

# McGill's Institute of International Air Law\*

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McGill University has recently announced the establishment, in its Faculty of Law, of the Institute of International Air Law. The purpose of this Institute is two-fold: first, to provide facilities for advanced study and graduate work in international air law; and, secondly, to provide an academic organization for fundamental research in a field that has already attained world-wide importance.

The new Institute will be the only organization now in existence devoting itself exclusively to this field of academic work. Although courses in air law have been given at a few universities throughout the world and certain national air law institutes have been established (some of which are no longer in existence), the Institute at McGill is the first directed primarily to the international phases of air law.

That Montreal was the best place to establish the Institute is evident. It offers opportunities that do not exist elsewhere in the world. Montreal is today the virtual capital of world civil aviation activities. It is the seat of the International Civil Aviation Organization (ICAO), the intergovernmental body charged with the development of world-wide aviation regulations and standards. Montreal is also the seat of the head office of the International Air Transport Association (IATA), whose members include a large majority of the international air transport enterprises of the world. Technical and library facilities are in consequence

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\*This account was prepared for the Review by Professor John C. Cooper of Princeton, New Jersey, the Director of the Institute. Professor Cooper is a member of the Bar of the Supreme Court of the United States; Legal Consultant, International Air Transport Association, Montreal; Member, Air Law Committee of the International Law Association, London; Member, Air Law Committee of the International Chamber of Commerce, Paris. He was a member of the Institute for Advanced Study, Princeton, 1946-51; President, Florida State Bar Association, 1931; Chairman, Committee on Aeronautical Law of the American Bar Association, 1932-34; Chairman, United States Delegation, International Air Law Conference, Rome, 1933; Vice-President, Pan-American Airways, 1934-46; Member, United States Delegation, and Chairman, Drafting Committee, International Civil Aviation Conference, Chicago, 1944. He is the author of *The Right to Fly* and other publications on international air law.

available in Montreal that do not exist elsewhere. Men and women working at the new Institute will have, for example, the opportunity of studying the day to day procedures and processes actually applied in ICAO in adopting regulations and standards that will materially affect developments in international air law.

The Institute is primarily an organization for post-graduate study. Men or women who successfully complete the prescribed course will receive the degree of Master of Laws (LL.M). Applicants for admission to the degree course must hold a law degree from an approved law school in any part of the world. Those applicants who possess a working knowledge of both English and French will have preference. At the discretion of the director men or women who lack the qualification of a law degree may be permitted to follow all or any part of the course, but without being eligible for the degree at the conclusion of the course. In exceptional cases applicants, possessing the required law degree but unable to devote their full time to the course, may in the discretion of the director be permitted to take part of the course without being eligible for a degree, or to complete the course on a part-time basis over an extended period.

The course of study will normally require two years residence at the Institute. However, those full-time students whose work is found satisfactory during the first year of residence may be permitted during the following year, even though not then in residence, to offer a thesis on an approved subject within the field of the Institute's work, and, on acceptance of the thesis, will receive the degree of LL.M.

Among the courses of study to be offered at the Institute dealing directly with the field of international air law will be the following:

1. *International Transport Law* — its history and development since the fifteenth century, with particular reference to international law questions as to rights of commerce and of transit of one state into or through the territory of another state — the right of each state to control activity within its territory — the development of the law of the relation of the state to its territory — the controversies as to whether the air space is or is not part of the territory of the subjacent state.

2. *Public International Air Law* — the background, drafting and significance of the great international conventions which constitute the basis for present concepts of air law, namely the Paris Convention of 1919, the Madrid Convention of 1926, the Havana Convention of 1928 and the Chicago Convention of 1944, includ-

ing a consideration and analysis of the legal status of usable space and of the legal status of aircraft and other flight instrumentalities.

3. *Private International Air Law* — an analysis of the conflicts of law arising in international aviation and the extent to which they have been or can be eliminated by international convention, with particular reference to (a) the Warsaw Convention covering the relationship and liability of the air carrier to passengers and shippers; (b) the Rome Convention covering the relationship and liability of air carriers to third persons suffering damage on the surface; and (c) the Geneva Convention covering title to and liens on aircraft.

4. *International Air Regulation* — an analysis of the implementation of the Chicago Convention of 1944 through the setting up of the International Civil Aviation Organization at Montreal, its practical handling of the authority given to it by the Chicago Convention looking towards the regulation of air navigation, its adoption of standards and recommended practices, the relation of its work to regulation of aviation in the several states of the organization.

It is believed that these four basic courses cover the general field of international air law. They are designed to be useful to the degree candidate in future professional work, whether it be governmental, commercial or academic.

