

# Public-private partnerships: re-conceptualizing the ‘public interest’

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**Heather Whiteside<sup>1</sup>**

## Abstract

Public-private partnerships (P3s) have been present in jurisdictions across Canada since the 1990s but it is only within the past decade (or less) that systematic attempts have been made on the part of government to protect the public interest when developing P3s. This raises three interrelated questions: how is the ‘public interest’ now conceptualized, what types of protections are being offered, and what have been the implications of these reforms? In addressing these issues, this paper argues that the P3 phenomenon relies on a fundamental reorientation and marketization of the public interest. Key components of this process include the methods now used to make infrastructure planning decisions (including how value for money is assessed and risk is gauged) and the empowering of new public sector agencies geared strictly toward privatization. Attempts to protect the public interest are therefore more attuned to facilitating P3s and streamlining privatization processes than they are to improving social outcomes, broadly conceived.

Public-private partnerships (P3s)<sup>2</sup> have been present in jurisdictions across Canada since the 1990s but it is only within the past decade (or less) that systematic attempts have been made on the part of government to protect the public interest when developing P3s. Protections are sorely needed given the poor track record of P3s in Canada: these projects are frequently unable to meet the promises made by proponents and carry several other negative social consequences (Whiteside 2011; 2013a; 2013b). Examples include poor or illusory value for money, delays and cost overruns, inadequate risk transfer to the private partner, and more precarious working conditions for privatized staff. The creation of specialized government agencies (P3 units) designed to support P3 development and capital planning frameworks containing best-practice principles are leading examples of relatively recent policy innovations which purportedly ensure that P3s serve the public interest. Yet these developments raise their own set of questions, namely how the ‘public interest’ is now conceptualized and what implications these new initiatives themselves hold.

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<sup>1</sup> Heather Whiteside is a doctoral candidate in Political Science at Simon Fraser University.

<sup>2</sup> P3s can be defined as “instruments for meeting the obligations of the state that are transformed so as to involve private property ownership as a key element in the operation of that instrument” (Cohn 2004, 2). Here the focus is on infrastructure P3s where the private for-profit partner designs, builds, finances, and operates public infrastructure and services.

This paper argues that the P3 phenomenon – P3 projects and policies – relies on the marketization of public sector decision-making. Key to this process are the methods now used to make public infrastructure planning decisions such as how value for money is assessed and risk is gauged. Risk is narrowly equated with commercially-bearable (and profitable) project risks; value for money assessments embed the presumption, without empirical substantiation, that public procurement does not or cannot optimally manage risk, and they ignore risks and uncertainties created by privatization. P3 evaluation procedures are not only tilted in their favour, they assume that the interests of the public and purpose of public services can be harmonized with the interests and purpose of capital. Attempts to protect the public at large are thus more attuned to facilitating P3s and streamlining privatization processes than they are to improving social outcomes, broadly conceived.

The ‘public interest’ will appear in scare quotes in what follows given that there can be no single or indivisible interest identified in Canadian society. Pal and Maxwell (2004) identify no fewer than five distinct philosophical approaches to understanding that concept and at least as many modes of regulatory practice. Space constraints prohibit this paper from being concerned with such debates. Instead it investigates the particular variant of the ‘public interest’ that P3 policy favours: one where the participation of for-profit actors and use of market-based evaluation metrics are prioritized at the expense of rival interpretations which would instead focus on collectively-oriented outcomes. Wider social goals such as those connected to democratic control, transparency, accountability, service quality, and equity are often compromised along the way.

Two sections form the paper: the first which summarizes the P3 phenomenon in Canada and the second which examines how P3 policy reorients the ‘public interest’. There are two relevant subsections to the latter: how the ‘public interest’ is conceptualized through value for money and risk transfer assessments, and the poverty of current protections offered for the public in the form of P3 units and provincial capital planning frameworks. Examples are drawn from the public health care sector in BC and Ontario throughout as a way of providing greater context and given that hospital projects in these provinces are the leading avenue of Canadian P3 proliferation today.

## **The P3 phenomenon**

P3s are used in many sectors across Canada, ranging from highways to water treatment facilities. However by late 2011 P3 hospitals accounted for roughly half to three quarters of all such projects in Ontario and BC respectively, the two provinces most enthusiastic for P3s.<sup>3</sup> P3 hospitals relative to traditional hospitals are also becoming increasingly common in these particular jurisdictions. Since the early 2000s *all* new large hospital projects (those costing in excess of \$50 million) have been developed using the P3 model in these provinces.<sup>4</sup> The contract bundling feature and length of these partnerships set them apart from more limited forms of contracting-out as most elements of a project become monopolized by a single for-profit provider (usually a consortium) for several decades. As a result, private partners now

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<sup>3</sup> For up-to-date figures see Infrastructure Ontario n.d; Partnerships BC n.d.

