

# THE OSGOODE CERTIFICATE IN PUBLIC PROCUREMENT LAW & PRACTICE

April 24-28, 2017  
5 Days  
In Person

This comprehensive course will give you the practical knowledge and skills you need to handle today's most pressing procurement challenges.

**Public Procurement is a complex and high-stakes field. Do you have the skill-set necessary to meet its demanding legal and practical challenges?**

*Osgoode's unique Certificate in Public Procurement Law and Practice, now in its seventh year, and taught by acknowledged experts, brings clarity to this demanding area. You will come away from this program better prepared, with knowledge, strategies and tactics that you can put to immediate use.*

Don't miss this unparalleled opportunity to take your procurement skills to the next level.

**Register today at:**

[osgoodepd.ca/procurement](http://osgoodepd.ca/procurement)

## Certificate Details:

PROGRAM DIRECTOR

**Paul Emanuelli,**  
General Counsel and  
Managing Director,  
Procurement Law Office

LOCATION

**Osgoode Professional  
Development**  
1 Dundas St. West, 26th Floor,  
Toronto, ON



# Drawing on the expertise and experience of leading lawyers and experts, including:

## Program Director



**Paul Emanuelli**

General Counsel and Managing Director, Procurement Law Office

Paul Emanuelli is recognized by *Who's Who Legal* as one of Canada's leading procurement lawyers. He is the General Counsel and Managing Director of the Procurement Law Office, which was recently ranked by *Global Law Experts* as Canada's top public procurement law firm. Paul has 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 strategic legal aspects of their 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*.

## Program Faculty

**Marilyn Brown**

Legal Counsel, Procurement Law Office

**Paul Emanuelli**

General Counsel and Managing Director, Procurement Law Office

**Leo Gotlieb**

Director, Western Management Consultants

**Claire Hicks**

Corporate Legal Counsel, Sinai Health System

**Eddy Jin**

Procurement Advisory Services

**Jennifer Marston**

Legal Counsel and Legal Editor, Procurement Law Office

**Cameron A. McCaw**

McCaw Financial Consulting Inc.

**Shahid Minto**

Advisor, Public Sector Oversight

# The Osgoode Certificate in Public Procurement Law & Practice

In five consecutive intensive one-day modules, *OsgoodePD's* 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.

This program is only offered once every year in Toronto. Register today!

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.

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.

## What You Will Learn

- The governing principles and common themes for proactive procurement
- Key practical strategies to build winning conditions in your purchasing operations
- Empowering the project management team: dos and don'ts
- Best practices for managing risk, enhancing flexibility and accelerating timeframes 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
- 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 managers, purchasing managers
- Contract/Project 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



# Agenda

**Day 1 - April 24, 2017**  
**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 Panel

An interactive panel discussion covering real conflict of interest situations drawn from recent high-profile events.

- 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

**Paul Emanuelli**, General Counsel and Managing Director, Procurement Law Office

**Cameron A. McCaw**, McCaw Financial Consulting Inc.

**Shahid Minto**, Advisor, Public Sector Oversight

**DAY 2 - April 25, 2017**  
**9:00 a.m. – 5:00 p.m.**

## Legal Foundations

### 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
- 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 decisions

### Negligence in the Tendering Cycle

An exploration of the Supreme Court of Canada's application of tort- based duties in the tendering cycle, with a particular focus on:

- The owner's material disclosure duties
- The duty of care owed by external engineers to owners and bidders
- Subcontractor negligence claims against owners

### Jurisdictional Considerations

A survey of leading international cases adopting Canadian common law principles in government procurement claims and a consideration of jurisdictional issues that apply to bid dispute challenges involving international suppliers.

### Administrative Law in Public Procurement

- The rise of judicial review as a court-based bid protest mechanism

- The evolution of the four-part test for reviewing government procurement decisions
- Recent case law developments dealing with the "correctness" and "reasonableness" standards of review
- The expansion of traditional administrative law principles including the doctrine of legitimate expectations within the government procurement context

### Faculty

**Paul Emanuelli**, General Counsel and Managing Director, Procurement Law Office

**Claire Hicks**, Corporate Legal Counsel, Sinai Health System

**Marilyn Brown**, Legal Counsel, Procurement Law Office

**DAY 3 - April 26, 2017**  
**9:00 a.m. – 5:00 p.m.**

## Critical Legal Trends

### Implied Duties and Express Rights

An exploration of recent cases dealing with privilege clauses and limitation of liability provisions.

