

## Course Outline

<b>COURSE:</b>	<b>LAWS 4209B – Topic in Business Law: – Government Procurement Law</b>
<b>PREREQUISITES:</b>	<b>Fourth-year Honours standing</b>
<b>TERM:</b>	<b>Winter 2009</b>
<b>CLASS:</b>	<b>Day &amp; Time: Wednesdays: 11:35 am – 2:25 pm</b> <b>Room: 280 UC (University Centre)</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Sam Schwisberg</b>
<b>CONTACT:</b>	<b>Office: Loeb C476 – Contract Instructors' Office</b> <b>Office Hrs: By Appointment</b> <b>Telephone: 613-841-0500</b> <b>Email: <a href="mailto:samthelawyer@yahoo.ca">samthelawyer@yahoo.ca</a> or <a href="mailto:schwisbergs@samuelschwisberg.com">schwisbergs@samuelschwisberg.com</a></b>

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"Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams." Also available at [http://www.carleton.ca/pmc/faculty/acom\\_statement.html](http://www.carleton.ca/pmc/faculty/acom_statement.html). For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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### **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 March 18th, present orally the essay they have completed for the course (see next paragraph).

Every student will have selected an essay topic on or before February 25 2009 and will complete it on or before March 18 2009. Commencing the seminar of March 18, 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.

**REQUIRED TEXT:**

Course pack **and** readings assigned during the course.

**SUPPLEMENTARY TEXTS:**

Government Procurement Paul Emanuelli, (LexisNexis Canada, 2nd edition, 2008)

Bidding and Tendering: What is the Law? Paul Sandori and William M. Pigott (Lexis Nexis Canada, 3rd edition, 2004)

**EVALUATION: (All components must be completed in order to get a passing grade)**

40% Essay  
10% Essay Presentation/Participation **(See Seminar Format above)**  
50% Final Examination: **(3 hours)**

**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 (2008-2009) AND TO THIS COURSE OUTLINE

**Seminars Topics**

JAN 7	Introduction/theoretical context
JAN 14	A history of Canadian Government Procurement Controversy – From Sir John A. MacDonald and the Pacific Railway Scandal to Jean Chrétien and the Sponsorship Scandal
JAN 21	Overview of Canadian law indirectly relevant to government procurement, 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
JAN 28	WTO Government Procurement Agreement NAFTA chapter 10 Agreement on Internal Trade

- FEB 4 Canadian compliance with treaty obligations; applicable common law; tendering and contracts; standard Government of Canada clauses; policy objectives and legal terms and conditions
- FEB 11 How to contest a government procurement decision; role of the Canadian International Trade Tribunal and the courts, review of selected decisions
- FEB 18 Winter Break
- FEB 25 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)
- MAR 4 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
- MAR 11 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
- MAR 18 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**;
- MAR 25 Selling to foreign governments through agents and distributors; the need for due diligence; fraud, conspiracy and money laundering traps; contract and other legal issues;
- APR 1 Future directions in government procurement. Will Canada effectively enforce the CFPOA? Evolving domestic roles of the Auditor General and Ethics Commissioner