Candidates for the degree of Master of Laws may also be permitted to take courses on collateral subjects, the determination of electives to be based on the prior academic record of the candidate and his future plans. These collateral courses will include, among others, the following: *International Trade, Principles of Maritime Law, Principles of Civil Law, Transportation, International Relations, Diplomatic History*.

Realizing the wide interest that exists in air law among members of the bar and government and transportation personnel who cannot devote full time as applicants for the degree of Master of Laws, the Institute is now giving careful consideration to a proposed part-time course of study, the details of which cannot be announced until later. The exact character and extent of this part-time course will be determined after consultation with members of the bar and others whose existing professional responsibilities are such that they cannot reasonably be expected to apply for admission to the complete degree course.

Of equal importance to the courses of study to be given at the Institute is its future programme for original research in timely and important problems of international air law. Among the

questions now being considered as the subject matter of research projects are the following: (1) a study of the conflicts that exist in the competence and jurisdiction of courts in the case of crimes, or other occurrences, on board an aircraft requiring judicial consideration when the flag of the aircraft is not that of the state flown over (for example, the question whether the courts of Canada or of the United States are competent to punish crimes committed on board United States aircraft flying through Canadian airspace); (2) a study of the extent of national airspace rights in the Arctic and in the Antarctic, with particular reference to whether flight over permanently frozen seas has the same legal characteristics as flight over the high seas, or whether the frozen seas and the airspace above may be claimed as national territory by an adjacent state—a question of particular interest to Canada; (3) a study of airspace rights over those territories that are covered by United Nations trusteeships, involving the important question whether the trustee state under the United Nations Charter and the Chicago Convention on International Civil Aviation can claim individual sovereign control of the airspace over the trusteeship territory, or whether it must permit the entry into such airspace of aircraft of all members of the United Nations; (4) a study of the extent of sovereignty in areas of space above and beyond the airspace, a question already posed by present high altitude rocket flights, which are now being driven beyond the airspace. The future extent of such high altitude flights of rockets, guided missiles or space ships appears to be scientifically unlimited, raising questions of particular difficulty over neutrality in time of war.

These and other research projects will be carried forward by the degree applicants admitted to the Institute and under the immediate supervision of its director. It is expected that a series of professional papers will result, and that the Institute will thus contribute in some measure toward the future development of international air law on a sound academic basis.

As indicated, the work of the Institute will be essentially international in character. Although announced quite recently, it has already evoked wide interest abroad. The total number of candidates to be admitted to the degree course during the first year will be small and carefully selected. It is expected that those admitted will come in part from Europe, from South America and, perhaps, from the Far East, as well as from Canada and the United States. Aviation is itself in many respects international in character. The airspace knows no physical boundaries. International law should continue to have as its objective the promulga-

tion and acceptance of sound legal rules that will be applicable to every aircraft no matter what may be its nationality or where it may fly. To obtain universality of that character, the interchange of ideas of men and women from far distant parts of the world is necessary. No single theory of law or system of jurisprudence can be accepted as controlling. International air law must eventually become a set of rules that exists irrespective of the background of any particular national system. It is hoped that the future interchange of ideas between men and women admitted to the Institute from many parts of the world will aid in some small degree this necessary objective.

The essentially international character of the Institute is further evidenced by the distinguished membership of its Advisory Committee. It is expected that this committee will from time to time aid the director in determining policies on courses of study, research projects and other similar matters. At present the committee includes the following well-known men in the field of international aviation: Mr. John P. Baldwin, Chairman, Air Transport Board of Canada; Major K. M. Beaumont, C.B.E., D.S.O., Member for the United Kingdom, Legal Committee of ICAO; Mr. André Garnault, Avocat à la Cour d'Appel, Paris, and Member for France of the Legal Committee of ICAO; Sir William P. Hildred, Director General, IATA; Dr. Luis Machado, Ambassador of Cuba to the United States of America; Mr. Emory T. Nunneley, Jr., General Counsel, U.S. Civil Aeronautics Board, and Member of the Legal Committee of ICAO; Dr. Edward P. Warner, President of the Council of ICAO; Mr. Richard O. Wilberforce, Member for the United Kingdom, Legal Committee of ICAO. The director of the Institute will act as chairman of this committee.

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### Recent Judicial Appointments

Fabio Monet, Esquire, K.C., a member of the Income Tax Appeal Board, to be Chairman of the Board, under the provisions of the Income Tax Act, and to hold office as such until December 31st, 1958.

Reginald Sydney Walter Fordham, Esquire, K.C., to be a member of the Income Tax Appeal Board, under the provisions of the Income Tax Act, for a period of ten years.

Antonio Garneau, Esquire, K.C., to be a puisne judge of the Superior Court for the District of Montreal, in the Province of Quebec.

Charles Edouard Ferland, Esquire, K.C., to be a puisne judge of the Superior Court for the District of Montreal.