

INSTITUTE AND CENTRE OF AIR & SPACE LAW

McGill University

ANNUAL REPORT

2002-2003

Prepared by

Professor Dr. Paul Stephen Dempsey
Director

9 September 2003

I. OBJECTIVES

- *Educate the next generation of air and space lawyers to serve the needs of the air and space community worldwide.* Since 1951, the Institute of Air & Space Law has taught more than 800 students, who today occupy positions in some 120 countries. Since the Warsaw Convention of 1929, a guiding principle of both private and public international air and space law has been to create a standard, universal and ubiquitous legal regime. By sending our graduates far and wide with a solid educational background, McGill has facilitated the objective of worldwide law harmonization.
- *Offer our students the best graduate education in air and space law available anywhere in the world.* We provide a curriculum relevant to the practical and theoretical needs of our students, developing their analytical and communications skills to enable them to practice their profession proficiently. McGill University offers a law faculty adept at comparative law, in a bi-lingual civil law province, in a common law country. Our courses are taught by some of the world's most accomplished lawyers in their respective fields.
- *Publish interdisciplinary research valuable to public institutions, the industry, and the legal profession.* Since 1976, our Centre for Research in Air & Space Law has published the *Annals of Air & Space Law*, and our faculty publishes widely in other legal periodicals as well.
- *Serve the professional educational needs of the aviation and space law bar.* Our conferences and seminars are attended by legal practitioners, government officials, industry leaders and professors from around the world.
- *Create a thriving intellectual environment and professional global network for our faculty, our students, our graduates, and experts in the field.* We bring together some of the world's premiere experts in air and space law under one roof for research,

informal discussions, class lectures, seminars and conferences. Working with other national and international organizations around the world enables the Institute to enjoy some of the most provocative and stimulating intellectual interactions on academic as well as practical industry issues and new legal and policy challenges.

II. HIGHLIGHTS

New Director Appointed. McGill University's first Tomlinson Chair was awarded to Prof. Paul Stephen Dempsey, who was appointed Director of the Institute of Air & Space Law [IASL] on August 1, 2002. Dr. Dempsey was recruited from the law faculty of the University of Denver, where he served as the Transportation Lawyers Association Professor of Law and Director of the Transportation Law Program for the past 23 years.

Mission Statement Adopted. The IASL adopted a Mission Statement. It is succinctly summarized above (in Part I).

Curriculum Review Undertaken. The IASL sent several hundred survey forms to former graduates and air and space law experts, asking them to evaluate the content of its courses and the pedagogy of its approach to the subject matter. The IASL is improving the curriculum based upon their comments.

Distinguished Lecturer Series Inaugurated. In 2002, the IASL inaugurated a Distinguished Lecturer Series to augment our courses. Speakers included: Dr. Tissa Abeyratne (International Civil Aviation Organization [ICAO]); Prof. William Tetley (McGill University); Prof. Jaye Ellis (McGill University); Rob Donald (International Air Transport Association [IATA]); John Baker (Air Canada); Ghislaine Richard (Canadian Air Transport Security Authority); Michel Bourbonnière (Transport Canada); and Patrick Salin (attorney).

Visiting Scholars In Residence Program Inaugurated. This year, an unusually talented group of scholars spent the year performing research at the IASL. Dr. Lucy Stojak came from the International Space University in Strasbourg. She has been appointed editor of the *Annals of Air & Space Law*. Professor Setsuko Ushioda-Aoki of Japan's Keio University spent her sabbatical performing research at the Institute. She led creation of the IASL Asia-Pacific Alumni(ae) association, described below.

Foreign Delegations Hosted. Delegations from the government of Vietnam and the Peoples' Republic of China visited the Institute to explore the latest research development in Air & Space Law.

Seminars and Conferences Co-Sponsored. The IASL co-sponsored "*Conference sur la Lutte contre le Terrorisme*" with the Université de Montreal and the Center for European Studies. The IASL and the Institute of European Studies also co-sponsored a round table discussion at the McGill University Faculty of Law on "The European Union 'Open Skies' Decision: Implications for International Aviation". More than 700 aviation professionals attended the Seminar on "Aviation in Transition: Challenges and Opportunities of Liberalization", co-sponsored by IASL, ICAO, IATA, Airports Council International, and Concordia University.

