



McGill

Institute of
Air and Space Law



FIFTH
ANNUAL
**MCGILL
CONFERENCE**
ON
**INTERNATIONAL
AVIATION
LIABILITY &
INSURANCE**

OCTOBER 25-26, 2013

HILTON MONTRÉAL
BONAVENTURE HOTEL

900 DE LA GAUCHETIERE WEST
MONTREAL, CANADA



Barreau du Québec
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International Air Transport Association



Transportation Lawyers Association

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www.mcgill.ca/iasl

THIS CONFERENCE WILL PROVIDE A REVIEW OF CONTEMPORARY LAWS, JURISPRUDENCE AND DEVELOPMENTS IN INTERNATIONAL AIR LAW AND LIABILITY INSURANCE FROM THE PERSPECTIVE OF AIRLINES, AIRPORTS, ANSPs, INSURERS, MANUFACTURERS AND LESSORS. THIS EVENT BRINGS TOGETHER SOME OF THE WORLD'S LEADING EXPERTS TO ADDRESS THE FOLLOWING TOPICS:

- Recent Developments in Aviation Liability and Insurance
- Unruly Passengers and Liability for Acts of Unlawful Interference
- Jurisdiction & *Forum Non Conveniens*
- Liability of Manufacturers and Lessors of Aircraft, Engines & Component Parts
- Comparative Interpretations of the Montreal Convention of 1999 and their Impact on Airlines, Manufacturers, Insurers & Claimants

AS WELL AS A MOOT COURT APPELLATE ARGUMENT

In addition, the conference will host luncheons and receptions to facilitate networking between attorneys, insurers, air carriers, manufacturers and governmental representatives.

THIS IS THE FIFTH ANNUAL MCGILL CONFERENCE ON INTERNATIONAL AVIATION LAW & LIABILITY

Prior Conferences were held in: Montreal 2009, Amsterdam 2010, Montreal 2011, London 2012





PROGRAM

FRIDAY, OCTOBER 25

7:30 – 8:30 REGISTRATION

8:25 – 8:30 WELCOMING REMARKS

Prof. Dr. Paul Stephen Dempsey (McGill University Institute of Air & Space Law, Montreal)

8:30 – 9:30

Forum Non Conveniens – Be Careful What You Ask For

- Should domestic courts hear claims for aviation accidents occurring in foreign jurisdictions?
- Does the claimant have the exclusive right to choose among the venues specified in the Warsaw and Montreal Conventions in which to bring his suit?
- Is *forum non conveniens* a procedural issue subject to *lex fori*?
- What has been the impact of judgments in French, Spanish and Brazilian courts that have either refused to accept a case dismissed in US courts on *forum non conveniens* grounds, or have awarded damages as generous as those available in some US courts?
- What precedent has been established by the courts in the West Caribbean, DHL Honeywell, Spanair, and Air France decisions?
- What has been the impact of the “blocking statutes” promulgated by certain Latin American States?

CHAIR: **Andrew Harakas** (Clyde & Co US LLP, New York)

SPEAKERS:

Thad Thano Dameris (Hogan Lovells, Houston)

Justin T. Green (Kreindler & Kreindler LLP, New York)

James Healy-Pratt (Stewarts Law LLP, London)

J. Thompson Thornton (Thornton, Davis & Fein, P.A., Miami)

9:30 – 10:30

The Erosion of Exclusivity Under the Warsaw and Montreal Conventions

- Does recent case law in England and the US suggest an erosion of the decisions in *Sidhu v. British Airways* and *El Al Israel Airlines Ltd. v. Tseng*?

- How have Canadian courts responded to the challenges to the exclusivity of the Montreal Convention in *Thibodeau v. Air Canada*?
- What does exclusivity entail?
- Does case law from emerging markets adhere to the exclusivity of the Warsaw and Montreal Conventions?
- Can the Warsaw and Montreal Conventions benefit from a less exclusive interpretation of their provisions?

