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# THE DRIVE TO PRIVATIZE

## Why public is better for our communities ... and for local business

A research brief to the municipalities and school boards of British Columbia

**Prepared for CUPE BC**
**By CUPE Research Branch**

# Contents

*Another exciting new area of opportunity for private sector investment and involvement is in the wide range of possible public-private partnerships.... Such opportunities will be actively pursued this year in helping to spur more private sector investment in transportation and highways, information technology, housing, land and resource development, health support services and facilities and education infrastructure.*

*Hon. I. Campagnolo (Lieutenant-Governor):*
*British Columbia Throne Speech*
*February 12, 2002*

# Executive summary

The Government of British Columbia has a new vision for public services. They want to hand them over to private companies. They are talking about privatizing health services, highways and just about everything in between. The new Community Charter will encourage "public private partnerships" (P3s) in municipalities. School districts are being denied funding for new schools that may force them into private financing.

P3s are not new. Local governments have always worked with the private sector in areas like large construction projects. What is new is the movement to hand ownership and control of assets over to private companies and to let them manage and deliver services.

The provincial government and business interests have tried to sell privatization and P3s as the only solution to cash-strapped municipalities and school boards. This brief raises some serious questions about looking to the private sector to solve all our problems.

Most important, P3s and privatization mean a loss of jobs and income to our communities. Money that workers used to spend in local business now leaves the community, the province or even the country in the form of profits.

Experience shows it is not small local businesses that do this work; it is large international companies. Competition soon disappears as these companies take each other over on an international scale.

These large companies are extremely sophisticated. With tens of thousands of employees, they know how to get the contract they want. For smaller school districts and communities in particular, the playing field is uneven.

There is little, if any, evidence that P3s and privatization save money. The provincial government and municipalities can borrow money more cheaply than businesses. In other communities P3s have cost money because of lax building standards and lack of accountability.

With P3s quality of service frequently falls. In Edmonton the school district brought custodial services back in-house after a disappointing experiment with handing the work to private partners.

Accountability is a major issue with P3s. The public frequently can't find the facts. Risks are rarely transferred to a private partner. At the end of the day it is a school district or municipality that must guarantee the service. That ultimate risk remains at home.

The biggest risk is the possible complete loss of public control. Under the new trade agreements public work once given to the private sector is very hard to get back. This was a major reason why the Greater Vancouver Regional District decided not to hand management of part of their water system over to a private company.

There is much evidence in other jurisdictions of the failure of P3s and privatization. In the United States work is being returned to school districts and municipalities faster than it is being contracted out. In England private services have led to dirty hospitals and reduced services.

Public employees have a proven track record. They have provided honest, efficient and cost-effective services to the people of B.C. Too often they are being replaced without adequate analysis and without adequate public participation.

We urge you to avoid making this mistake. Look warily at P3s. They may not be in the best interest of keeping your community strong, healthy and safe. Stay public in the interest of all.



***"Public sector workers invest in their community. Private companies come and go. Workers become transient. There is no loyalty to the community. Public sector workers live in their community long-term, giving back what they take out....Private companies tend not to be bound by the collective rights of working people. Now, the Campbell government is handing them the means to undermine what unions have bargained over the years."***

***– Rob Zver, a school board caretaker in Nanaimo, B.C. (Local 606)***

# Introduction

The 2002 provincial government throne speech and budget stressed that the private sector will get a bigger role in delivering public services in British Columbia. Finance Minister Gary Collins said, "we're changing the way we develop public infrastructure – opening up new opportunities for the private sector, and opening up government to creative new ideas for providing public services at a cost we can afford." [1]

The private sector is going to play a much bigger role in delivering infrastructure such as schools, hospitals and highways. The finance minister told reporters that declines in capital spending in several ministries were due to anticipated public private partnerships. Transportation Ministry officials are ready to proceed. The government has introduced Bill 57, the Transportation Investment Act, to permit P3s to develop and own highways and other transportation infrastructure.

In health care, the Campbell Liberals are proceeding with a "take no prisoners" approach to privatization. Leaked government documents suggest 14,000 people will either lose their jobs or be forced to have their work transferred to private companies that will pay them 30 per cent less. To make sure this can happen the Campbell Liberals have torn up contracts that offered health care workers layoff protections.

Abbotsford is being targeted for a privately funded hospital with no consultation and against the wishes of local residents.

In other areas what will happen is less clear. The provincial Capital Asset Management Framework encourages development of P3s in ministries, Crown corporations and school boards. A new agency, Partnerships BC, has been created to drive the process.