<sup>4</sup> With the exception of the Peterborough Regional Health Centre in Ontario (PRHC) which was announced by the Ministry of Health and Long Term Care in 2000 and fully operational in 2008. PRHC was the last large (\$197 million) traditional hospital approved in that province prior to the wave of P3 projects first launched in the early 2000s.

design, build, finance, and operate/maintain most new hospital projects' physical infrastructure and support services in BC and Ontario.

The proliferation of P3 projects raises several concerns. The dispossession of public sector employee rights and democratic control are key issues, and so too is the marketization that occurs when for-profit actors and market-based reasoning come to deeply influence public policy making. A P3-oriented public sector is induced through, and represented by, changes in health sector policy practice and discourse, occurring most prominently through the invention of P3 enabling fields (discussed in greater detail in Whiteside 2013a). 'Enabling fields' is used here to refer to the constellation of new arrangements that now serves to increasingly normalize P3 use, most notably new capital planning frameworks and greater institutional support for privatization. Together these elements help shift the bias away from traditional public procurement and toward P3s. Developments such as these remain underpinned by ideological preference for privatization but policy reform helps to transcend this normative basis by cementing P3s as the 'new traditional' in the health sector. In other words, P3 proliferation relies upon both normative and normalized neoliberal policy, promoting and favouring marketization.

There are two ways to apply the term 'marketization' to the use of P3s: the expansion of market rule that flows from private partner decision- and profit-making and the adoption of market-like rules by the public sector as a way of enabling P3 use.

Market rule and privatization affect P3 hospitals in a range of ways. The most obvious and immediate transformation is the decades-long privatization of work historically conducted by public employees (e.g., hospital cleaning, food services, laundry, maintenance, and physical plant upkeep) which can lead to more precarious employment. Given that between 70 and 90 percent of total health care costs, depending on the service, are derived through labour costs (Armstrong and Armstrong 2008, 125), profit for private employers is earned mainly through reductions in wages and benefits, and changes in working conditions. Not only does this negatively affect staff but reduced labour costs can also mean cut corners, with clear implications for health services and patients. For instance, when staff are provided with less training it can lead to lower quality or less rigorous cleaning, in turn affecting infection control and hygiene.

Hospitals account for the largest share of total health care spending in Canada (roughly one third) (CIHI 2012) and therefore governments may be tempted to introduce privatization as a way of reducing public expenditures. Yet greater profit making for private partners and contractors does not necessarily translate into lower costs for taxpayers, especially when hospital infrastructure is privately financed. P3s are often used by government to avoid upfront capital expenses and as a way of shifting costs and risks away from the public sector – however higher interest rates, hidden fees, inadequate or misleading risk transfer, and higher private partner overhead costs all add up, producing more expensive infrastructure and services over the long run (Whiteside 2013b).

Finally, the dispossession of rights and customs surrounding public sector decision-making (including democratic transparency and oversight) also occurs when P3 private providers come to manage, organize, and control some degree of future planning with respect to hospital services and infrastructure. Greater market rule presents a number of contradictions for the current and future management of public hospitals such as reduced capacity for future innovation (e.g., the application of new technology and spatial design techniques) and disintegrated hospital service organization and planning (Barlow and Koberle-Gaiser 2008). P3s create an internal bifurcation of authority when private partners manage support services and public partners manage clinical services (Shrybman 2007).

Market-like rules, the other major component of marketization with P3s, reorient public sector decision-making by adopting the logic and reasoning of capital. Market-based conceptions of risk and value for money, discussed in the section that follows, re-conceptualize the ‘public interest’ and become the basis upon which P3 proliferation is encouraged.

Contradictions and problems produced by dispossession leave the P3 model vulnerable to crises of faith on the part of policy makers (particularly in light of longstanding public opposition to privatization in sensitive areas like health care) and to crises induced by greater market dependence (e.g., financial market volatility). The adoption of market-like rules through P3 enabling fields cannot ultimately eliminate the pitfalls associated with P3 projects, but it does stabilize the model in tough times, makes P3 projects easier to implement, smoothes and regularizes the process, and creates a bias toward privatization – hence they ‘enable’ privatization by stealth. These initiatives furthermore constitute a ‘field’ given that they now inform decision-making across the public sector.

