

*"This is an excellent course. A must for anyone wanting to practice in public procurement."*

Greg Sykes, SaskPower (Procurement Certificate, 2010)



# The *Osgoode* Certificate in Public Procurement Law and Practice

A unique hands-on program on how to manage the key legal and practical issues facing procurement professionals today

April 4 - 8, 2011 | 5 Days | Toronto, Canada



Professional Development  
CLE



# Why You Should Attend

## Program Details

### Dates

#### Day 1

Institutional Governance  
April 4, 2011

#### Day 2

Legal Rules and Regulations  
April 5, 2011

#### Day 3

Project Management  
April 6, 2011

#### Day 4

Document Drafting and Reviews  
April 7, 2011

#### Day 5

Remedies and Dispute Resolution  
April 8, 2011

The program will be held at *Osgoode Professional Development's* Downtown Toronto Conference Centre.

Across Canada there are thousands of public institutions spending billions of dollars on public projects. The challenges posed by greater supplier competition, the ever-increasing need for transparency and the demand for faster turnaround times, all underpinned by robust legal oversight have made public procurement a complex, high stakes field.

Given the challenges, it is not surprising that high profile examples of procurements that have gone awry continue to make headlines, as the focus on accountable, prudent public sector spending becomes more acute.

This unique *Osgoode Certificate in Public Procurement Law and Practice*, now in its second year, brings clarity to this demanding area. Led by Paul Emanuelli, an outstanding faculty of legal and procurement professionals will give you the knowledge and practical skills you need to competently and confidently handle today's most pressing procurement challenges and issues. You will come away from this program better prepared, and with knowledge, strategies and tactics that you can put to immediate use. This is an unparalleled opportunity to take your procurement skills to the next level – don't miss it.

### Key Benefits: What You Will Learn

- The governing principles and common themes for pro-active procurement
- Key practical strategies to build winning conditions in your purchasing operations
- Empowering the project management team: dos and don'ts
- How to focus on critical project details
- Major plays from major projects: learning from successful leading edge multi-million dollar projects
- Best practices for managing risk, enhancing flexibility and accelerating time frames in the procurement process
- Precision drafting: what you should be doing (and what you should not be doing)
- Avoiding drafting pitfalls, and creating documents that withstand the turbulence of the tendering process
- Critical benchmarks that should be assessed when reviewing procurement documentation
- When (and how) you should be using fairness advisors: bolstering the procurement process
- Remedies and dispute resolution
- Managing the inherent legal risks in contract management
- Avoiding public purchasing paralysis: tips for surviving the red-tape revolution

### Who Should Attend

- Procurement specialists and professionals; VPs and managers of finance from municipalities, hospitals, school boards and academic institutions
- Procurement/purchasing managers
- Government procurement officers and procurement managers
- Municipal lawyers
- Government counsel
- Lawyers advising purchasers
- Lawyers advising vendors to public institutions
- In-house counsel for vendors
- Procurement policy advisors



In five consecutive intensive one-day modules, an expert faculty will deliver the key concepts of Public Procurement Law and Practice. There will be an emphasis on the practical, and classes will be taught using a blended delivery method that includes lectures, class discussions, case studies and small group work.

## THE CURRICULUM

### DAY 1

April 4, 2011, 9:00 a.m. – 5:00 p.m.

#### Institutional Governance

##### Governing Principles

The governing principles and common themes that impact a public institution's procurement policies and practices:

- Role of the private sector in government operations
- Impact of public policies and trade treaties
- Written rules that frame the procurement process
- Unwritten rules that regulate competitive bidding
- Risks and remedies that shape public procurement
- Practical considerations that enable empowered procurement

##### Institutional Strategies

Critical institutional strategies needed to build winning conditions in your purchasing operations:

- Proactive leadership
- Enhanced external oversight
- Ethics and accountability
- Clear roles and responsibilities
- Common rules and practices
- Empowered innovation

##### Ethics and Accountability

An interactive review of scenarios drawn from real conflict of interest cases, including case studies that cover:

- How bidder conflict of interest and unfair "insider" advantage can compromise the integrity of the tendering process
- How purchaser bias can undermine a fair evaluation process
- How a decision maker's impartial discretion can be compromised by personal interests
- Why it is important to clearly define conflict of interest rules in your procurement documents

##### Faculty

**Eddy Jin**, Director, Procurement Services, University of Toronto

**Shahid Minto**, (formerly Procurement Ombudsman)

**Diana Magnus**, Manager, Marketing and Communications, Procurement Services, University of Toronto

**Margaret Rose**, Executive Director, The Caribbean Procurement Institute

**Paul Emanuelli**, Managing Director, The Procurement Office

### DAY 2

April 5, 2011, 9:00 a.m. – 5:00 p.m.

