

Get practical and tactical advice from some of Canada's top procurement specialists

The Advanced Legal and Practical Guide to Public Procurement

This unique, hands-on program, designed for committed public procurement professionals, takes you to the next level. In two practical, information-packed days, you will learn about:

- Critical trends in public purchasing and their implications
- Surviving the red tape revolution in the post-*Gomery* era
- Dealing effectively with confidential information in the government procurement cycle
- The latest key cases before the *Canadian International Trade Tribunal* and the *Federal Court of Canada*
- The latest critical common law cases
- Contract management - key strategies and tactics to help minimize disputes
- Using fairness commissioners - what you need to know
- Tips for clearly defining conflict of interest rules in your procurement documents - balancing fairness with effectiveness

Plus! Mini workshops on precision drafting

- How to draft a clear, thorough and concise statement of requirements
- Highlighting recurring drafting hazards and how to avoid them
- Tools for achieving document integration

Course Leader

Paul Emanuelli, Counsel, Crown Law Office - Civil
Ministry of the Attorney General, (Ontario)



DATES

January 22 - 23, 2009

LOCATION

Osgoode Professional Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

"I would recommend it to any procurement professional, and will depend on its availability as a key component of the training for committed procurement professionals in my organization"

Melinda Nycholat, Director Contract Services, Defence Construction Canada (*Intensive Course in Public Procurement, Toronto, 2008*)



The Advanced Legal and Practical Guide to Public Procurement

From the team that brought you the *Intensive Course in Public Procurement* – don't miss your opportunity to take your knowledge and skills to the next level

"This was a fabulous overview of the law relating to government procurement. Excellent!"

Elizabeth King, Ministry of Municipal Affairs and Housing (Ontario) (*Intensive Course in Public Procurement, Toronto, 2007*)

The legal and practical issues surrounding public procurement continue to develop at a rapid pace, and the focus on accountable, prudent public sector spending has never been sharper. Keeping up to date with the latest rules and procedures, as well as staying on top of the latest key strategies and tactics in the procurement cycle is essential.

This unique *Osgoode Professional Development* program – *The Advanced Legal and Practical Guide to Public Procurement*, was designed to build on Osgoode's *Intensive Course in Public Procurement*, and provide committed public procurement professionals with a sharply focused and comprehensive understanding of the most recent cutting edge legal and practical developments. As well, the program will cover some of the thornier and more complex issues facing procurement professionals today. Topics include:

- Obligations of government institutions to businesses contracting with government
- The latest cross-Canada court cases impacting public procurement
- Managing risks in the contract management phase
- Ethics and accountability in the procurement process – tips and tools for creating the right culture
- Identifying the projects that warrant a fairness commissioner
- Precision drafting – highlighting recurring hazards and how to avoid them

Whether you are an experienced procurement professional, or are looking to build on Osgoode's *Intensive Course in Public Procurement*, you'll find this program worthwhile.

Register now by visiting www.osgoodepd.ca, calling 416.597.9725 or 1.888.923.3394, emailing opd@osgoode.yorku.ca or faxing 416.597.9736.

Course Leader

Paul Emanuelli, Counsel, Crown Law Office – Civil
Ministry of the Attorney General (Ontario)

Faculty

Geza R. Banfai, Blaney McMurtry LLP

Denis A. Chamberland, Aird & Berlis LLP

Michael Killeavy, Managing Consultant
Knowles Consultancy Services Inc.

Paul M. Lalonde, Heenan Blaikie LLP

Kevin McGuinness, Counsel, Crown Law
Office – Civil, Ministry of the Attorney
General (Ontario)

Phuong T.V. Ngo, Gowling Lafleur
Henderson LLP

Joe Pannella, Counsel, Ministry of
Transportation (Ontario)

Michelle Schachtschneider, Counsel
Crown Law Office – Civil, Ministry of the
Attorney General (Ontario)

Ellen Stensholt, Senior General Counsel
Public Works and Government Services
Canada

Gerry Stobo, Borden Ladner Gervais LLP

Malliha Wilson, Assistant Deputy
Attorney General, Legal Services
Division, Ministry of the Attorney General
(Ontario)