The establishment of P3 enabling fields, especially P3 units and capital planning frameworks, recalls Mahon’s (1977) description of a bureaucracy’s ‘unequal structure of representation’. Not only do enabling fields privilege policies developed by Ministries of Finance and Infrastructure, but they force other social concerns (e.g., health and health care) to be addressed through the prism of a P3 screen – P3s must now be first considered for all large capital projects.

These developments hold several important implications for the public sector. Enabling fields create a new ‘common sense’ that alters public sector decision-making and procurement processes leading to covert yet enduring support for privatization. In other words, P3 enabling fields are highly transformative, not merely substitutes for older protocols or ways to fill in gaps that previously existed with earlier modes of P3 development. This helps to ensure that any changes made to P3 programs affect *how* P3s proceed, not *whether* they proceed. Ultimately, through the proliferation of P3 projects and policies, P3s are becoming the ‘new traditional’ way in which public infrastructure is designed, built, financed, and operated in several Canadian jurisdictions.

## **P3s and the ‘public interest’**

### ***Re-conceptualizing the ‘public interest’: value for money and risk transfer***

The major justification offered for P3s today is based on the notion of achieving value for money (VfM) by transferring project risks from the public to the private partner.<sup>5</sup> In order to ascertain whether a P3 is likely to be of better value than a traditional project, best practice dictates that a public sector comparator (PSC) be generated. The PSC provides the mechanism through which a P3 can be compared to a traditional form of project delivery (e.g., in house planning and design, public financing, limited contracting-out). Financial and quantifiable non-financial benefits are compared in both cases and the option with the lowest net present cost is typically chosen. There are, however, many controversial aspects to the VfM process and with risk transfer itself.

First, an amount (known as a ‘risk adjustment’) is added to the PSC to cover risks like construction overruns and operational difficulties, under the presumption that with a P3 the private partner will be contractually obligated to cover these risks. Broadbent et al. (2003, 427)

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<sup>5</sup> Cost savings arguments were far more popular in the early days of P3s in Canada (see Loxley 2010).

report that for P3s in the UK, nearly 50 percent of the total risk adjustment (the amount added to the PSC) is related to design and construction risk valuation. However, the Auditors General of Ontario (2008) and Quebec (2009) argue that there is no reason to assume that risks relating to construction and design cannot be adequately managed through a traditional design-build contract. Incorporating the assumption that a PSC would not be able to transfer this risk into VfM methodology is therefore a highly normative practice.

Second, on top of the amount added to the PSC to cover risk, a discount rate is applied which can significantly impact VfM calculations. Discounting is used to compare the two forms of cash – money spent today versus payments which are spread over many decades – based on the private sector principle that money spent today costs more since it had the potential to earn interest if spent gradually (Gaffney et al. 1999). Discounting is felt to be necessary for VfM determinations since the cost of conventional projects are typically born upfront, during the initial stages (design and construction phases) whereas a P3 spreads costs over the entire project (Broadbent et al. 2003, 428). Through the application of a discount rate, net present costs can be calculated for both the P3 and PSC and the lowest cost is taken to represent best VfM.

Aside from the fact that private sector techniques used to maximize shareholder value is a questionable way of determining public policy, the most controversial aspect of this practice is the discount rate chosen. The rate is so sensitive that it can easily skew the VfM calculation in favour of the P3 (Shaffer 2006; Gaffney et al 1999; Parks and Terhart 2009). The higher the discount rate applied, the more attractive the P3 will appear since money spent today becomes more costly. A few examples from BC make this clear.

When calculating VfM for the Diamond Centre hospital P3 in Vancouver, Partnerships BC used a discount rate of 7.12 percent. To illustrate its sensitivity, Parks and Terhart (2009, 9) calculate that if a 4.12 percent discount rate had been applied, the P3 would have represented a net present value cost of \$15.2 million over and above that of the PSC. However, if a 9.12 percent discount rate had been applied, the P3 would appear to produce a net present value savings of \$29.6 million. With no discounting applied to the VfM assessment, the difference in nominal dollars is \$114 million in favour of the PSC (ibid, 10). Similarly, with the Sea-to-Sky highway P3, Partnerships BC applied a discount rate of 7.5 percent; however at 5 percent (the government's borrowing rate at the time) the P3 costs almost \$220 million more than the PSC (Shaffer 2006, 6). While there is no globally agreed upon discount rate, rates used to calculate VfM in Ontario and BC are well above the UK's best practice rate of 3.5 percent, often by 1-3 percent respectively (Loxley 2012; 2010). This practice makes it appear as though a P3 offers better value even in cases where cost savings fail to materialize. International evidence produces similar results (e.g., Hodge and Duffield 2010).