#### Legal Rules and Regulations

##### The Supreme Court's Dual Paradigms

A comparison of the "Contract A" tendering law paradigm and the traditional contracting model explained with reference to:

- The history of the *Ron Engineering* case, with an analysis of the decisions at the trial court, Ontario Court of Appeal and Supreme Court of Canada
- The legacy of *Ron Engineering* and the common law duty of fairness
- The Supreme Court of Canada's modern analytical architecture and dual procurement paradigms, with specific focus on leading Supreme Court decisions

##### The Five Major Implied Duties

An analysis of some of the leading cases from the last quarter century that illustrate the following implied fairness duties:

- Disclosure duty
- Duty to reject non-compliant tenders
- Duty to run a fair process
- Duty to award to the winning bidder
- Duty to award the contract as tendered

##### Implied Duties vs. Reserved Rights

An exploration of the interplay between implied fairness duties and expressly reserved rights, with reference to leading cases that help define:

- How some implied rules, such as the "low bid rule", can be overridden by specific tender call provisions
- How the courts rely on the doctrine of fairness to apply limits on the use of the "privilege clause"

##### Faculty

**Paul Emanuelli**, Managing Director, The Procurement Office

**Maud Murray**, Counsel, Crown Law Office Civil, Ontario Ministry of the Attorney General

## DAY 3

April 6, 2011, 9:00 a.m. – 5:00 p.m.

### Project Management

#### Project Management Overview

- Managing internal governance
- Building business plans
- Developing procurement strategies / selecting the procurement format

#### Surveying the Procurement Playbook

This segment will review the following internationally recognized purchasing formats and assess them within the unique context of Canada's tendering law:

- Legally binding Invitations to Tender
- Binding and negotiated RFPs
- Prequalification processes
- Request for Quotation formats
- Market research methods - RFIs & IEs

#### Major Plays from Major Projects

This segment will consider advanced scenarios from successful leading-edge multi-million dollar projects.

#### Faculty

Leo Gotlieb, Director, Western Management Consultants

Marilyn Brown, Solicitor, City of Toronto

Paul Emanuelli, Managing Director, The Procurement Office

## DAY 4

April 7, 2011, 9:00 a.m. – 5:00 p.m.

### Document Drafting and Reviews

#### Secrets of Aerodynamic Design: An Overview of Critical Precision Drafting Concepts

#### The Three Pillars

The three underlying principles that drive the precision drafting process:

- Clear thinking; plain language; legal interpretation

#### The Seven Stages of the Precision Drafting Process

- The initial mapping statement; detailing requirements; making material disclosures; establishing eligibility requirements; creating ranking and selection criteria; developing the rate bid form; drafting the form of agreement

#### Aligning Legal and Procurement Reviews

The critical benchmarks that should be assessed when conducting a review of a procurement document.

#### Faculty

Paul Emanuelli, Managing Director, The Procurement Office

Michael Killeavy, Director, Contract Management, Ontario Power Authority

## DAY 5

April 8, 2011, 9:00 a.m. – 5:00 p.m.

### Remedies and Dispute Resolution

#### Surviving the Red Tape Revolution

In the modern era, government procurement is under an unprecedented level of scrutiny. This segment provides critical recommendations for managing disputes while considering a critical question: Is red tape paralyzing public purchasing and undermining the procurement process?

#### Fairness Oversight

More and more public institutions are using arms-length advisors to monitor their procurement projects. This segment offers five critical considerations for the proper use of external fairness advisors.

#### Legal Risks and Remedies

A review of the legal risks, liabilities and remedies that can apply during the procurement process, with a particular focus on cases dealing with:

- Purchaser remedies against bidders
- Dealing with problematic suppliers
- The role of external advisors
- The warning signs of bid rigging
- Speedy supplier remedies
- Supplier lost profit damages
- Alternative dispute resolution

#### Contract Management

An analysis of how contract management should inform your entire procurement cycle, with fact scenarios drawn from case studies that illustrate:

- How a supplier's poor past performance can impact both the supplier's right to bid and the evaluation of its tender
- How the origins of many performance disputes can be traced back to earlier stages in the procurement process
- How the contract management phase of the procurement cycle is fraught with inherent legal risks that need to be carefully managed

#### Faculty

Paul Emanuelli, Managing Director, The Procurement Office

Christianne M. Laizner, Executive Director and General Counsel/Head of Legal Services, Department of Justice, CIDA Legal Services

**Note:** There will be an in-class assessment during this session. In order to receive the *Osgoode* Certificate in Public Procurement Law and Practice, students must successfully complete the assessment and attend all 5 days of the program.