CHAIR: **George Leloudas** (Institute of International Shipping and Trade Law, Swansea University)

SPEAKERS:

Robert Lawson QC (Quadrant Chambers, London)

Steven C. Marks (Podhurst Orseck, P.A., Miami)

Mark C. Power (Heenan Blaikie, Ottawa)

10:30 – 10:50 REFRESHMENT BREAK

10:50 – 12:00

Passenger Rights & Carrier Liability

- How generous is compensation for delay, denied boarding, and flight cancellations?
- What do new regulations require for advertising, sales, and promotions?
- What is the gravity of liability exposure for airlines under the tarmac delay rules?
- How do policy makers and security personnel resolve the conflict between intrusive aviation security procedures and personal privacy?
- How have jurisdictions other than the US and EU joined in the stampede for consumer protection?
- Which States have promulgated consumer protection legislation, and what are the conflicting requirements imposed upon airlines?
- Should ICAO harmonize conflicting consumer protection laws?

CHAIR: **Stephan Eriksson** (Advokaterna Liman & Partners AB, Stockholm)

SPEAKERS:

Jochen Croon (Transavia Airlines, Amsterdam)

Henrik Kjellin (Former Swedish Director Of Aviation Affairs, Stockholm)

Beatrice Lim (Association of Asia Pacific Airlines, Kuala Lumpur)

Caroline Theil (Flightright, Berlin)

Tom Whalen (Schott Johnson LLP, Washington)

Montreal Conference 2013



12:00 – 13:15 LUNCH

KEYNOTE SPEAKER: **Daniel Desjardins** (*Vice President Legal Affairs and Corporate Secretary, Bombardier Inc., Montreal*)

13:15 – 14:15

Jurisprudence: How does it differ internationally between jurisdictions?

This panel will explore the rich mix of common and civil law, and examine similarities and differences between Canadian, American, European and other jurisprudence on issues involving international aviation liability.

CHAIR: **Gerard Chouest** (*Bersenas Jacobsen Chouest Thomson Blackburn LLP, Toronto*)

SPEAKERS:

Isabel Mazoni Andrade (*Felsberg e Associados, São Paulo*)

Christian Bouckaert (*Bouckaert Ormen Passemard Sportes, Paris*)

Tim Trembley (*Paterson MacDougall LLP, Toronto*)

14:15 – 15:15

The Liability and Security Interests of Aircraft Lessors

- How is registration, recordation and insurance handled, and what impact do they have on liability?
- Should an aircraft lessor be held liable in a personal injury action for negligent entrustment of an aircraft to a foreign airline which crashes in a foreign jurisdiction?
- What is the current status of the Cape Town and the General Risks Conventions?

CHAIR: **Heather C. Devine** (*Gowling Lafleur Henderson LLP, Hamilton*)

SPEAKERS:

Lisa A. Harig (*McBreen & Kopko, Washington*)

John F. Pritchard (*Holland & Knight LLP, New York*)

Carlos Sierra (*Sierra y Vázquez, Mexico City*)

14:15 – 15:15 REFRESHMENT BREAK

15:35 – 17:00

How In-House Legal Counsel Manage Liability Claims

- How do in-house counsel manage claims (e.g. selection of outside lawyers, management of outside lawyers, monitoring of legal fees)?

- What are their internal programs of training, and processing, monitoring, and resolving claims?
- How do they prepare themselves for liability cases (e.g. assessment of exposure, human resources issues, in-house training)?
- What are the differences in approaches to handling day-to-day claims vis-à-vis major aviation catastrophes?
- How do insureds select and interact with insurers?
- How do they educate management to avoid corporate liability?