VfM calculations do not represent actual dollars saved but rather are ex ante estimates of the likely difference in net present value between a hypothetical P3 and PSC. Better VfM is therefore not necessarily synonymous with lower project costs. For example, Ontario's Value for Money methodology manual (Infrastructure Ontario 2007a) indicates that base project costs, financing costs and ancillary costs (legal and other transactions costs) are all lower for traditional procurement and thus P3 VfM superiority is derived exclusively through risk transfer.

VfM reports produced for recently operational P3 hospitals in Ontario indicate just how significant risk transfer is for this type of assessment. With the Centre for Addiction and Mental Health P3, P3 base project costs are valued at \$354.8 million compared to only \$235.1 million for the traditional procurement model; risk transfer makes up the entire 'savings' that is achieved with a P3 (Infrastructure Ontario 2010, 6). With the Sunnybrook Health Science Centre P3, base

costs are estimated at \$142 million (P3) vs. \$129 million (traditional); when the value of risk transfer is estimated the P3 comes in at \$14.1 million under the traditional option (Infrastructure Ontario 2007b, 14). And with the North Bay Regional Health Centre P3 base costs are estimated at \$551.7 million as opposed to \$404.6 million (traditional); factoring in risk transfer produces a VfM superiority of \$56.7 million in favour of the P3 (Infrastructure Ontario 2007c, 11). Shifting P3 evaluation from absolute cost to VfM via risk transfer offers a more opaque and technocratic justification for privatization, masking an inherently controversial methodology.

Risk, in the context of a capital project, is held to be a situation of potential loss of investment resulting from operating in an uncertain business environment (Grimsey and Lewis 2004, 148-52). The most common risks attributed to P3 projects include: site (tenure, access, suitability), design and construction (delays, weather, cost overruns), operation and maintenance (cost overruns), and financial risks (interest rates, inflation). What the P3 model attempts to do, from a public policy perspective, is transfer to the private partner as many of these risks as would be feasible, minimizing the exposure of the public partner and creating a built-in incentive for the private partner to generate project efficiencies and lower overall costs.<sup>6</sup> For instance, it is common for P3 contracts to stipulate that payments to the private partner will only begin once the project is operational, and continued payment is based on meeting performance criteria (Hodge and Greve 2005, 52). Thus P3 policy rests on the normative claim that optimal risk transfer will produce the best VfM, and that the P3 model is uniquely able to achieve this.

Freedland (1998, 307) argues that at heart risk transfer arguments contain the inherent assumption that “a commercial bearing or insurance of public burdens is a beneficial thing in and of itself.” The reasoning here is highly circular: P3 projects are justified (rhetorically and mathematically) exclusively through the normative logic of the P3 model itself, ignoring the option of transferring risk through traditional contracts (Ontario Auditor General 2008; Quebec Auditor General 2009).

An emphasis on risk transfer also relies upon the belief that failure, mis-estimation and suboptimal performance are commonplace occurrences with public infrastructure and service provision even when these beliefs may be completely unsubstantiated. For example, P3s are now used for most large public infrastructure projects in Ontario but, as confirmed by the former President and CEO of Infrastructure Ontario, there has yet to be any systematic analysis of the track record of risk and performance associated with traditional public procurement in that province (Ontario Standing Committee on Government Agencies 2008, 1130).<sup>7</sup> Left unchecked, the underlying normative assumption that public procurement is inherently riskier incentivizes P3 use as a way of protecting against purportedly common risks – despite it being far from certain which (if any) particular risks bedevil public infrastructure projects. Assuming that public management is less efficient and effective also provides the rationale needed to blame the public sector should P3s perform worse than expected, justifying the appropriation of project development techniques from the private sector and increasing public sector dependence upon market actors for their P3 knowledge and expertise.