Internship Program Launched. One of the new initiatives begun this year was the establishment of postgraduate internship opportunities for our students. Internship opportunities exist at three locations in Asia, seven in Europe, one in Latin America, and eight in North America.

Alumni(ae) Association Expanded. The IASL Alumni(ae) Association established new Latin American and Asia-Pacific regional associations. The European, Latin American, and Asia-Pacific branches of our alumni association will bring the Institute family closer together, and enhance the networking and educational opportunities for our graduates. The European IASL Alumni(ae) Association met in Ljubljana, Slovenia, the Latin American Association held its inaugural meeting in Bogota, Colombia, and the Asia-

Pacific Association was formed in Montreal, with another meeting set for Dubai in December.

Communications Improved. Beginning last fall, we began distributing “Letters from the Director” as regular correspondence designed to keep our graduates informed of, and engaged in, our activities. We improved our web site, and produced a poster for marketing our educational product.

Development Committee Formed. To participate in McGill University’s forthcoming multi-year capital campaign, the IASL established a Development Committee of prominent graduates. Our objective shall be to create an endowment to ensure the long-term sustainability of the Institute.

III. PLANNING AND PERFORMANCE

A. Student Population

Our incoming class for 2002-03 was one of the largest in recent memory, with 21 new students from around the world. Eight were from Europe, seven from the U.S. and Canada, three from Latin America, two from Asia, one from Africa, and one from New Zealand (see Appendix V).

B. Teaching and Learning

In the fall semester, our students had the opportunity to take Comparative Air Law from Prof. Dr. Ludwig Weber & Donald Bunker (both of whom are Adjunct Professors), General Principles of Space Law from Prof. Dr. Ram Jakhu, Private International Air Law and Public International Air Law from Prof. Dr. Michael Milde, and a seminar from Prof. John Saba (an Adjunct Professor).

In the spring semester, students had the opportunity to take courses in the Law of Space Applications and Government Regulation of Space Activities from Prof. Jakhu, and

Government Regulation of Air Transport from Prof. Richard Janda and Dr. Peter Van Fenema (an Adjunct Professor).

Several guest lectures were also delivered by McGill law Professors Dr. Paul Stephen Dempsey, Jaye Ellis, and Bill Tetley.

C. Student Success

Recognizing the critical role that legal education would play in facilitating integration of legal standards globally, in 1951, McGill University established the Institute of Air & Space Law to provide graduate legal education for students from around the world. In the ensuing half century, IASL has educated some 800 students from 120 countries. Today, our graduates hold some of the highest positions in international organizations, governmental air transport ministries, airlines, and law firms around the world.

Dr. Eduardo Julian Hermida of Argentina, and Dr. Boutheina Guermazi of Tunisia, successfully completed their DCL thesis and oral examinations in 2003.

The following Prizes and Scholarships were also awarded:

NICOLAS MATEESCO MATTE PRIZE	<i>Sean McGonigle (New Zealand)</i>
JOSE BOGOLASKY MEMORIAL PRIZE IN PUBLIC INTERNATIONAL AIR LAW	<i>George Leloudas (Greece)</i>
THE SETSUKO USHIODA-AOKI PRIZE	<i>Delphine Deleau (France)</i>

D. Research

Publications of the faculty are set forth in Appendix III, below.

E. Academic Staff

DEMPSEY, Paul Stephen, Professor and Director
MILDE, Michael, Professor
VLASIC, Ivan, Professor Emeritus
JAKHU, Ram, Associate Professor
JANDA, Richard, Associate Professor

Part-time and auxiliary staff

Sessional Lecturers

BUNKER, D., Adjunct Professor
HARAKAS, Andrew, Adjunct Professor
MARGO, Rod D., Adjunct Professor
NESGOS, P., Adjunct Professor
SABA, J., Adjunct Professor
SCHUBERT, F., Adjunct Professor
VAN FENEMA, H.P., Adjunct Professor
VAN HASSELT, L., ICAO
WASSENBERGH, Henri, Adjunct Professor
WEBER, L., Adjunct Professor

Guest Lecturers

ALECK, Jonathan, Representative of Australia to ICAO
DUCHARME, Edward
EDDY, Andrew
GABRYNOWICZ, Joanne Irene
HUANG, Jiefang
LACHAPELLE, Guy
LACK, Peter
STOJAK, M-Lucy

N.B.: The IASL is relying to a large degree on the services of Adjunct Professors and visiting lecturers not only to make up for the lack of permanent staff resources but to keep the students exposed to up-to-date contact with prominent practicing experts.