CHAIR: **P. Nikolai Ehlers** (*Ehlers, Ehlers & Partner, Munich*)

SPEAKERS:

AIR CARRIER: **Senarath D. Liyanage** (*Etihad Airways, Abu Dhabi*)

MANUFACTURER: **Karl Hennessee** (*Airbus, Toulouse*)

LESSOR: **Brenda Nichols** (*Engine Lease Finance Corporation, Shannon*)

AIR NAVIGATION SERVICE PROVIDER: **Francis Schubert** (*Skyguide, Geneva*)

AIR CARRIER: **Louise-Hélène Sénécal** (*Air Canada, Montreal*)

INSURANCE UNDERWRITER: **Uta Sigl*** (*Allianz, Munich*)

18:00 – 19:30 NETWORKING RECEPTION

SATURDAY, OCTOBER 26

8:30 – 10:10

Moot Appellate Argument: Carrier Liability for Parental-Child Abduction

Internationally prominent aviation attorneys will argue whether an airline should be held liable under common law for failing to investigate the custodial rights of a single parent traveling with his or her minor child where the parent/passenger is using the airline to illegally transport the child outside of the United States, and whether a claim by the “left-behind parent” for the airline’s failure to implement pre-embarkation safeguards to protect against the use of its services by a customer to abduct children is preempted by the Montreal/Warsaw Convention and/or the US Airline Deregulation Act. *See Bower v. Mirvat El Nady and EgyptAir Airlines*, 2012 WL 947527 (D. Mass. 2012).

JUDGE: **Hon. Nicolas Kasirer** (*Québec Court of Appeal, Montreal*)

ATTORNEY FOR APPELLANT: **Thea Capone** (*Baumeister & Samuels, P.C., New York*)

ATTORNEY FOR APPELLEE: **Chris Carlsen** (*Clyde & Co US LLP, New York*)

10:10 – 10:30 REFRESHMENT BREAK

10:30 – 11:45

Managing the Aviation Claim in 2013 - Fact v. Fiction

- How do insurers currently manage their claims?
- What is the role of the policy leader - working with the insureds – in selection of outside lawyers; settling the hull claim; deciding whether to litigate or settle; preparing and managing trial; considering an appeal; reconciling a multiple insured's loss; relationships with their reinsurers?
- What are the trends and developments that are of current concern to insurers (e.g. criminalization, and the US Federal Preemption Defense)?
- What is the legacy to date of the Montreal Convention?
- Ten years on, what are insurers' perspectives on the Montreal Convention?

CHAIR: **Philip Chrystal** (*Swiss Re, Zurich*)

SPEAKERS:

Michael J. Peterson (*Willis Global Aviation North America, New York*)

William F. Ranieri (*United States Aircraft Insurance Group (USAIG), New York*)

Joseph Taccetta (*Global Aerospace Inc., Parsippany*)

11:45 – 13:00 LUNCH

KEYNOTE SPEAKER:

Dean Wang Han (*Northwest University of Political Science & Law, Xi'an, China*)

Dr. Wang is the leading academic scholar on aviation liability law in China. He will discuss recent legal and jurisprudential developments in the People's Republic of China related to the Montreal Convention of 1999.

13:00 – 14:15

Carrier and Passenger Liability for Unruly Conduct aboard Aircraft

- Should an air carrier be liable for the assault by one passenger upon another?
- Should liability be allowed under the Warsaw/Montreal regimes when the "accident" was not caused by an event or occurrence related to an aviation operation?
- Which court decisions have circumscribed the liability shield provided by the Tokyo Convention?
- Should the Tokyo Convention be amended to expand immunity for airlines including their flight crew?
- Should sky marshals enjoy immunity for acts committed against passengers aboard aircraft, and if so, under what circumstances?
- Can air carriers recover flight diversion costs from unruly passengers? Should they be able to do so?

CHAIR: **Alan D. Reitzfeld** (*Holland & Knight LLP, New York*)

SPEAKERS:

Gilles Charette (*Air Canada, Montreal*)

Michael Gill (*International Air Transport Association, Geneva*)

Clay S. Hunter (*Paterson MacDougall LLP, Toronto*)

Michael Jennison (*Federal Aviation Administration, Washington*)

Jeanne M. O'Grady (*Speiser, Krause, Nolan & Granito, New York*)

14:15 – 15:15

Antitrust Liability/Antitrust Immunity

- What has been the course of antitrust litigation against airlines for allegedly collusive activity (e.g. fuel surcharges for air cargo)?
- How has litigation fared in airline predation cases?
- How have antitrust suits fared in claims brought by passengers?
- Why have alliance "metal neutral" joint ventures been conferred antitrust immunity, and will (or should) other States honor the immunity conferred by US and EU regulators?
- Why have not more States followed the Canadian regulatory requirement of "carve-outs", and why has the United States abandoned "carve-outs"?
- What are the criteria for approval of airline mergers and acquisitions (e.g. Air France/KLM, Lufthansa/Austrian, BA/Iberia, Delta/Northwest, United/Continental), and disapproval of others (e.g. Aegean/Olympic, United/US Airways)?