## Take your procurement knowledge and skills to the next level..



Program Director Paul Emanuelli is an internationally known author, procurement lawyer and consultant with an extensive track record of public speaking, publishing and training. His portfolio focuses on major procurement projects, information technology transactions, outsourcing, corporate governance and supply chain management. He has in-depth experience advising institutions on the legal and strategic aspects of purchasing operations, developing procurement formats and negotiating commercial transactions. He is the author

of *Government Procurement*, *The Laws of Precision Drafting: A Handbook for Tenders and RFPs* and the *National Tendering Law Update* and hosts two procurement law webinars *Case Law Countdown* and the *Procurement Office Cyberseries*.

### Here's what participants said about 2010's inaugural **Osgoode Certificate in Public Procurement Law and Practice:**

***"Excellent program. Anyone involved in the procurement process should be required to take this course first."***

Tracy Allen, City of St. Albert (Procurement Certificate, 2010)

***"Paul is a wonderful teacher. He pools his wealth of knowledge together with common sense and practicality, and delivers his message effectively and concisely."***

Christine Robertson, City of Brantford/Brantford Power Inc. (Procurement Certificate, 2010)

***"The most useful seminar I have taken in 12 years of practice"***

Andrea Adar, Town of Richmond Hill (Procurement Certificate, 2010)

***"Exceptional in-depth knowledge; awesome presentation skills"***

Michel Simard, Canadian Institute of Health Research (Procurement Certificate, 2010)

## FACULTY

### PROGRAM DIRECTOR

Paul Emanuelli  
Managing Director  
The Procurement Office

### FACULTY

Shahid Minto  
(formerly Procurement Ombudsman)

Margaret Rose, Executive Director  
The Caribbean Procurement Institute

Leo Gottlieb, Director  
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Michael Killeavy, Director  
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University of Toronto

Christianne M. Laizner  
Executive Director and General Counsel  
Head of Legal Services, Department of  
Justice, CIDA Legal Services

Diana Magnus, Manager, Marketing and  
Communications, Procurement Services  
University of Toronto

Maud Murray, Counsel, Crown Law Office  
Civil, Ontario Ministry of the Attorney  
General

# THE OSGOODE CERTIFICATE IN PUBLIC PROCUREMENT LAW AND PRACTICE SPRING 2011 REGISTRATION

Get a comprehensive grounding  
on how to manage the risks in this  
complex, high stakes area

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Title:	_____								
Firm/Company:	_____								
Practice Area:	_____								
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- Please add me to your mailing list.
- Please delete me from your mailing list.
- If you do not wish to be contacted by e-mail, indicate here.

Payment Plan  
available

## Fee Per Delegate

\$3,145 plus 13% HST for a total of \$3,553.85.

Fees include attendance, program materials, continental breakfast, lunch and refreshments for each of the 5 days of the program. The price does not include accommodations. Please inquire about group discounts and financial assistance. Payment plan details below. Dress is business casual.

**Need accommodations?** Check our website at [www.osgoodepd.ca/hotelandparking.html](http://www.osgoodepd.ca/hotelandparking.html)

Payment Options – Payment must be made prior to the program

- Cheque enclosed (payable to York University – GST# R119306736)
- Bill my credit card:  VISA  Mastercard
- Payment plan (Available prior to January 15, 2011 only): Bill my credit card in three equal monthly payments of \$1,184.61 commencing the date of registration.  VISA  Mastercard

Card#	Expiry:
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Signature:
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Payment Amount:
_____

## Program Changes

We will make every effort to present the certificate program as advertised, but it may be necessary to change the dates, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON, M5G 1Z3

## For Further Program-Related Information

Please contact: David Thomas, Program Lawyer  
at 416.673.4672 or email [dthomas@osgoode.yorku.ca](mailto:dthomas@osgoode.yorku.ca).

## Cancellations/Rainchecks/Substitutions

If you are unable to attend the program your organization may name a replacement. A full refund will be issued for cancellations received a minimum of 21 days before the program start date. Written cancellations received after March 14, 2011 will include an administration charge of \$700.

## Certificate of Program Completion

You will receive a certificate upon completion of The Osgoode Certificate in Public Procurement Law and Practice. Participants must attend all program modules and satisfactorily pass the in-class assessment to receive a certificate.

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

## 4 Convenient Ways to Register

- MAIL** your registration form to:  
Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
- ONLINE** at [www.osgoodepd.ca](http://www.osgoodepd.ca)
- FAX** your registration to 416.597.9736
- CALL US** at 416.597.9724 or 1.888.923.3394

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