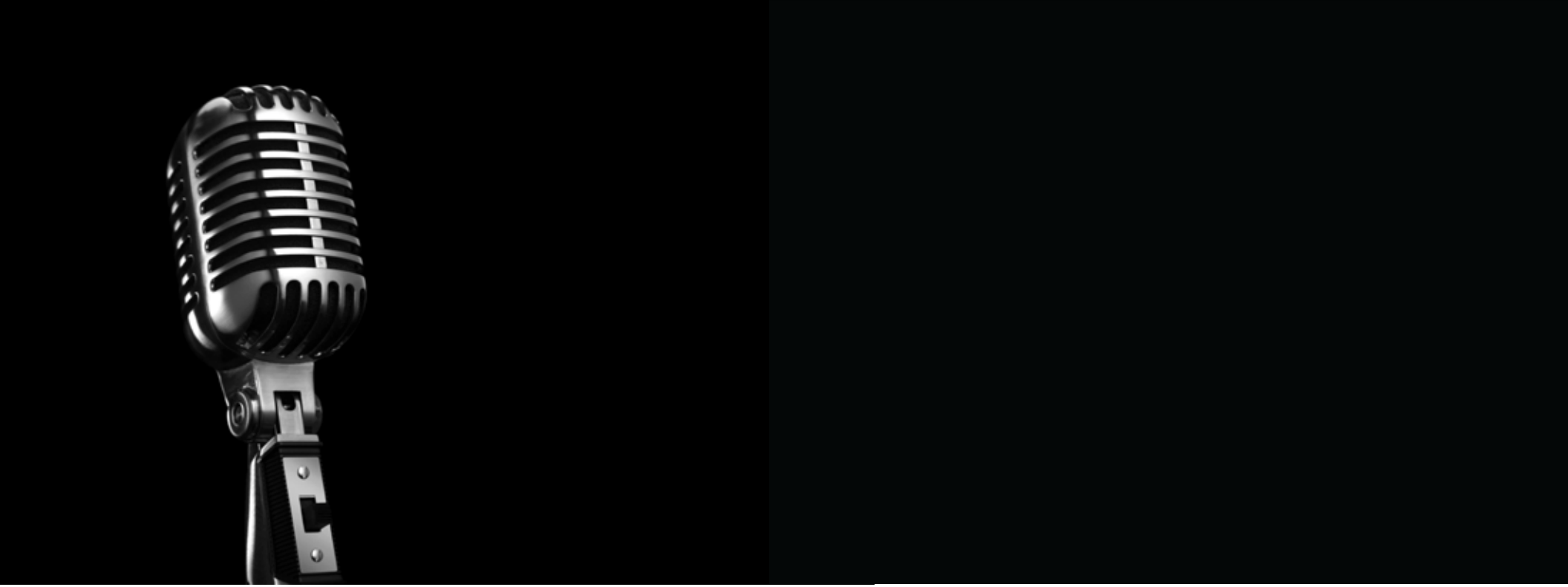
Canadian Law Certificate

2020 Training Catalogue

The Procurement Office

Procurement Advisory Office | Procurement Training Office



About the Instructor

Paul Emanuelli is the General Counsel and Managing Director of The Procurement Office. He was recognized by Who's Who Legal as one of the top ten public procurement lawyers in the world. His portfolio includes advising on strategic governance in public purchasing and on negotiating high-profile major procurement projects. Paul has an extensive track record of public speaking, publishing, and training. He is the author of *Government Procurement*, *The Laws of Precision Drafting*, *Accelerating the Tendering Cycle*, and *The Art of Tendering: A Global Due Diligence Guide*. Paul also publishes a weekly procurement newsletter and hosts a free monthly webinar series. Over the last 20 years, he has trained and presented to thousands of procurement professionals from hundreds of institutions across North America through The Procurement Office and in collaboration with leading industry organizations, including NIGP, SCMA, the University of the West Indies, and Osgoode Hall Law School.

The Public Interest

"It is a self-evident proposition that those responsible for spending vast amounts of public resources should have access to the necessary training to ensure value-for-money and the protection of the public interest."

Paul Emanuelli, *Government Procurement* (Lexis Nexis, 4th ed. 2017)

Overview

Featuring the most popular critical legal trends covered in the 4th edition of his standard-setting *Government Procurement* textbook, Paul Emanuelli's Canadian Law Certificate offers 16, 90-minute modules divided into four bundles that span the landscape of Canadian procurement law and practice. Each four-module bundle is the equivalent of a full day of training.