F. Involvement in the Community (Academic and Non-Academic Communities)

The IASL has been active in the Montreal community. Over the last year, IASL co-sponsored seminars and conferences with the following organizations:

- the Université de Montreal;
- Concordia University;
- the Center for European Studies;
- the International Civil Aviation Organization;
- the International Air Transport Association; and
- Airports Council International.

IV. EVALUATION OF PERFORMANCE PERTAINING TO OBJECTIVES

The data posted on the McGill website is not disaggregated to reveal performance of the Institute of Air & Space Law. Therefore, one cannot use that data to comment empirically on its performance. However, our internal data is set forth in Appendices IV – VI, below.

Appendix IV reveals that, during the last academic year, the IASL generated 25 applications for the LL.M., and 0 applications for the D.C.L. degrees (though they provide no numbers for the Certificate Program). These numbers are generally within the range of applications since 1997 (though in 1999-2000, the last year in which IASL had a permanent Director, an abnormally high of 48 applications were received for the LL.M program, and 3 were received for the D.C.L.). During 2002-03, 17 applicants were admitted into the LL.M. program (within the range of the preceding years), and 15 were registered (the highest number in all but one year since 1997. An additional six students were enrolled in the Graduate Certificate program, and nine additional were enrolled as returning students (Appendix V). During the fall of 2002, 16 theses were submitted (Appendix VI).

More generally, a major criticism of IASL has been the inadequacy of commitment of human and economic resources to it. Economic resources devoted to IASL were significantly less than it produced in terms of tuition revenue; an interim Director was appointed for several years who, though a capable and dedicated academic, had no expertise in aviation or space law. These problems have been partially rectified with the University's devotion of the first Tomlinson chair to IASL, making it possible to hire a full-time Director and Professor for the program. More needs to be done to devote more full-time faculty resources to IASL, so that it does not have to rely so heavily on Adjunct Professors to fulfill its teaching, and thesis supervision, needs. For example, Prof. Ram

Jakhu, who now teaches nearly a full load in Space Law, should be moved to a full time tenure track position.

As noted above, IASL did engage its graduates in a comprehensive curriculum evaluation. We asked our graduates to rank the individual components of our aviation and space law courses in terms of their importance to their practice of law, and their importance to any aviation or space lawyer. We also asked them to evaluate the usefulness of the thesis requirement. The results show that its educational focus is sound, and that the thesis requirement should be retained (unlike the Institute of Comparative Law, which is moving for elimination of the thesis requirement for many students). We continue to study the results of the survey to determine whether to inject additional courses or subject matter offerings into our curriculum.

The IASL has published the *Annals of Air & Space Law* since 1976. Unfortunately, its publication has been months late the last two years. The new Director made a decision to replace the Editor of the *Annals* with the hope that timely publication may be resumed.

The Center for Research in Air & Space Law has laid moribund for some time, without significant research grants. The new Director petitioned a number of US foundations for financial support, with no success as yet. He also appointed Dr. Lucy Stojak with the task of leading a wide range of grant proposals to infuse the Center with new life.

The IASL has been without a permanent Director since 1998. It will take some time to rebuild and generate new momentum toward growth, and the excellence of which the Institute and Center are capable.

V. Additional Information Attached

Appendix I: Consulting Activities

Appendix II: Honours, Awards and Prizes

Appendix III: Publications
List of publications is also presented separately at
www.iasl.mcgill.ca in the prescribed form.

Appendix IV: Application and Admission Statistics

Appendix V: IASL Students Registered in 2002-03

Appendix VI: IASL Submitted Theses 2002-03

Appendix VII: IASL Mission Statement

APPENDIX I

CONSULTING ACTIVITIES
June 1, 2002 – May 31, 2003

Name of Faculty Member	Number of days			
	Private Sector Consulting	Public Sector Consulting	Other (please explain)	Total
Paul Dempsey	10			10
Ram Jakhu		15		15
R. Janda	N/a in relation to air law			0
Michael Milde		54		54

Honours, Awards and Prizes

Professor Richard Janda has been awarded a Fulbright Scholarship to study aviation security at Michigan State University during his forthcoming sabbatical (2003-04).