Municipalities will be affected. The province has developed a new "Community Charter" that, when passed, will make it easier for business to profit from municipal services and more difficult for citizens to question the partnerships. School boards faced with funding cuts, particularly for school construction, will face pressures to seek capital from private partners.

In other words, the Campbell government is telling British Columbians that P3s are the solution to all our problems. As American writer H.L. Mencken observed, for every complex problem, there is an answer that is clear, simple...and wrong.

This brief looks at P3s and offers a more critical perspective than we have seen in the Campbell Liberals' lemming-like rush to the private sector to solve all our problems.



***"We were touted as the first all-electric town in Canada back in the mid-1960s. If they were to privatize BC Hydro, and I had to pay upwards of $400 a month because of the weather up here, I just couldn't afford it. BC Hydro is ours. We bought it. Taxpayers paid the price and should continue to reap the benefits....Taxpayers won't be able to spend any of the so-called savings [from privatization] because many of them won't have jobs. Up here it's a race to the bottom. People are ready to do your job for $2 cheaper or $4 cheaper without benefits. It's dog eat dog."***

***– Craig Anderson, a school board worker in Gold River, B.C. (CUPE Local 2769)***

# Public private partnerships – What are they?

Discussion of privatization and P3s is not new in B.C. In 1999 the B.C. government published a Guide for Local Government on Public Private Partnerships.

**The guide describes P3s as:**

> *"arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related services. Such partnerships are characterized by the sharing of investment, risk, responsibility and reward between the partners. The reasons for establishing such partnerships vary but generally involve the financing, design, construction, operation and maintenance of public infrastructure and services."* [2]

P3s are a form of privatization that moves control of public assets and services to the private sector. There are many P3 models. Appendix A outlines 10 possible models as described in the municipal government guide. At one end is the common design/build approach, where a public organization hires a contractor to design and build a facility. At the other end is the build/own/operate model, which is full-scale privatization of a facility.

**The guide stresses that P3s are not just for infrastructure projects:**

> "Public private partnerships can be an effective and innovative way of delivering a range of local government services and facilities. While large infrastructure projects tend to capture the most public attention, public private partnerships can also be used to deliver services that do not involve capital projects. Examples include provision of data services, refuse collection and road maintenance." [3]

The Campbell government has gone much further than this, even identifying certain health services as appropriate for P3s.

# Loss to employees and to the community

Employees are the most obvious and direct losers when public bodies privatize services and enter into P3 agreements. Workers with well-paid jobs and benefit packages find themselves either unemployed or paid much less by a private company.

Under the Campbell government legislation, they will also lose their union, since successorship, at least in the health sector, has been eliminated. A major firm seeking to provide custodial services in the health sector has even suggested it would blacklist former employees.

But employees are not the only losers in this situation. Communities lose when well-paid jobs disappear and are replaced by close to minimum wage jobs. People buy less in their communities. Communities, already hard hit by the threatened loss of schools and hospitals, will be hit again by the loss of jobs and incomes.

More money flows out of the community with the corporate profits flowing to places like France (Sodexho) and Portland (ServiceMaster).

# What kind of businesses are involved in P3s?



P3s are often sold with the argument that services currently done by the public sector will be taken over by small businesses in the community. This has not proven to be the case. In fact, contracted-out services tend to be done by large corporations that drive small competitors out of the field.

In Denver, CO, the transit department contracted out service to three national companies: Mayflower, Laidlaw and ATC/Vancom. Typically, the strategy of such firms is to capture a new market quickly and drive out small competitors by submitting a very low initial bid. In this case Mayflower submitted a bid, which was half the cost estimated to run the service. Sure enough, within two years the charges from Mayflower were doubled.

In 1997, Laidlaw purchased ATC/Vancom. Any suggestion of real competition here disappeared.[4]

What is true for transit is also true for many other services such as custodial and cafeteria services. The companies competing for this work are not small, "mom and pop" operations; they are huge international conglomerates.

Sodexho has been in the news in B.C. They were hired by the new Northern Health Region Authority to advise on how work could be contracted out. Sodexho is a huge international company that provides contracted-out support work in hospitals in the United Kingdom. They were recently given a contract in Hamilton, Ont., to provide housekeeping services at all Hamilton Health Sciences locations. Sodexho also provides catering and support services in schools and post-secondary institutions.

Where the private sector delivers public services, mergers and takeovers have dramatically reduced any possibility of competition.

For example, Canadian Waste Services Inc., a subsidiary of American Waste Management Inc., has bought out both Laidlaw and Browning Ferris.