Our training content is available through self-directed learning on our new Procurement Office eLearning platform. This new platform allows individuals to select single modules to explore specific topics of interest and features interactive modules and quizzes, along with a deep library of reference materials. Individuals interested in earning full-day training certificates can select one of our existing four-module bundles or build their own custom full-day training program by selecting their own modules from our catalogues. Those one-day certificates will then count towards the completion of the full certification. Larger groups that are interested in certification should inquire about our eLearning group discounts and should also consider supplementing their eLearning experience with live training with Paul Emanuelli through his Live Online Learning Program and his in-house training.

Training Bundles

Practical Considerations

- ☐ CL101 - Accountability Controls in Canada
- ☐ CL102 - Conflict of Interest and Bid-Rigging
- ☐ CL103 - Institutional Governance and Project Governance
- ☐ CL104 - The Procurement Playbook

Treaty Compliance

- ☐ CL201 - Open Competition and Anti-Avoidance
- ☐ CL202 - Incumbent Advantage and Biased Specifications
- ☐ CL203 - Debriefing Duties and Confidentiality
- ☐ CL204 - Canada's Bid Dispute Regimes

Legal Foundations

- ☐ CL301 - Administrative Law and Judicial Review
- ☐ CL302 - Commercial Law and Contract A
- ☐ CL303 - Negotiating Beyond Contract A
- ☐ CL304 - Tort Law: Negligence in Tendering

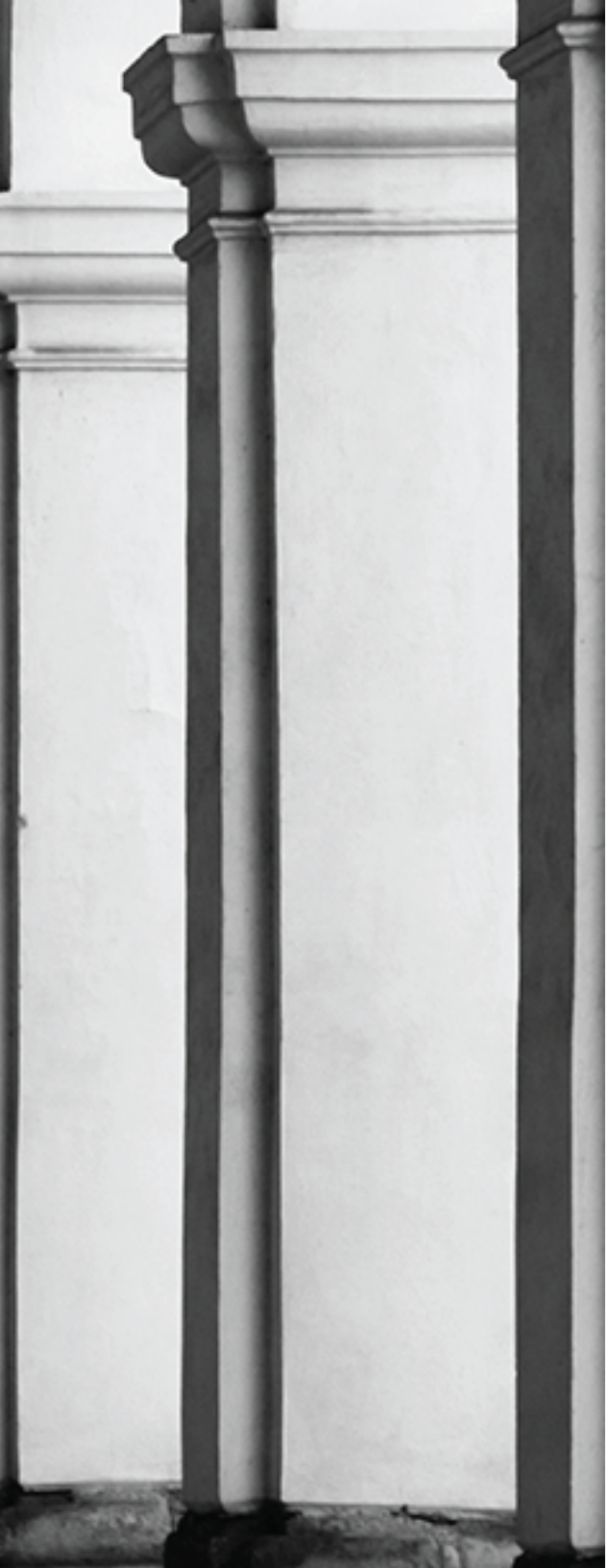
Fair Competition

- ☐ CL401 - Disclosing Evaluation Criteria
- ☐ CL402 - Tender Compliance I
- ☐ CL403 - Tender Compliance II
- ☐ CL404 - The Duty to Award

Practical Considerations

The Practical Considerations bundle focuses on the core due diligence measures required to achieve legal compliance at the institutional and project level.

CL101 - Accountability Controls in Canada
Highlighting a series of leading public audit and inquiry reports from across Canada, this module summarizes the transparency, open competition, and value-for-money standards that apply to public institutions in all stages of the public procurement process and provides practical compliance guidelines to help institutions prepare for their next audit review or bid protest challenge.