Agenda

Day One - Thursday, January 22, 2009

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Course Leader

Paul Emanuelli, Counsel, Crown Law Office – Civil Ministry of the Attorney General (Ontario)

9:05 Critical Trends in Public Purchasing

Paul Emanuelli, Counsel, Crown Law Office – Civil Ministry of the Attorney General (Ontario)

Paul Emanuelli will examine the latest key trends in public purchasing, including:

- Going global with open public procurement: Public policy developments are reshaping the way that governments do business worldwide. Where does Canada fit within these international developments, and what are the implications?
- How to survive the red tape revolution in the post-*Gomery* era
- Preventative law for public purchasing – redirecting legal services to the institution's training rooms and workshops

10:00 Recent Tendering Law Developments Part I: The Federal Regime

Ellen Stensholt, Senior General Counsel, Public Works and Government Services Canada

Gerry Stobo, Borden Ladner Gervais LLP

A survey of the most critical new *Canadian International Trade Tribunal* and *Federal Court of Canada* cases impacting federal public procurement.

11:00 Refreshment Break

11:15 Recent Tendering Law Developments Part II: The Common Law Cases

Paul M. Lalonde, Heenan Blaikie LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division, Ministry of the Attorney General (Ontario)

A survey of the most critical new cross-Canada court cases impacting public procurement in the federal, provincial, municipal and broader public sectors.

12:15 Networking Luncheon

1:15 Dealing With Confidential Information in Government Tendering

Joe Pannella, Counsel, Ministry of Transportation (Ontario)

When conducting an open tendering process, public institutions must balance the need to protect a bidder's confidential information with the need to ensure transparency of the tendering process. Learn what you need to know about dealing with confidential information in the government procurement cycle.

- What to expect when an access for information request is made
- Types of business information that can (and cannot) be protected
- Outsourcing by government and implications for "control" of business records
- Key factors and legal tests for determining whether business records can be released
- Obligations of government institutions to businesses contracting with government

2:00 Contract Management: How to Prevent or Minimize Disputes

Geza R. Banfai, Blaney McMurtry LLP

Kevin McGuinness, Counsel, Crown Law Office - Civil, Ministry of the Attorney General (Ontario)

For parties engaged in a contract management dispute, third party adjudication in court is often the last option available to obtain resolution. Yet litigants are sometimes unpleasantly surprised by the process, as well as the outcome. This session explores contract management problems as they are dealt with in the courts, and will include discussion of:

- Judicial approaches to contract management disputes generally
- Recent case law on contract management issues
- ADR and mediation
- How to structure the relationship to minimize disputes and avoid costly litigation.

3:00 Refreshment Break

3:00 Contract Management Workshop: Tips and Tools for Navigating Through the Maze

Moderator:

Paul Emanuelli, Counsel, Crown Law Office – Civil Ministry of the Attorney General (Ontario)

Agenda

Panellists:

Geza R. Banfai, Blaney McMurtry LLP

Kevin McGuinness, Counsel, Crown Law Office-Civil, Ministry of the Attorney General (Ontario)

This interactive session highlights 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
- Why the origins of many performance disputes can be traced back to earlier stages in the procurement process
- Legal risks in the contract management phase and how to manage them.

5:00 Day One Adjourns

Day Two - Friday, January 23, 2009

8:30 Continental Breakfast

9:00 Introduction from the Course Leader

Paul Emanuelli, Counsel, Crown Law Office - Civil Ministry of the Attorney General (Ontario)

9:05 Using Fairness Commissioners

Moderator:

Paul Emanuelli, Counsel, Crown Law Office - Civil Ministry of the Attorney General (Ontario)

Panellists:

Michael Killeavy, Managing Consultant, Knowles Consultancy Services Inc.

Denis A. Chamberland, Aird & Berlis LLP

Phuong T.V. Ngo, Gowling Lafleur Henderson LLP

As the need for accountability becomes more pronounced, an increasing number of public institutions are employing the services of fairness commissioners to help bolster their procurement processes. This panel will provide insider insights on some of the most pressing issues impacting the use of fairness commissioners.