Canadian Waste has also acquired Philip Environmental Inc., Universal

Disposal Services Ltd. and the solid waste assets of WMX Technologies Inc. The Canadian company now has annual revenues exceeding $600 million.

What happens when contracts expire and these cities must go back to the marketplace?

With few competitors, Canadian Waste can likely force higher costs on the cities. That is what has happened in Hamilton. Local politicians were shocked to discover regional staff proposing a 14-month contract extension with Canadian Waste that would have cost taxpayers and additonal $12,875 more per month – roughly a 20 per cent increase.[5]

The Canadian Competition Bureau reviewed Canadian Waste's acquisition of certain services previously provided by Browning-Ferris. While it did not object, as a result of discussions Canadian Waste agreed not to acquire other Browning Ferris services, including recycling in Vancouver and Kelowna.

The bureau has already expressed concern about Canadian Waste, and the people of Hamilton are finding out exactly what that means.

Further, once assets for solid waste management are eliminated, it becomes much harder for a municipality to go back into the service. The municipality becomes a captive to the ever-fewer private garbage giants that control the industry.

Vancouver looked at contracting out its waste collection a decade ago and decided not to proceed. As Vancouver Mayor Philip Owen said, "My concern then was what if we went ahead and dismantled our sanitation department, we could be held to ransom by whoever won the contract."[6]

In a contracted-out, P3 environment, huge international companies will soon come to dominate the marketplace. Competition will be transitory. Savings will be fleeting, lasting only as long as it takes these large companies to control the industry.



***"Enderby parents already have to hire tutors because of the school board cuts. So the private sector is already infringing on the public system. Plus, parents have to pay more. Now there's even talk of residents adopting streets, sidewalks and parks. Residents would be expected to look after their adopted portion of the street or park. What about safety or continuity of service? It won't be there."***

***– Dee Jones, a school board worker in Enderby (Local 523)***

# Competition not the only issue

In some cases, the problems are larger than a lack of competition. A municipality should think twice about who it does business with. The following quote is taken from the Globe and Mail, Nov. 13, 2000, page 1:

> "A secret police study recommended that Ontario close its border to imported waste – whether they are hazardous or not – to curb the mob's potential grip on the industry. The Criminal Intelligence Service of Ontario was so concerned that organized crime would deepen its inroads into the fast growing business that it called on Queen's Park to set up a broad task force to investigate mob links to waste disposal..."

Organized crime isn't the only problem. In March 2002 U.S. Securities regulators announced they were suing six former executives of WMI for masterminding a "massive financial fraud" in which investors lost more than $US 6 billion. The company's long- term auditor, Arthur Andersen, familiar from their work with Enron, was also named for entering into an agreement to cover up past fraud.[7]

Another example is Azurix, one of the companies short-listed for the Greate Vancouver Regional District's design/build/operate Seymour filtration project. Azurix was owned by Enron, the American company which crashed and burned so spectacularly taking with it billions of dollars in investors' money.

# Negotiating a contract – No level playing field

P3 negotiators will find themselves sitting across the table from some of the most sophisticated business people in the world. International organizations like Sodexho, ServiceMaster and Laidlaw have tens of thousands of employees and operate in many countries. They have the legal and technical services to make sure that any contract they negotiate works in their best interests.

Many public sector organizations in B.C. are not so large or sophisticated. For example, there are 70 municipalities with populations of less than 5,000. Health regions and school districts will also find themselves overmatched in any negotiations. The province's guide on P3s has acknowledged this problem.

**The PPP guide says,**

> "Depending on the size of the local government, it may not have many of the areas of expertise required for a public private partnership. In such cases, it is important to secure trusted advisors from outside the organization."

The guide identifies the following types of expertise: overall expertise in public private partnerships; process management; public finance, including cost recovery; private finance; taxation policy and regulations; accounting; contract law; engineering; architecture; facility operations; real estate appraisal; real estate development; asset evaluation; quantity surveying; communications and public involvement.

As well, the PPP guide calls for the following in-house expertise: negotiation skills, mediation, arbitration, contract law, project management, performance auditing and quality control, public process, private sector finance and risk management.

Even B.C.'s auditor general has warned that there are complications involved in dealing with P3s:

> "Alternative service delivery methods such as contracting out and public/private partnerships also require managers to acquire new skills to deal with risks associated with these new arrangements — to ensure public policy goals are efficiently achieved." [8]

With all these skills, it is unclear why we would hand control of service delivery to the private sector rather than doing it ourselves.