Stripped of all rhetoric and self-promoting jargon, risk transfer through a P3 amounts to three things: privileging certain risks, ignoring others, and creating new risks along the way. The risks controlled (transferred) through a P3 are those that private partners can profit from or,

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<sup>6</sup> Optimal risk transfer with P3s occurs not when all risks are transferred to the private partner but when taken up by “whoever is best able to manage it,” and in so doing VfM is achieved (Freedland 1998, 306). Offloading all risks to the private partner is thus neither desirable nor an appropriate justification for using a P3.

<sup>7</sup> Similarly, early P3 performance was also not evaluated by policy makers prior to the proliferation of P3s in BC.

in other words, those that the state can marketize and monetize by turning public goods and services into exchangeable commodities through competitive bidding and for-profit delivery. At the same time, risk assignment is based on the probability of particular outcomes and ignores future possibilities that cannot be stated statistically (Froud 2003, 570). Uncertain costs (unknown or unacknowledged risks) are not transferred and always remain with the state (ibid, 581). The rigidity of the P3 contract precludes any subsequent transfer of uncompensated risks onto the shoulders of the private partner once the project agreement is signed.

It follows, therefore, that the risks (and uncertainties) that are not incorporated into VfM assessments are those that would discourage the use of P3s. Project risks are narrowly equated with market-derived conceptions of the public interest which do not take into consideration concerns such as the contradiction that exists between profit-making and commercial confidentiality on the one hand, and democratic oversight and local control on the other. Collective risks associated with service quality deterioration or more precarious working conditions are similarly excluded.

Along with the simultaneous privileging and suppression of particular risks is the creation of risk and uncertainty through P3 use. Multi-decade contracts in the health sector, for example, lock public service decision making into “a particular pattern of service provision whereby changes must be negotiated with the provider and paid for” (Froud 2003, 580). This lock-in may stifle innovation and flexibility since the health sector requires that infrastructure be able to meet and adapt to future service needs and changes in policy and technology. The internal bifurcation of authority within P3 hospitals that results from private partners managing some services and public partners managing others also creates problems for the organization of staff and integration of decision-making – both of which are important for effective and efficient service provision in hospital.

Even considered on its own terms, using a P3 to mitigate risk is misleading given that P3s do not actually reduce project risks, they merely reassign it. In their study of P3s from the UK, Ireland, the Netherlands, Australia, and Denmark, Vining and Boardman (2008) find that since governments can spread risks over a larger number of projects, it does not always follow that simply transferring all risks to the private partner leads to enhanced VfM (ibid).

Finally, and perhaps the most damning for the risk transfer argument, is that in order for the public partner to offload some or all of the relevant project risks, compensation for the acceptance of risk must be offered. This compensation translates into the anticipated profit margin of the private partner. Unless the private partner is inexperienced with P3s, risk will be reflected in the price of the bids submitted to a request for proposals. Taking responsibility for project risks can be a very lucrative arrangement, and shareholders involved with privately financed P3s tend to expect real rates of return on investment of at least 15-25 percent per year (Gaffney et al. 1999, 116; Hodge 2004, 162). Justifying the use of a P3 on the basis of risk transfer is therefore untenable since qualified private partners will either avoid bidding on contracts that offload too much risk, or this risk will be monetized in the form of higher-cost bids in line with the anticipated profit margin sought by investors (Cohn 2004, 8). The monetization of risk through the bidding process cancels out risk transfer as “risk becomes just one component of the project’s cost structure and is therefore passed completely onto the state in the consortium’s bid” (Rouillard 2006, 5).

In summary, inherent to the entrenchment of P3s within the public health care system has been a re-conceptualization of the ‘public interest’. Given that society is class divided, its interests are too; and thus it is no surprise that public policy will be as well (Mahon 1977, 170).

Health- and health care-related concerns remain the key factor in hospital infrastructure design and development, for instance through a focus on infection control and ensuring reasonable access to health services. Yet these concerns are now subsumed within the matrix of market-based logic and market-like calculus: hospitals only leave the proposal stage when they deliver value for money through the transfer of commercially-bearable risk. Transferring some risk can potentially benefit the public by helping to keep costs down, thereby improving the long run sustainability of public health care given that hospitals are a leading cost pressure within the system. However the myopic focus on certain risks – risks that can generate profit for private partners – ignores other aspects such as long run uncertainties, policy inflexibility, internally-bifurcated hospital decision-making, working conditions for staff, service quality and access, and democratic control, accountability, and transparency. The ‘public interest’ is therefore reoriented to serve privatization-enabling efforts, and all other interests are made to fit within that prism. Tradeoffs are made, most often to the detriment of broader social concerns.