CL102 - Conflict of Interest and Bid-Rigging

Surveying leading case law, statutory and industry developments in the area of conflict of interest and bid-rigging, this module addresses the importance of: (i) avoiding conflict of interest, unfair advantage, and bias in the bidding process; and (ii) establishing the necessary institutional safeguards to protect against kickbacks, collusion, and price-fixing in public sector tendering.

CL103 - Institutional and Project Governance

Surveying the legal standards that apply to public institutions in the government procurement process, this module explains how organizations can build winning conditions to achieve compliance through the implementation of institutional policies and procedures, and how project teams can increase their success rates by defining project roles and responsibilities, creating clear project plans, and adopting advanced document drafting and bid evaluation procedures.

CL104 - The Procurement Playbook

Covering the main tendering formats used in competitive bidding across Canada, this module compares and contrasts the Request for Quotation, Invitation to Tender, RFP, and Negotiated RFP formats, while also explaining how and when to use Prequalification or Request for Information processes.

Treaty Compliance

The Treaty Compliance bundle covers the recent trade treaty developments flowing out of the new *Canadian Free Trade Agreement* and *Canada-Europe Comprehensive Economic and Trade Agreement*.

CL201 - Open Competition and Anti-Avoidance

Drawing on the core rules contained in the new trade treaties, this module covers: (i) open, fair, and transparent competition duties; (ii) contract value thresholds; (iii) tender call posting, disclosure, and amendment rules; (iv) tender evaluation, award, and debriefing duties; and (v) bidder prequalification and debarment protocols. This module also distills the main trade treaty anti-avoidance provisions and covers: (i) valuation and contract-splitting; (ii) local preference and Canadian content; (iii) prohibited practices, including biased specifications, unfair requirements, restrictive criteria, and conflict of interest; and (iv) standard exemptions, including confidentiality, security, and urgency.

CL202 - Incumbent Advantage and Biased Specifications
Covering the main unfair advantage pitfalls that impact the government tendering process, this module explains the case law rules surrounding incumbent advantage, transition costs, and biased specifications.

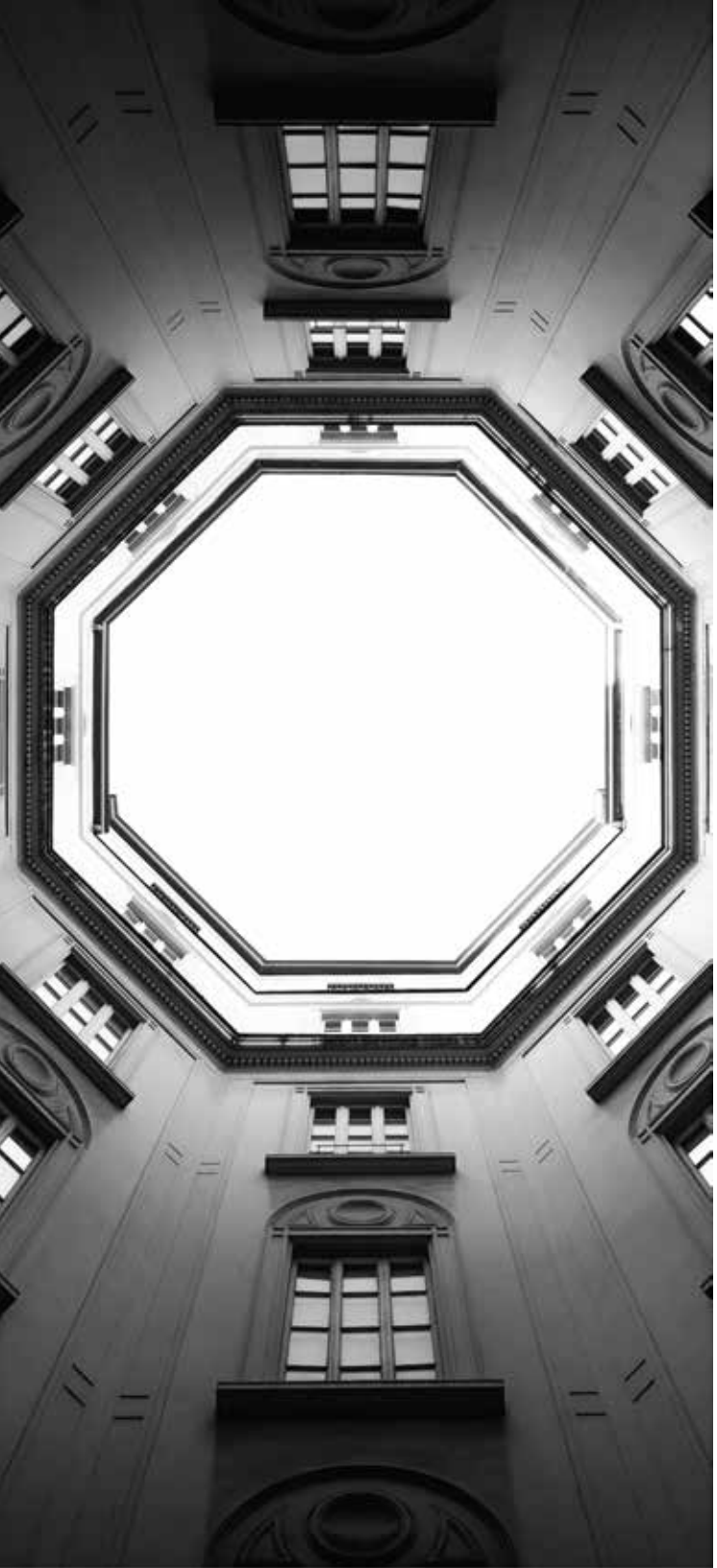
CL203 - Debriefing Duties and Confidentiality
With a specific focus on the newly expanded trade treaty debriefing duties, this module covers the duty to ensure transparency in the tendering process, while protecting confidential bidder information, and explains how public institutions will need to enhance their debriefing practices to comply with the new trade treaty rules.