***User fees would mean that most single-parent families, most students, many young people and the working poor would just have to do without. Even if we can pay user fees, the quality of our services and the income we get from those jobs (provided we aren't blacklisted for being union workers) will decline… If they get their way and lead us down the P3 garden path, things will only get worse for working families."***

***— Adrienne Smith, a municipal worker in Burnaby (Local 23)***

# Costs savings from a public/private partnership?



The Campbell government has put school districts and health regions in a desperate situation. In real terms, for school districts in particular, funding has been cut. But with these cuts has come the new "flexibility" to manage differently. As part of that flexibility, P3s are being pushed as a way of saving money. The savings, the government states bluntly in its leaked Health Ministry document, will come from slashing wages and benefits for people working in the institutions.

Savings have also been promised from using private sector money to build schools, hospitals and post-secondary institutions.

These solutions are flawed.

The private sector cannot borrow money to build public facilities more cheaply than the public sector. One of the most important reasons is the cost of borrowing.

With the exception of Vancouver, all B.C. municipalities belong to the Municipal Financing Authority of British Columbia (MFA). As the MFA notes on its web site:

> "The Municipal Finance Authority of British Columbia (MFA) is the central borrowing agency for the municipalities and regional districts in the Province of British Columbia. MFA was created by provincial legislation in 1970. Its members include virtually all municipalities in the Province, including those on the Lower Mainland. The sole exception is the City of Vancouver which operates under its own charter and handles the capital financing needs of its population on its own.
> The establishment of the Municipal Finance Authority was a recognition that it made economic sense for individual municipalities and regional districts to borrow together as a group and to guarantee each others' credit. The pooling of their borrowing would also produce great economies of scale.'

The MFA borrows at a AAA bond rating – higher even than the province and much higher than any private company. The province, because of the security offered lenders by its ability to tax, also has a much better credit rating than any private company. These higher ratings lead to lower borrowing costs that cannot be matched by companies investing in schools and hospitals.

James Craven, former executive director of the MFA, made the following point.

> "The results the MFA has achieved in low-cost interest rates has made private sector financing too expensive by comparison. Even with tax-driven savings, the private sector cannot provide comparable rates."

> "A Canadian model for public-private partnerships will have to evolve before municipal governments are able to consider it the panacea the private sector alleges it is."

Borrowing is not the only factor that can lead to higher costs.

In June 2000, Nova Scotia's Conservative government scrapped its P3 program for new school construction, citing additional costs as the primary reason. The 33 schools built under the P3 arrangement cost taxpayers $32 million more than the original estimate of $350 million. The government attributed the extra costs to lax building standards, lack of accountability, last-minute design changes and unmanaged site development costs.

With that extra $32 million, the province stated it could have built three additional schools. N.S. Finance Minister Neil LeBlanc said, "the PPP school program was an expensive experiment that cost Nova Scotians dearly." In short, Nova Scotia views P3 school construction as an all-out failure.[10]



Savings in labour costs have also been overrated. Academic writers studying privatization note that the cost of negotiating and managing contracts is high and it is often ignored when doing cost comparisons.

> "In the decision to privatize, governments often fail to include the costs of contracting and monitoring which can average over 20% of the total project costs (Prager 1994, Pack 1989)." [11]

Eliot Sclar notes the following:

> "Presumably, a public administrative structure [must] remain for contract supervision, maintenance of the contracting process, and enforcement of the policy mandates governing the provision of a public service. U.S. transit experience suggests that, even when the direct service is contracted out, overhead costs remain substantial, ranging from 16 percent to one-third of total costs, depending on the system size and complexity." [12]

Frequently it is more expensive to contract work out even if contract management costs are not taken into consideration.

A study that looked at contracting out practices in municipalities in Canada and the United States found that work was being brought back in-house as fast as it was being contracted out. Economic concerns were frequently stated for bringing the work back in-house.[13]

These studies reflect the findings of an Edmonton report independently prepared for the Edmonton Board of Education and CUPE Local 474. The study found four out of five custodial contractors charging the school district more for services than if they were done in-house.[14]

# Quality – You get what you pay for



There are only two ways that the private sector can provide services more cheaply than the public sector. Either they slash jobs, wages and benefits (which will be discussed later) or they slash the quality of service. Frequently they do both.

Sodexho was criticised recently when a Glasgow Evening Times reported on the quality of its custodial work in Glasgow's largest hospital. The newspaper reported that, "A joint management and union inspection team found filthy conditions throughout Glasgow Royal Infirmary in areas used by patients and staff."