### *Protecting the ‘public interest’?*

An important part of P3 policy development has been the creation of a new layer of unequal representation (Mahon 1977): the P3 unit that now makes decisions for all Ministries on the basis of P3-biased value for money methodology. This new form of institutional support for P3s is purported to ensure that these projects save taxpayer dollars and deliver value for money (Iacobacci 2010). P3 units promote and evaluate these projects and act as repositories of knowledge which facilitates policy learning by building government expertise surrounding the complex bidding, negotiation, and operational phase of P3 projects (Rachwalski and Ross 2010). While the benefits for the public and value for money remain dubious, the presence of these P3 units has been essential to the normalization of privatization within the public sector.

Without the institutional support that P3 units provide, problems experienced with individual projects would not readily transform into a sophistication of the local P3 model but instead could easily lead to its abandonment. P3s are relatively unique from other types of privatization given that individual projects are locked in through multi-decade contracts but since the model itself must constantly be renewed through new projects the policy must also be future-oriented. Committed policy makers must therefore take into consideration the long run implications of decisions made today. P3 units are currently the central way to ensure that this happens. As Jooste and Scott (2012, 150) put it: “The move toward private participation in infrastructure does not simply substitute private sector capacity for public sector capacity, it requires new forms of public sector capacity to be developed to overcome [P3] challenges”.

In Ontario support for P3 development is provided by Infrastructure Ontario, in BC by Partnerships BC. It should be noted, however, that these P3 units have been institutionalized in unique ways. Whereas Infrastructure Ontario is largely a creature of the Ministry of Infrastructure and is assigned work by Ministries seeking to build capital projects; Partnerships BC is more independent from government, though it ultimately reports to the Ministry of Finance, and it charges work fees to its public sector clients. In both provinces, capital planning frameworks dictate that P3s must be considered for all large capital projects and thus the inclusion of P3 unit decision-making in other Ministries’ processes is mandatory in each jurisdiction. For its part, the federal government created P3 Canada in 2007 as a way of supporting Canadian jurisdictions that do not have a provincial P3 unit.



As mentioned, Partnerships BC must generate its own business and touts its operations as being ‘self-sustaining’ since it acts almost entirely independent of government funding by charging ‘work fees’ in exchange for its services (Partnerships BC 2011). However, the claim that it is ‘self-sustaining’ ignores the fact that all infrastructure projects with an estimated provincial contribution in excess of \$50 million must be first contemplated as a P3, and therefore all such proposals must be sent to Partnerships BC for evaluation (Whiteside 2013a). Furthermore, ‘work fees’ are better thought of as a hidden drain on the budgets of other Ministries and this acts as a way of funneling money into Partnerships BC coffers. The fees it receives are substantial, as the table below indicates. Note that the Ministry of Health and regional health authorities are the single largest contributor, owing to the many hospital and health care-related P3s initiated since 2002.

#### Partnerships BC Work Fees

	\$			% of PBC revenues		
	2011	2010	2009	2011	2010	2009
<b>Ministry of Health Services and provincial health authorities</b>	\$1,908,576	\$2,205,279	\$2,948,454	22.7%	33.2%	42.4%
<b>Ministry of Transportation and Infrastructure</b>	1,919,946	1,475,085	1,196,532	22.8	22.2	17.2
<b>Ministry of Labour and Citizens’ Services</b>	665,465	472,888	426,005	7.9	7.1	6.1
<b>Ministry of Education</b>	520,763	314,745	176,815	6.2	4.7	2.5
<b>BC Crown corporations</b>	1,731,669	462,895	177,980	20.6	7.0	2.6
<b>BC vocational institutes</b>	98,741	301,180	741,944	1.2	4.5	10.7
<b>Other provincial governments</b>	36,876	215,305	220,395	0.5	3.2	3.2
<b>Government of Canada</b>	657,037	706,284	614,976	7.8	10.6	8.8
<b>Others</b>	865,698	498,302	453,711	10.3	7.5	6.5
<b>Total</b>	8,404,771	6,651,963	6,956,812	100	100	100

Source: Partnerships BC 2011, 20; Partnerships BC 2010; 22.

Not only does this represent a transfer of funds from in-house Ministry project development to Partnerships BC project development, charging work fees creates a conflict of interest given that this P3 unit both evaluates and promotes P3s. Colverson (2012, 14) warns that

“if a dedicated unit is not wholly funded by the government and derives part of its income through user fees it charges there is a risk that P3s can be pushed into inappropriate situations because the unit will have a vested interest in producing business.”