- Identifying the projects that warrant a fairness commissioner
- Determining the appropriate skill set: factors to be borne in mind

- How do you ensure the independence of the fairness commissioner?
- Defining the scope of engagement: tips and tools
- Balancing fairness with effectiveness

10:30 Refreshment Break

10:45 Ethics and Accountability Case Studies Workshop

The faculty from the morning session returns for an interactive survey 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
- Clearly defining conflict of interest rules in your procurement documents: tips and tools

12:00 Networking Luncheon

1:00 Intensive Precision Drafting Workshop

Paul Emanuelli, Counsel, Crown Law Office - Civil Ministry of the Attorney General (Ontario)

Michelle Schachtschneider, Counsel, Crown Law Office - Civil, Ministry of the Attorney General (Ontario)

To meet the challenges of modern purchasing, institutions need to implement techniques that can accelerate tender call drafting while producing clear documents capable of withstanding the turbulence of the tendering process. This segment will cover the following topics in a lecture and interactive workshop setting:

Using Clear Drafting

- Employing clear, direct and jargon-free language
- Avoiding tricky terminology and complicating cross referencing
- Eliminating unnecessary document filler
- Incorporating technical, operational and administrative details
- Understanding the proper use of formal drafting techniques
- Using legal interpretation principles to help structure your documents

Agenda

Drawing a Clear Road Map

- Preparing a clear, thorough and concise statement of requirements
- Completing the big picture before detailing your document components
- Coordinating your drafting team to work within your structure and process.

Highlighting Recurring Hazards

- Disclosing known risk factors in the tendered contract
- Drafting clear tender compliance requirements
- Developing transparent supplier ranking criteria
- Establishing simple process rules
- Distinguishing process rules from contract performance requirements

Achieving Document Integration

- Building horizontal integration across the document by ensuring that your statement of requirements aligns with your evaluation criteria and with your rate bid form
- Achieving vertical integration within the document by ensuring that your statement of requirements aligns with your operational and technical details, with your pricing structure and with a properly tailored legal agreement

Note: A refreshment break will be taken during this session.

4:00 Course Concludes

Who Should Attend

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

Course Leader

Paul Emanuelli is a government procurement lawyer with the Crown Law Office - Civil, Ministry of the Attorney General, Ontario.

His practice focuses on major procurement projects in the areas of information technology, public infrastructure and outsourcing. Paul has an extensive track record of public speaking, publishing and training. He is the author of the seminal text *Government Procurement*, Second Edition (LexisNexis Canada Inc. 2008). Paul can be reached at: paul.emanuelli@sympatico.ca.

Registration

Procurement practices are under the microscope like never before. Are you prepared?

- Yes.** Register me for: *The Advanced Legal and Practical Guide to Public Procurement*
- I am unable to attend. Please send me information about ordering program materials.

Name: _____ Position: _____

Firm/Company: _____ Practice Area: _____

Address: _____

City: _____ Province: _____ Postal Code : _____

Email: _____

Telephone: _____ Fax: _____ Priority Service Code

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Please complete all registrant information.

- Add me to your mailing list
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Fee Per Delegate

Regular Rate: \$1,595 plus 5% GST for a total of \$1,674.75
Public Sector Rate: \$1,395 plus 5% GST for a total of \$1,464.75
Fees include attendance, program materials, continental breakfast, lunch, and break refreshments.
Please inquire about group discounts, financial assistance and CLE credits.

CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist Program and the NY CLE Board for transitional and non-transitional lawyers.

Payment Options

- Cheque enclosed (payable to York University – GST# R119306736)
- Bill my credit card: VISA Mastercard

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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 and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Dates & Times

January 22 - 23, 2009
Day One: 9:00 a.m. - 5:00 p.m.
Day Two: 9:00 a.m. - 4:00 p.m.
Please arrive at 8:30 a.m. on Day One for sign-in and material pick-up.
Dress is business casual.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Location

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

Why Osgoode Professional Development?

At *Osgoode Professional Development*, our mandate is to meet the needs of working lawyers, and other professionals who need legal information. If you need an update on recent developments, to learn or refresh skills, or are considering a graduate degree designed for working professionals, consider *Osgoode Professional Development's* rich and diverse programs.

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-  2. **ONLINE** at
www.osgoodepd.ca
-  3. **FAX** your registration to
416.597.9736
-  4. **CALL US** at 416.597.9725 or
1.888.923.3394