CHAIR: **Jim Ehrig** (*Eckert Seamans, Washington*)

SPEAKERS:

Kate Markhvida (*InterVISTAS, Vancouver*)

Bruce McDonald (*Jones Day, Washington*)

Mark Rosman (*Wilson Sonsini Goodrich & Rosati, Washington*)

Bruce Wark (*American Airlines, Fort Worth*)

15:15 – 15:30 REFRESHMENT BREAK

15:30 – 17:00

Emerging Liability Issues in International Aviation

This session will address emerging liability and insurance issues in several nascent areas, including:

- Unmanned Aerial Vehicles (aka Remotely Piloted Aerial Vehicles)
- Cyber-security and the threat posed to air traffic services in terms of potential collisions
- Sub-orbital aerospace vehicles
- The role of ICAO in addressing areas of international liability
- Safety Management Systems and the role of civil and criminal litigation on the confidentiality of flight data
- Protection of safety information
- The dangers of criminalization, and the need for "Just Culture"
- Flight automation and the liability of IT providers
- Cockpit fatigue and liability

CHAIR: **Urban Olson** (*Advokatfirman Urban Olson, Stockholm*)

SPEAKERS:

Roderick van Dam (*EUROCONTROL Just Culture Task Force, Brussels*)

Peter F. Frost (*US Department of Justice, Washington*)

Prof. Lars-Goran Malmberg (*University of Gothenburg, Sweden*)

Kenneth P. Quinn (*Pillsbury, Washington*)

Siew Huay Tan* (*Civil Aviation Authority, Singapore*)

17:00 – 17:05 CLOSING REMARKS

Prof. Dr. Paul Stephen Dempsey (*McGill University Institute of Air & Space Law, Montreal*)

CONFERENCE INFORMATION

Venue: The Hilton Montréal Bonaventure Hotel
900 Rue de La Gauchetière ouest
Montréal, Québec H5A 1E4
Reservations: 1-800-267-2575

The Hilton Montréal Bonaventure – a luxury hotel — is nestled on the roof of Place Bonaventure, a Montreal landmark directly across the street from the world headquarters of the International Civil Aviation Organization. This Hotel boasts 2½ acres of landscaped gardens, outdoor terraces and a spectacular year round heated pool. The Hotel is directly connected to Montreal's metro/subway, train station and underground city of boutiques & restaurants.

1. Hotel Reservations: To make your hotel reservations online, please visit http://www.hilton.com/en/hi/groups/personalized/Y/YULBHHF-LIAI-20131021/index.jhtml?WT.mc_id=POG or call Toll Free number 1-800-267-2575 or direct line: (514) 878-2332. Hotel fax line: (514)878-3881.

We are pleased to confirm the following special group rates in Canadian dollars, from \$179 plus taxes.

	Rate
Standard Deluxe Rooms (1 King bed or 2 double beds)	\$179
Executive Floor Rooms	\$229

Executive floor rooms provide benefits including: Executive Lounge access with deluxe continental breakfast, honor bar & hors d'oeuvres [17:00 -19:30]; free local calls & high speed Internet.

We have reserved a block of rooms and the reservation deadline is noon, **September 20, 2013**. After this date, the Hotel does not guarantee the availability of rooms and will assign rooms on a space available basis. Rooms are available for check-in at 15:00 with a Check-out time of 12:00 noon.