### Disclosure Dilemmas

An examination of recent cases on the disclosure duty with a focus on:

- Material performance conditions
- Budgetary information
- Evaluation criteria
- Bidding process rules
- Navigating the interplay between purchaser disclosure duties and bidder pre- bid inspection duties
- Managing transparency and confidentiality in tendering

### Tender Compliance

- Strict vs. substantial compliance
- Contractual compliance
- Procedural compliance
- Technical compliance
- Compliance timing issues
- Clarifications and bid repair

# Agenda

## Fair Evaluations

An overview of common fair evaluation challenges, with a particular focus on procedural breaches, low bid by-pass and bid shopping.

## Remedies and Dispute Resolution

A review of the legal risks, liabilities and remedies that can apply during the procurement process, along with the protocols and dispute resolution strategies that institutions should implement to deal with those risks, with a particular focus on the following topics:

- Purchaser remedies against bidders
- Commercial lost profit claims
- Administrative judicial review challenges
- Tribunal and panel-based trade treaty bid disputes
- Dealing with problematic suppliers and bidder barring
- Public audit oversight mechanisms

## Faculty

**Paul Emanuelli**, General Counsel and Managing Director, Procurement Law Office

**Claire Hicks**, Corporate Legal Counsel, Sinai Health System

**Marilyn Brown**, Legal Counsel, Procurement Law Office

**DAY 4 - April 27, 2017**  
**9:00 a.m. to 5:00 p.m.**

## Ethics and Project Governance

### Ethics and Accountability Case Studies Workshop

This interactive workshop will cover procurement-related ethics and accountability case studies dealing with:

- Conflict of interest
- Evaluation bias
- Unfair advantage
- Bid rigging

## Project Governance 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 & IELs

## Major Plays from Major Projects

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

## Faculty

**Paul Emanuelli**, General Counsel and Managing Director, Procurement Law Office

**Leo Gotlieb**, Director, Western Management Consultants

**Eddy Jin**, Procurement Advisory Services

**DAY 5 - April 28, 2017**  
**9:00 a.m. to 5:00 p.m.**

## Precision Drafting and Contract Management

### 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 and 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; and 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.

## 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

## Contract Management Role Playing Exercise

This segment will have attendees participate in a role playing exercise set in the contract management phase of the procurement cycle.

## Faculty

**Paul Emanuelli**, General Counsel and Managing Director, Procurement Law Office

**Jennifer Marston**, Legal Counsel and Legal Editor, Procurement Law Office

“A very important program for people in procurement - the world across.”

Paul Sharp  
Botswana Defence Force

“Paul’s passion for the topic was very evident in his delivery. He is a very engaging speaker.”

Bernie Bolton  
Alberta Gaming & Liquor Commission



#### SCMA ACCREDITED

Students who earn a grade of B or higher in the Osgoode Certificate will be exempt from taking the Competitive Bidding and Contract Management workshop towards the Supply Chain Management Professional (SCMP) Designation Program. For more information about the SCMP designation, please visit [www.scmad.ca](http://www.scmad.ca).



Osgoode Professional Development  
1 Dundas Street West, Suite 2600  
Toronto, ON Canada M5G 1Z3

## Registration Details

### Fee per Delegate

**\$4,295 plus HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance.

### Program Changes

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

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.

### For Further Program-Related Information please contact:

Reheleh Pourkhodayar, Program Lawyer at 416.619-9351 or email [reheleh@osgoode.yorku.ca](mailto:reheleh@osgoode.yorku.ca)

## Certificate of Program Completion

You will receive a certificate upon completion of Certificate in Public Procurement Law and Practice. Participants must attend all program modules and pass the post-program multiple choice assessment to receive a certificate.

## 4 Convenient Ways to Register



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Register today at:

[osgoodepd.ca/procurement](http://osgoodepd.ca/procurement)



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