P3 units help root market rules and norms within the public sector and this role appears to be expanding as their purview grows. With Partnerships BC this expansion is both internal and external to the province. Within the province, greater use of P3s means that Partnerships BC has been gradually taking over the roles previously played by the BC Building Corporation (BCBC) (McKellar, 2006). Created in 1977 to manage public sector real estate, land, and infrastructure, BCBC is thus being increasingly replaced with a commercialized Crown corporation oriented toward privatization. Further, as indicated in its 2011 annual report, Partnerships BC’s future strategy includes diversifying its client base (Partnerships BC 2011). This involves selling its expertise to other jurisdictions without P3 units and pushing the P3 model into new sectors within the province.

The roles assigned to Infrastructure Ontario have also been greatly expanded over the years and it is now responsible for many different aspects of infrastructure and land development in the province: from large P3 infrastructure development and operation in 2005 to small infrastructure loans (offered to municipal borrowers only) in 2006 when it absorbed the Ontario Strategic Infrastructure Financing Authority (OSIFA), and more recently in 2011 it took on the responsibilities of the Ontario Realty Corporation (ORC) (the manager of government owned and occupied land and buildings) (see Infrastructure Ontario 2011). This has not only given Infrastructure Ontario a greater degree of permanence within the province but it also means that its P3-specific tasks are increasingly normalized within the day-to-day operations of government.

In addition to the presence of P3 units, provincial capital planning frameworks contain principles that are presented as protections for the ‘public interest’. BC’s Capital Asset Management Framework (CAMF) and Ontario’s Infrastructure Planning, Financing, and Procurement Framework (IPFP) are touted as both improvements made to the way P3s used to be developed and as innovations that proactively address public concern. Yet CAMF and IPFP best-practice principles not only offer misleading protections (in fact P3s violate nearly every principle), they are also toothless – mechanisms have yet to be put in place which would actually guarantee that their principles are upheld.

In May 2002, the CAMF was introduced in BC to serve as new “rules of the road” for public infrastructure development, governed by five best-practice principles: sound fiscal management, strong accountability, value for money, protecting the public interest, and competition and transparency (BC Ministry of Finance 2002, 1-2). The CAMF applies province-wide and all ministries, public sector agencies, and public organizations must now comply with these rules when seeking approval and funding for infrastructure projects.

When it was first introduced, the Ministry of Finance made an effort to present the CAMF as being pragmatic, claiming that it “does not predetermine that every project will be a public-private partnership” (ibid, 1). The Value for Money CAMF document furthermore states that: “the framework does not assume that any one sector [public or private] is inherently more efficient in building and operating public assets. Instead, it emphasizes that capital decisions will be based on a practical, project-specific assessment of a full range of options” (BC Ministry of Finance n.d., 5). Yet pragmatism is more rhetorical than real since the CAMF also dictates that

all capital project proposals in excess of \$50 million must *first* be considered as P3s.<sup>8</sup> Cohn (2008, 89) suggests that the CAMF shifts the bias away from traditional public procurement by “chang[ing] the terms of debate regarding P3s. Instead of explaining why a P3 was justified, it [is now] necessary to explain why a P3 (or some other form of alternative service delivery) [is] *not* being employed”.

Less obvious but equally important are the implications of its focus on market-oriented notions of risk and the heavy emphasis placed on identifying and valuating risk throughout the CAMF procedures. Before a project can move beyond the initial proposal stage it is subjected to a risk-based assessment which assumes that additional responsibilities bring greater risks, and that risk can be mitigated and minimized through partnership agreements. This creates an innate bias against public financing and ownership given that *any* new infrastructure project taken on by a public sector agency is assumed to generate risk. Risks are then monetized and added onto publicly delivered projects, penalizing public procurement even though these risks may be entirely hypothetical. Reliance upon the private sector to reduce risk also ignores the potential for cost savings that can be achieved through risk pooling (i.e., publicly financing a large number of projects), which can amount to a huge loss for the citizen and taxpayer. Mackenzie’s (2007, iv) study of Alberta P3 schools found that “for every two schools financed using the P3 model, an additional school could be built if they were all financed using conventional public sector financing.”

