negotiations during the negotiation of NAFTA Rules of Origin. Mr. Johnson has advised Canada's Federal Government in various actions brought by U.S. investors under NAFTA Chapter Eleven. He has advised industry stakeholders in World Trade Organization (WTO) challenges brought against Canada regarding automotive duty remission programs, patent protection for pharmaceuticals, and the term of protection under Canadian patent legislation, as well as in various WTO challenges brought by Canada against the U.S. in the softwood lumber dispute. He has represented clients in antidumping and countervailing duty actions as well as in customs matters, import and export controls, and other border measures. He has taught international trade law, including LLM courses. He has testified before both the Canadian House of Commons Subcommittee on Foreign Affairs and International Trade and the Canadian Senate Committee. His publications include *The North American Free Trade Agreement: A Comprehensive Guide*. In 2009, the Ontario Bar Association International Section gave him the Award of Excellence in International Law. A sole practitioner, he is a retired partner of Goodmans LLP.

COMPETITION CO-CHAIRS

Cyndee Todgham Cherniak is counsel in the International Trade Law and Tax Law Groups in the Toronto office of McMillan, LLP. She was the author of the 2007-08 and 2008-09 Niagara Moot problems. Ms. Todgham Cherniak is co-founder of Trade Lawyers Blog, Women Lawyers Blog and Canada Law Blog. She is also a Contributing Editor of the International Law Prof Blog. She is a director of the Canada-China Lawyers' Foundation and a director and board member for the Canada-China Business Council/China Council for the Promotion of International Trade Joint Conciliation Centre. She is vice-chair of the American Bar Association, International Law Section customs and membership committees and the Diversity Task Force. Ms. Todgham Cherniak has been appointed Vice Chair of the Canadian Bar Association, National Commodity Tax, Customs and Trade Section (2010-12). She is an advisory board member of the Canada-U.S. Law Institute. In addition, she is a member of the J.D./LL.B. Advisory Board (University of Windsor/University of Detroit Mercy). A frequent speaker on international trade and commodity tax topics and a regular contributor to a number of industry publications, she has also been widely quoted and interviewed in print, broadcast and online media. She is a guest lecturer at the University of Windsor Law School and an adjunct professor at Case Western Reserve University School of Law.

Ian A. Laird is a Special Legal Consultant in the International Trade and Arbitration Group of Crowell & Moring, based in the firm's Washington, D.C. office. Mr. Laird's website, Investmentclaims.com, was the winner of the Transnational Dispute Management/OGEMID IDR-Related Project of the Year for 2009. He is counsel on numerous investment treaty arbitrations and disputes, most recently involving El Salvador, Lithuania, Kazakhstan, Mongolia and Turkey. His work also includes arbitrations under the provisions of NAFTA, CAFTA-DR, the Energy Charter Treaty (ECT) and other international investment agreements, typically applying the arbitration rules of ICSID or UNCITRAL. He is a former Chief of Staff to a Canadian cabinet minister and a former senior political aide to the Ontario Minister of Energy. Mr. Laird is Editor-in-Chief and co-founder of Investmentclaims.com (Oxford Univ. Press), a source of legal and academic information on international investment law and arbitration. He has co-edited three books, is completing a fourth, and is the author of numerous articles and book chapters. Mr. Laird is co-chair of the only annual conference on investment arbitration held in Washington, D.C. He is also Co-Course Advisor for the annual fall program on investment agreements and arbitration conducted at the International Law Institute in Washington, D.C. Mr. Laird is an Advisory Board Member of the Foreign Direct Investment International Moot Court Competition.

Case Western Reserve University School of Law

Founded in 1892, Case Western Reserve University School of Law is one of the nation's preeminent centers of legal education. Located in Cleveland, Ohio, the law school draws students from more than 40 states and 10 foreign countries. Approximately 70 percent of its students are from outside Ohio. What they share in common is their outstanding talent, creativity, and commitment to the welfare of humanity. Since its beginnings as one of the country's first university-affiliated law schools, Case Western Reserve University School of Law has been known for innovations in curriculum and teaching methods. The school continues that tradition with its acclaimed CaseARC program, which merges the teaching of legal theory and policy and lawyering skills in a unique and exciting way, combining traditional classroom methods with experiential learning throughout a student's three years at the school. Since 1997, the law school has introduced more than 130 new courses and developed seven areas of concentration. In addition, the school is home to nine Centers of Excellence, including the renowned Frederick K. Cox International Law Center, the Milton A. Kramer Law Clinic Center, and the Law-Medicine Center.

Western Law

Western Law is a national law school with an international outlook and has been the leader in program development among Canadian law schools for many years. The Small Group Program, Areas of Concentration and the January Term are all Western Law innovations. Western continues to maintain the broadest core curriculum of any law school in North America and has the largest exchange program, with one in five students participating in an exchange. Western Law is one of the two Canadian law schools with the highest proportion of faculty with earned doctorates and its publication rate is among the highest in the country. Over the past five years, Western Law has had an average articling placement rate of ninety-nine percent, which is one of, and often, the highest in Canada. Statistics consistently place Western as one of the top two law schools for placement in Toronto. Western Law offers excellent practical experience through clinical courses, advocacy training and competitions, the Community Legal Services Clinic, the Western Business Law Clinic, the STINT Program, the Sport Solution, the Dispute Resolution Centre and Pro Bono Student Canada.