In order to receive the preferred contracted rates, telephone and fax requests must identify their affiliation with our group — **please refer to the “McGill Conference” when making reservations.**

2. Passport/Visa Information: If you are visiting Canada, a valid passport is generally required. It is the responsibility of the visitor, before entering Canada, to ensure that he/she has the necessary documents, including those to enter Canada and to re-enter his/her own country. Contact the nearest Canadian Embassy or Consulate if you need to obtain a visa to enter Canada.

3. Cancellation Policy: Registrants will be entitled to a refund of 80% of their registration fee if cancellations are received by October 15, 2013. Regrettably no refunds will be granted thereafter. Alternatively, a replacement attendee may be designated however such replacement must be advised in advance, or symposium materials may be sent in lieu of a refund. **Cancellations must be faxed to the attention of Maria D'Amico at 514-398-8197.** The Conference reserves the right to cancel any programmes and assumes no responsibility for personal expenses.

4. For latest programme information: Visit the McGill website at <http://www.mcgill.ca/iasl/>

5. Marketing Contacts:
Sponsorship of the Conference: Professor Dr. John Saba, john.saba@mcgill.ca or 514-398-5095

6. Questions: If you have questions or require additional conference information, please contact **Maria D'Amico** at 514-398 5095 or e-mail conferences.iasl@mcgill.ca





REGISTRATION INFORMATION

PRE-REGISTRATION is recommended to avoid delays on-site.

- To register for all programmes and events described in this brochure, **please submit your completed registration form and payment to the addresses indicated below.**
- In order to be included in the list of programme attendees, you must register by October 15, 2013.
- Beneficiaries of discounted rates will be required to present proof of eligibility e.g. a student card valid for conference dates.

THREE WAYS TO REGISTER!

- **Internet:**

Register online at: <https://www.mcgill.ca/iasl-events/>

- **Fax:**

McGill Conference 2013, c/o Maria D'Amico, Fax number: (514) 398-8197.

Fax the completed registration form with credit card payment information.

- **Mail:**

Send completed registration form with payment [do not mail cash] to:

McGill Conference 2013

Attention: Maria D'Amico

McGill University Institute of Air & Space Law

3690 Peel Street

Montreal, Quebec

Canada H3A 1W9



On-Site Registration is available for those persons who miss the registration deadline.

On site registrants must pay the registration fees by cheque, Visa, MasterCard, American Express or Canadian funds.

No registrations will be accepted without payment.

PAYMENT INFORMATION

REGISTRATION FEES

- For applicable registration fees, please **see registration form**.
- All fees are expressed in **Canadian dollars** (including hotel rates).
- Conference registration fees include all applicable taxes.
- Registration fees include admission to the two-day programme, refreshment breaks, luncheons and receptions listed.

METHOD OF PAYMENT

- **Credit Card** (Visa, MasterCard or American Express).
- **Cheque or money order in Canadian funds payable to “McGill University Institute of Air & Space Law”.**
- **Cash (on-site only)**
- **Bank transfer payment** The registration fee must be pre-paid in Canadian dollars. You should indicate clearly to your bank that the transfer is made to “*McGill University Institute of Air and Space Law*”.
An additional charge of CAD \$20 should be added to cover charges by McGill University’s bank. Please note that processing may require up to two weeks.
E-mail or telephone Maria D’Amico to inform McGill when you transacted the bank transfer.

Beneficiary Bank:

RBC Royal Bank of Canada
1 Place Ville Marie
Montreal, Quebec
H3C 3A9
Canada

Transit code: 00001

SWIFT code: ROYCCAT2

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**McGill Bank Account Number:
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Currency of account: CAD\$

Account name:

**McGill University (Please
state “*McGill Institute of
Air & Space Law*”)**



Conference on International Aviation Liability & Insurance 2013 REGISTRATION FORM

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Dr.

FIRST NAME		INITIAL(S)	LAST NAME
TITLE			
ORGANIZATION / FIRM			
ADDRESS			
CITY	STATE/PROVINCE	POSTAL/ZIP CODE	COUNTRY
TELEPHONE	FAX	E-MAIL	
DATE		SIGNATURE	

Registration Fee: includes admission to the 2-day programme, refreshments, luncheons, and receptions.