PUBLICATIONS 2002-2003

- Dempsey, Paul, "Predation, Competition & Antitrust Law: Turbulence in the Airline Industry," 67 *Journal of Air Law & Commerce* 685-840 (2002).
- Dempsey, Paul, "Metropolitan Planning Organizations: Findings and Recommendations for Improving Transportation Planning", 32 *Publius: The Journal of Federalism* 87 (2002) (with Professors Andrew Goetz & Carl Larson).
- Dempsey, Paul, "Airport Landing Slots: Barriers to Entry and Impediments to Competition," 16 *Air & Space Law* 20-48 (2001).
- Dempsey, Paul, "Competition in the Air: European Union Regulation of Commercial Aviation", 66 *Journal of Air Law & Commerce* 979-1153 (2001).
- Jakhu, Ram, "Legal Aspects of Space Tourism" (with Raja Bhattacharya), Colloquium on the Law of Outer Space, 2002.
- Jakhu, Ram, "Larger Access and New Services to the Rural Areas in Canada and India", (with Dr. Lachapelle and Prof. Manikutty), *Proceedings of the Conference on Switching to High Growth: Issues in Policy and Regulation in the Indian Telecom Sector*, 18-19 October 2002.
- Jakhu, Ram, "Space Law and the Developing Countries", in *Proceedings of the IV Space Conference of the Americas*, 14-17 May 2002.
- Weber, Ludwig – "ICAO Legal Bureau", paper delivered at the *Fourteenth ICAO Orientation Course*, Montreal, 3 December 2002.
- Van Fenema, Peter, "Launch services and satellite export controls: recent developments in the U.S.", 'Project 2001' - Legal Framework for the Commercial Use of Outer Space, Carl Heymans Verlag, pp. 121-126 (2002);
- Van Fenema, Peter, "The Unidroit space protocol, the concept of 'launching State', space traffic management and the delimitation of outer

- space - the 41st session of the UNCOPUOS Legal Subcommittee, Vienna, 2-12 April 2002, Report, Air & Space Law, Vol. XXVII/4/5, pp. 266-279 (Sep 2002);
- Van Fenema, Peter, "National ownership and control provisions remain serious obstacles to airline mergers", ICAO Journal, Vol. 57, No. 9, pp. 7-9, 24-26 (Nov/Dec 2002);
 - Van Fenema, Peter, "Airline ownership and control: long and short term approaches to a trade barrier", European Air Law Association, Zurich 9 Nov 2001, EALA Conference Papers, Vol. 17, Dagtoglou Ed., Netherlands (2002, delayed).

APPENDIX IV

Application and Admission Statistics: Graduate Law Degrees at McGill, 1997-98 – 2002-2003 (omits certificate programs)

			2002-2003	2001-2002	2000-2001	1999-2000	1998-1999	1997-1998
Number of Applicants	LLM	ICL	214	181	198	197	151	136
		IASL	25	29	24	48	30	30
		Bioethics	4	2	5	2	2	5
		Total LLM	243	212	227	247	183	171
	DCL	ICL	34	21	18	17	16	17
		IASL	0	3	5	5	3	3
		Total DCL	34	24	23	22	19	20
	Grand Total		277	236	250	269	202	191
Number of Offers Made	LLM	ICL	100	92 ¹	91	86 ²	100 ⁴	80 ⁵
		IASL	17	23	12	23 ³	22	15
		Bioethics	3	2	4	1	1	3
		Total LLM	120	117	107	110	123	98
	DCL	ICL	15	9	10	3	3	4
		IASL	0	1	0	2	1	1
		Total DCL	15	10	10	5	4	5
	Grand Total		135	127	117	115	127	103
Number of Registrations	LLM	ICL	55	43	48	40	43	35
		IASL	15	13	9	20	13	10
		Bioethics	2	1	4	0	1	1
		Total LLM	72	57	61	60	57	46
	DCL	ICL	11	5	3	1	2	2
		IASL	0	1	0	2	1	1
		Total DCL	11	6	3	3	3	3
	Grand Total		83	63	64	63	60	49

¹ Includes 3 DCL applicants.

