

Course Outline

COURSE: LAWS 4209 B

PREREQUISITES: Fourth Year Honours Standing

TERM: Fall/Winter 2007-08

CLASS: Day & Time: Tuesdays: 2:35 pm – 5:35 pm
Room: 208 CO (University Commons)

INSTRUCTOR: Sam Schwisberg

CONTACT: Office: C476 LA (Loeb Building)
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Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9, 2007 for December examinations and March 14, 2008 for April examinations. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

Course Description: A unique body of law has developed in respect of the sale of goods and services to governments around the world, including the Government of Canada. Governments are major purchasers of goods and services, and often use their enormous buying power to influence public policy and achieve social objectives. Government procurement contracts often include terms and conditions that require private businesses to implement socially desirable policies. For example, the Government of Canada requires many contractors to implement an employment equity program. Governments may also try to favor businesses located within their own borders.

Such practices, however, may be inconsistent with the objective of securing the best goods and services at the lowest possible cost. They also run counter to neo-classical and neo-liberal economic thought which posits that free markets and trade liberalization hold the key to global wealth maximization. Governments can also sometimes fail to draw a proper distinction between the promotion of socially desirable objectives and those that serve the narrower interests of the party in power.

Laws, both on an international and domestic level, strive to secure a proper balance among these competing objectives. However, one's sense of the "proper balance" may largely hinge on one's economic philosophy. Similarly, do international conventions covering government procurement, such as those that discourage bribery, corruption and nepotism, reflect universal values, or do they represent a form of cultural imperialism that promotes a Western viewpoint which values efficiency over social relationships?

A review of Canada's government procurement laws and processes, as well as the most relevant international conventions will be reviewed and analyzed in the context of these issues. A limited review

of US procurement laws relevant to Canadians will also be reviewed in this context. Lastly, laws attempting to deal with corruption both domestically and internationally will be reviewed.

Seminar format: The Lecturer will devote approximately the first hour of each seminar to an overview of the legal and policy issues arising out of the assigned reading materials. Thereafter, students will be invited to comment on and discuss the course material in greater depth or, commencing November 6th, present orally the essay they have completed for the course (see next paragraph).

Every student will have selected an essay topic on or before October 16 2007 and will complete it on or before November 6 2007. Commencing the seminar of November 6, eight to 9 students will either volunteer or be selected at random each week to each provide the remainder of the class with a 10 minute overview of the essay he or she has written. The essay presentation will provide the major component of the presentation/participation mark. **Only the most extraordinary circumstances will justify a deadline extension or excusal from presenting when randomly called to do so.** The remainder of the class will be expected to participate in discussion upon conclusion of the presentations. The Lecturer will facilitate discussion.

<u>Evaluation:</u> Essay	:	40%
Essay Presentation/Participation		10% (See Seminar Format above)
Final Examination:		50% (3 hours)

Required book: **Government Procurement**, Paul Emanuelli, (LexisNexis Canada, 1st edition, 2005))

Other readings will be assigned during the course of the year.

Objective: The student will gain a good understanding of the key legal, policy and political issues relevant to domestic and international government procurement.

ALL STUDENT WORK IS SUBJECT TO THE CONTRACTUAL PROVISIONS CONTAINED IN THE CARLETON UNIVERSITY UNDERGRADUATE CALENDAR (2007-2008) AND TO THIS COURSE OUTLINE

Seminars Topics

Sept 11	Introduction/theoretical context
Sept 18	WTO Government Procurement Agreement NAFTA chapter 10 Agreement on Internal Trade
Sept 25	A history of Canadian Government Procurement Controversy – From Sir John A.

MacDonald and the Pacific Railway Scandal to Jean Chrétien and the
Sponsorship
Scandal

- Oct 2 Review of the Gomery Report and Federal Accountability Act. Where are we today? Are today's laws enough? Review of the current government procurement process; safeguards and loopholes
- Oct 9 Applicable common law; standard Government of Canada contract clauses; policy objectives and legal terms and conditions
- Oct 16 How to contest a government procurement decision; role of the Canadian International Trade Tribunal and the courts, review of selected decisions
- Oct 23 Protectionism: Is it alive and well in government procurement? Examination of exceptions under the WTO GPA and NAFTA chapter 10 in both Canada and the USA. How can Canadians sell to the US government? Examination of US rules with extraterritorial application to Canadians (ITAR, dual citizens and human rights in Canada)
- Oct 30 National Security and Government Defense contracting; examination of US and Canadian cooperation on security issues through unique bilateral arrangements. Controlled goods; defense articles and top secret or classified information
- Nov 6 Selling to governments abroad – controlled goods, export permits, contract issues and legal concerns. The role of the Canadian Commercial Corporation and Export development Corporation; insurance and Letters of Credit
- Nov 13 Corruption in foreign government procurement; developments under international conventions; why the US **Foreign Corrupt Practices Act** is relevant to Canadian business; compliance issues under the Canadian **Corruption of Foreign Public Officials Act**;
- Nov 20 Selling to foreign governments through agents and distributors; the need for due diligence; fraud, conspiracy and money laundering traps; contract and other legal issues;
- Nov 27 Future directions in government procurement. Will Canada effectively enforce the CFPOA? Evolving domestic roles of the Auditor General and Ethics Commissioner