All amounts below are stated in Canadian dollars & include all applicable taxes.

Kindly check mark which of the following categories and registration fees apply to you

	Early Bird (Postmarked on or before 30 September 2013)	Regular (Postmarked on or after 1 October 2013)
General attendee	<input type="checkbox"/> \$695.00 CAD	<input type="checkbox"/> \$795.00 CAD
Sponsor/IASL Graduates*	<input type="checkbox"/> \$595.00	<input type="checkbox"/> \$695.00
Academic/Government/Speaker	<input type="checkbox"/> \$395.00	<input type="checkbox"/> \$495.00
Student	<input type="checkbox"/> \$195.00	<input type="checkbox"/> \$250.00
SPECIAL 1-DAY Rate	30% Discount off above rate	30% Discount off above rate

* Employees of our sponsors and graduates of the McGill University Institute of Air & Space Law

☐ I will attend the Friday Luncheon

☐ I will attend the Friday Reception

☐ I will attend the Saturday Luncheon

Method of Payment: ☐ **Cheque or money order** in Canadian funds payable to *McGill Institute of Air & Space Law*
☐ MasterCard ☐ Visa ☐ American Express ☐ Cash (*on-site*)

CARD NO:	
EXPIRY DATE:	NAME OF CARD HOLDER:
DATE:	SIGNATURE OF CARD HOLDER:

By internet at: <https://www.mcgill.ca/iasl-events/>

By fax: McGill Conference 2013, c/o Maria D'Amico, Fax number: (514) 398-8197.

Fax completed registration form with credit card payment information.

By mail: Send completed registration form with payment to: McGill Conference 2013,
 ATTENTION: Maria D'Amico, McGill University Institute of Air & Space Law,
 3690 Peel Street, Montreal, Quebec, Canada H3A 1W9

Conference on International Aviation Liability & Insurance

25-26 October 2013 HOTEL RESERVATION FORM

The Conference has negotiated a special discounted group rate of \$179 CAD [Deluxe room] or \$229 CAD [Executive room] at the **Hilton Montreal Bonaventure** (*across from the ICAO Headquarters*). To take advantage of this rate and to ensure your accommodation, please **complete this reservation form with full details** and FAX it directly to the hotel at (514) 878-3881.

1. YOUR DETAILS

*Please complete in **block capitals** using **black ink***

FAMILY NAME:

GIVEN NAME:

JOB TITLE:

ORGANIZATION:

ADDRESS:

TEL (DIRECT LINE):

FAX (FOR CONFIRMATION):

2. YOUR REQUIREMENT

Please choose room type

Hilton Montréal Bonaventure Hotel

900 de la Gauchetiere West, Montréal, Québec, Canada H5A 1E4 Telephone (514) 878-2332

Please Fax to: +1 (514) 878-3881 prior to September 20, 2013

☐ King Room at \$179+tx per night

☐ Double Room \$179+tx per night

☐ Executive Room at \$229+tx per night

☐ Non-smoker

(deluxe continental breakfast and cocktails included & served in the Executive Lounge)

ARRIVAL DATE:

DEPARTURE DATE:

NUMBER OF NIGHTS:

3. TO GUARANTEE YOUR ROOM

All reservations must be guaranteed with a major credit card

Card Company: ☐ VISA

☐ MasterCard

☐ American Express

CARD NUMBER:

EXPIRY DATE:

SIGNATURE OF CARDHOLDER:

To cancel a guaranteed reservation, you must contact the hotel and obtain a cancellation number 3 days before check-in for a full refund, otherwise the first night of the reservation will not be refunded.

4. CONFIRMATION

To be completed by the hotel

This section will be completed by the hotel who will then fax the whole form back to you.
We are pleased to confirm the above booking.

RESERVATION NUMBER

DATE OF CONFIRMATION:

Thank You

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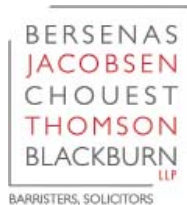
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