CL204 - Canada's Bid Dispute Regimes
Detailing the formal bid dispute enforcement rules contained in the new trade treaties, this module covers the following topics: (i) the due process rules contained in the trade treaty enforcement regimes, including document disclosure discovery rules, the right to representation, and the requirement of live public hearings; (ii) the scope of the Canadian International Trade Tribunal's federal jurisdiction and the range of its treaty enforcement powers; and (iii) the evolving sub-federal treaty enforcement mechanisms that are exposing provincial and territorial public sector institutions at all levels to the increasing risk of bid protest challenges.

Legal Foundations

The Legal Foundations bundle covers the main administrative and commercial law duties and remedies that apply to the government procurement process in court-based tendering disputes.

CL301 - Administrative Law and Judicial Review
Covering the rise of judicial review, this module explains how administrative law fair process duties are applied to government procurement and surveys the range of potential judicial review remedies, including injunctions, re-evaluation rulings, and contract termination orders.



CL302 - Commercial Law and Contract A

Summarizing the Contract A tendering law analysis and remedies, this module provides an overview of: (i) the creation of Contract A and the duty of fairness; (ii) the key indicators of Contract A; and (iii) the Contract A remedies of bidder lost profits and forfeited bid security.

CL303 - Negotiating Beyond Contract A

Synthesizing the case law developments that have forged a clear path beyond the Contract A bidding process rules, this module focuses on the factors relied on by the courts to determine whether a tendering process is governed by Contract A rules or by more flexible traditional contract law principles.

CL304 - Tort Law: Negligence in Tendering

Highlighting the key factors that trigger project delays and extra cost claims, this module explains how the tort-based laws of negligent omission and misrepresentation apply to the bidding process and explains how these transparency duties create significant risks to purchasing institutions. It also explains how tort law informs subcontractor rights in the tendering cycle. This module also surveys the Supreme Court of Canada's governing analysis for the rules that govern negotiations under traditional contract law.

Fair Competition

The Fair Competition bundle focuses on the core due diligence duties that apply to project teams as they navigate the government tendering process.

CL401 - Disclosing Evaluation Criteria
Covering the key transparency duties that require public institutions to disclose their evaluation criteria and process rules, this module focuses on the importance of establishing and following clear and defensible evaluation and award procedures.

CL402 - Tender Compliance I

Summarizing the case law developments that govern the duty to reject non-compliant tenders, this module covers: (i) the leading precedents dealing with strict vs. substantial compliance; and (ii) the principles that inform formal, contractual, and procedural compliance.

CL403 - Tender Compliance II

Expanding on Tender Compliance I, this module summarizes the leading cases dealing with: (i) technical compliance; (ii) rectifications, clarifications, and bid repair; and (iii) enforcing compliance and the difference between tender compliance criteria and contract performance requirements.

CL404 - The Duty to Award

Surveying the leading cases dealing with the duty to award to the best bid, this module covers the recurring risk areas relating to: (i) reserved rights and privileges, low-bid bypass, and unfair process claims; and (ii) over-budget bids, cancellations, re-tendering, and bid-shopping claims.

Contact Us

Paul Emanuelli
Managing Director
416-700-8528
paul.emanuelli@procurementoffice.com

Lisa Kuechler
Training Manager
416-700-8536
lisa.kuechler@procurementoffice.com

The Procurement Office

Procurement Advisory Office | Procurement Training Office