The CAMF also enshrines a market-based notion of what defines the ‘public interest’. Under the CAMF this feature of policy making is to be determined through criteria such as assessing service outcomes (mediated by monetary relations) and monitoring the performance of service providers (using market-based contracts). This is an extremely narrow conception of the public interest and does not take into consideration other concerns such as the contradiction that exists between profit-making and commercial confidentiality on the one hand, and democratic oversight and local control on the other (see Wood 1995 for more on this tension).

Initiated in July 2004, Ontario’s IPFP is similar to BC’s CAMF given that it outlines the strategies that will be used when developing (planning, building, financing and managing) new public infrastructure projects across the province. Like the CAMF, the IPFP framework contains five key principles in the planning, financing, and approval of project proposals submitted by Ministries, municipalities, and other public sector entities: the public interest is paramount, value for money must be demonstrated, appropriate public ownership/control must be preserved, accountability must be maintained, all processes must be fair, transparent, and efficient (Ontario Ministry of Public Infrastructure Renewal [MPIR] 2004, 9). These too are presented as a pragmatic, technocratic approach to infrastructure investment but there is an explicit emphasis on “innovative engagement of the private sector to leverage expertise and capital” (MPIR 2004, 17); and P3s must be considered for all projects over \$20 million. Of the nine infrastructure and procurement models discussed in the IPFP, eight are P3s (MPIR, 2004, p.21-22), and the public procurement option is only recommended for very minor investments (MPIR 2004, 24). A risk-focus is present here too, as is an emphasis on value for money which incentivizes private financing and procurement.

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<sup>8</sup> From 2002-2008 this stipulation applied to all proposals above an even lower threshold of \$20 million (since 2008 those in the \$20-\$50 million range are subject to a P3 screen which is used to determine whether a more comprehensive P3 evaluation should proceed) (BC Ministry of Finance 2008).

## Concluding remarks

Public sector unions and public service advocacy organizations are the leading source of resistance to P3s in Canada, implicitly or explicitly challenging the market-oriented view of the ‘public interest’ inherent to privatization initiatives. While some efforts have been successful, ultimately P3s are proliferating now more than ever. Resistance has produced several important changes in health sector P3 programs over the past five years. One of the most noteworthy changes is the 2006 exemption of soft support services (e.g., housekeeping, food, patient portering) from Ontario’s hospital P3 deals; and recently hospitals developed in BC have excluded cleaning services. Concerns around debt refinancing have also led to the inclusion of clauses within Ontario’s P3 hospital project agreements which stipulate that financial gains reaped through debt refinancing must now be shared with the relevant public hospital board (Loxley 2010, 110). A reversal of some elements of privatization-enabling legislation has also occurred. Most notably, in 2007 the Supreme Court of Canada sided with BC’s Hospital Employees’ Union, and other health sector unions, in their fight against BC Bill 29-2002 (*the Health and Social Services Delivery Improvement Act*) which unilaterally rescinded provisions in signed collective agreements and paved the way for unprecedented privatization of health care support staff in the province. This forced changes to similar unconstitutional provisions in P3-related legislation (BC Bill 94-2003 *The Health Sector Partnerships Agreement Act*).

The need to protect the public must come in other ways as well. Recent legislation in Manitoba offers one way of helping to at least strengthen protections offered by capital planning frameworks. In 2011/12 the Province took an important step toward expanding protections with its Bill 34 (*The Public-Private Partnerships Transparency and Accountability Act*) which requires greater public consultation and involvement of officials such as the provincial Auditor General and fairness monitors. However, as beneficial as fairness monitors and Auditors General may be (provincial auditors’ reports have thus far proven to be a leading source of support for anti-P3 campaigns) actual progress will remain illusory until the P3 model is scrapped altogether. In this struggle it is important to keep in mind that not only are the protections offered by P3 units and capital planning frameworks weak, the very presence of P3 enabling fields militates against P3 policy abandonment. Victories and initiatives such as those mentioned above help dampen the more deleterious effects of privatization but they do not entirely reverse them, nor do they root out the specific elements of P3-enabling state restructuring that have occurred over the past decade.

A greater focus on P3 enabling fields (P3 units and capital planning frameworks), and the market-oriented assumptions inherent to value for money and risk transfer assessments, would be useful for opponents as it would not only help to counter P3s but also the re-conceptualization of the ‘public interest’ that has occurred. This includes politicizing the normalization of market-based rationale that informs P3 policy, reorients public sector decision-making, and conflates the ‘public interest’ with the interests of for-profit market actors.

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