² Includes 3 DCL applicants.

³ Includes 1 DCL applicant.

⁴ Includes 5 DCL applicants.

⁵ Includes 6 DCL applicants.

APPENDIX V

IASL Students Registered in 2002-03

last name	first name	title	degree	country of citizenship
Chouinard	Vicky	Ms.	LLM	Canada
Cohen	Guillaume	Mr.	LLM	France
Deleau	Delphine	Ms.	LLM	France
Fernandez Briseno	Raul	Mr.	LLM	Mexico
Fiallos	Luis	Mr.	GC	Ecuador
Gernandt	Leon	Mr.	GC	South Africa
Horstke	Stephanie	Ms.	LLM	Germany
Ionesco	Irina-Gabriela	Ms.	LLM	Romania
Kermani	Poupak	Ms.	GC	Canada
Leloudas	George	Mr.	LLM	Greece
Li	Wen	Mr.	GC	China
McGonigle	Sean	Mr.	LLM	New Zealand
Nicolas	Banerjea Brodeur	Mr.	LLM	Canada
Poget	Gael	Mr.	LLM	Switzerland
Salazar Vicuna	Ignacio	Mr.	GC	Chile
Sarigul	Gul	Ms.	LLM	Turkey
Travadel	Sebastien	Mr.	GC	France
Tremblay	Michel	Mr.	LLM	Canada
Waldrop	Elizabeth	Ms.	LLM	USA

Returning Students

Benguira	Audrey	Ms.	LLM	France
Bhattacharya	Raja	Mr.	DCL	India
Bourbonniere	Michel	Mr.	DCL	Canada
Giard	Timothee	Mr.	LLM	France
Hoerl	Kay-Uwe	Mr.	DCL	Germany
Hermida	Julian	Mr.	DCL	Argentina
Jallow Sey	Aisatou	Ms.	LLM	Gambia
Oh	Sang-Eun	Ms.	LLM	Korea
Waithaka	Kuria	Mr.	LLM	Kenya

APPENDIX VI

**Institute of Air and Space Law
Submitted Theses
June 2002/May 2003**

Student	Diploma	Thesis Title	Date of submission
AGUILAR CORTES, Carlos	LLM	Air carrier liability and automation issues	November 2002
BHATTACHARYA, Raja	LLM	Intellectual property rights in outer space	November 2002
BENGUIRA, Audrey	LLM	International cooperation in the private satellite communications sector: enhancing commercial exploitation of outer space	November 2002
BENSOUSSAN, Denis	LLM	GNSS and Galileo liability aspects	August 2002
DEL REY-UBAGO, Beatriz	LLM	The emerging GNSS: Galileo, the European alternative to the global positioning system	September 2002
DIETRICH, George	LLM	Extending the Principle of the Common Heritage of Mankind to Outer Space	July 2002
GIARD, Timothee	LLM	The control of state aid to airlines by the European Commission	September 2002
GUERMAZI, Boutheina	DCL	Bridging the digital divide: Beyond the Basic Telecom Agreement, Towards a Global Universal Service regime	July 2002
HERMIDA, Hermida	DCL	Legal basis for a national space legislation	October 2002
JALLOW-SEY, Aisatou	LLM	Legal Consequences of the Security Implications following 11 September 2001	November 2002
MOORE, Joe	LLM	Information warfare, cyber-terrorism and community values	July 2002
PECHBERTY, Sébastien	LLM	Abuse of a dominant position under article 82 of the E. C. Treaty in the air transport sector	November 2002
PEREIRA-BAIA, Liliane	LLM	Les impacts du 11 septembre sur l'ordre juridique international: l'exemple du droit spatial	September 2002
RODRIGUEZ-CONTRERAS, Pablo	LLM	GNSS liability issues: possible solutions to a global system	August 2002
WAITHAKA, Kuria	LLM	Airline Franchising: A rose sweet enough to comprise the African aviation liberalization bouquet	November 2002
YODMANI, Suvongse	LLM	The Warsaw system: a case for Thailand to ratify the Montreal Convention 1999 or not	March 2003

APPENDIX VII

**MISSION STATEMENT of MCGILL UNIVERSITY'S INSTITUTE OF AIR &
SPACE LAW**

"McGill University's Institute of Air and Space Law, through its accomplishments in teaching, research and publication has established itself as a center of excellence in the field of international law. The Institute has made unparalleled contributions to the development of international air law and to the examination of contemporary aviation issues."

International Civil Aviation Organization,
upon the occasion of conferring to the Institute
The Edward Warner Award

Introduction

In 1944, the world community laid the groundwork for the establishment of the U.N. International Civil Aviation Organization [ICAO] in Montreal. ICAO's principal mission was to achieve international cooperation to ensure that the legal and regulatory regime governing aviation would be uniform across nations. One can imagine what a Tower of Babel international aviation would have become had ICAO's 188 current member states adopted differing legal rules and standards. Without a harmonious legal and regulatory regime, the development of international aviation and space would have been seriously impeded. By its very nature, aviation shrinks the planet, integrating disparate cultures and economies, and facilitating peaceful, prosperous and cooperative global order. Globalization has created interdependence among nations and peoples of the world, and air transportation has facilitated that interdependence.

Recognizing the critical role that legal education would play in facilitating integration of legal standards globally, in 1951, McGill University established the Institute of Air & Space Law [IASL] to provide graduate legal education for students from around the world. In the ensuing half century, IASL has educated some 800 students from 120 countries. Today, our graduates hold some of the highest positions in international organizations, governmental air transport ministries, airlines, and law firms around the world.

Our objectives are to:

- *Educate the next generation of air and space lawyers to serve the needs of the air and space community worldwide.* Our educational emphasis is graduate in character and international in scope. Since its birth in 1951, the Institute of Air & Space Law has taught more than 800 students, who today occupy positions in some of the most senior levels in law firms, corporations, governmental and intergovernmental institutions, and universities, in some 120 countries – both developed and developing. Since promulgation of the Warsaw Convention of 1929, the Chicago Convention of 1944, and the Outer Space Treaty of 1967, a guiding principle of both private and public international air and space law has been to create a standard universal and ubiquitous legal regime. By sending our graduates far and wide with a solid educational background, McGill has facilitated that important objective of worldwide law harmonization.
- *Offer our students the best graduate education in air and space law available anywhere in the world.* Though we have been teaching air and space law at McGill University for more than half a century, we constantly strive to improve our educational programme. This we seek to achieve with a curriculum relevant to the needs of our graduates designed to provide a base of relevant practical and theoretical information and analytical and communications skills to enable them to practice their profession proficiently. Rigorous classroom instruction is coupled with a research and writing requirement, which enables our students to wade deeply into complex issues of air or space law. Being located at McGill University in Montreal offers the benefit of being in a law faculty adept at comparative law in a bi-lingual civil law province in a common law country. The world's principal intergovernmental aviation agency and international airline trade association, the national space agency, a major airline and several aerospace manufacturers are headquartered in Montreal, facilitate the presence of experienced practitioners in our classrooms. Our courses are taught by some of the world's most accomplished lawyers in their respective fields.
- *Publish interdisciplinary research valuable to governmental and multinational institutions, the airline and aerospace industries, and the legal profession.* Since 1976, our Center for Research in Air & Space Law has published the *Annals of Air & Space Law*, and our faculty publishes widely in other legal periodicals as well. Our faculty also assists international organizations and governmental institutions in their efforts to advance air and space law and policy.
- *Serve the professional educational needs of the aviation and space law bar.* Our conferences and seminars are attended by legal practitioners, government officials, industry leaders and professors from around the world. For example, some 200 registrants attended the Institute's 50th Anniversary Conference in 2002. Over the years, the Institute has been visited by delegates from many nations

seeking cutting edge information on unfolding developments in air and space law.

- *Create a thriving intellectual environment and professional global network for our faculty, our students, our graduates, and experts in the field.* We bring together some of the world's premiere experts in air and space law under one roof for research, informal discussions, class lectures, seminars and conferences. Working with other national and international organizations around the world enables the Institute to enjoy some of the most provocative and stimulating intellectual interactions on academic as well as practical industry issues and new legal and policy challenges raised by privatization, deregulation, globalization and global terrorism.