The report continued, "Bloody surgical 'scrubs' from an operating theatre are dumped in a lift used to carry patients' meals. Staff say the area is infested with cockroaches. Workers say tunnels below the Victorian-built hospital have been turned into firetraps by piles of waste." [15]

This was not the first time Sodexho had been criticised for the quality of its work in British hospitals. In April 2001 the company was cited as having been put on "special measures because of the quality of its work in National Health Service Hospitals.

> "Four of the trusts, all of which were put on special measures, use the following private contractors: Royal Liverpool and Broadgreen University Hospitals NHS trust (Broadgreen Hospital) subcontracts its cleaning services to Sodexho." [16]

In the U.S., several school districts have brought work back in-house because of quality concerns. In DeKalb County, GA, school officials tried to save money and improve maintenance by privatizing their custodial services. Unsatisfactory results forced the school board to terminate the contract in June 1999.

After paying ServiceMaster $75,083 to provide janitors at five district schools, they found that neither their maintenance services nor their staff relations improved. In addition, the contract had drawn criticism from the

Organization of DeKalb Educators as well as school board members who saw that the private contract took jobs away from the community. [17]

> "For both private sector and government, timeliness, dependability and quality often are more important than cost efficiency. In a study of local government restructuring in New York State, quality concerns were highest among those governments that contracted out more because they no longer held internal control over service delivery." [18]

These findings were reflected in a 1997 report prepared for the Edmonton School Board. In 1994 board trustees voted to privatize custodial services in up to 30 per cent of the board's schools. The process began as a pilot project limited to five schools. To evaluate the project the board and CUPE Local 474 agreed to a joint evaluation process. Independent evaluators did the work. The findings were significant:

- Deficient skill levels due to high turnover in the contracted out schools;
- Greater involvement in contracted out schools by school officials and staff regarding custodial deficiencies;
- A much higher level of commitment to the institution by in-house custodians;
- Complaints lessened over time in contracted-out schools. This was attributed to people getting tired of complaining and giving up;
- Statistical studies showing in-house custodians exceeded the performance of contracted out custodians by 18 per cent;
- Four of the five contractors charged the school board 10 per cent more than in-house service. [19]

Subsequently, all the work in Edmonton has been returned in-house.



In the U.S. many school districts are regretting decisions to hand over management of schools to private companies like Edison Schools. In Dallas, Texas, the school superintendent has recommended ending the district's contract with Edison Schools for financial reasons and because of lacklustre results. The U.S. Department of Education is now investigating how the company obtained its latest and largest contract managing 20 schools in Philadelphia.[20]

Managing and cleaning in a school or a hospital is not the same as working in a private place. Standards and skills must be higher. A low-bidder approach doesn't work.

# Accountability

P3s are inherently risky.  One of the greatest risks is the loss of accountability and transparency as to how public bodies operate.

Once again, the provincial government has acknowledged this in its PPP guide, which says,

> "Public private partnerships that involve significant investments and risks by the private partners often provide for greater involvement of the private party in decisions concerning how services are delivered and priced.  This often leads to concerns about who controls the delivery of services."

And,

> "Certain local governments are more sensitive than others in terms of public demand for accountability and responsiveness.  With public private partnerships, the lines of accountability for the provision of services are less clear to the public than under conventional service delivery.  This may result in public criticism of the partnership arrangement and the private partner, or require increased involvement of the local government in ensuring compliance and responding to public demands."

This lack of accountability is, perhaps, the most disturbing element about P3s.  Private companies are not required to be transparent about their financial situation.

Once a private corporation takes hold of a long-term P3 contract, that service contract can become an obstacle to addressing problems such as inferior work, damage to property or accessibility.  Unexpected problems are dragged out as the government and the corporation negotiate over who is responsible.  In some cases, the process completely shuts down.  Canadians witnessed this first-hand when a contract dispute with the private sector forced the Canadian military to take over a ship loaded with military hardware.

Huge and expensive issues can also arise as to who is responsible for what. A classic example of this was seen in Hamilton, the home of one of Canada's first P3 sewage treatment facilities. In December 1995, the Regional Municipality of Hamilton-Wentworth signed a 10-year, $180-million contract with the new, one-year-old Philips Utilities Management (PUMC). The contract transferred responsibility for the operation, management and maintenance of the region's water and sewage system to PUMC.

In January 1996, an accident at the Hamilton treatment plant managed by Philips Services caused the worst spill in its history. About 180 million litres spilled into the harbour. Over 70 homes and businesses reported excessive damage after their basements were filled with raw sewage. More than a year after this catastrophe, the region and Philips were still wrangling over who was responsible for the cleanup. Sorting out the responsibility is estimated to have cost the municipality $400,000 in legal, staff and consulting fees.

There is also the question of availability of basic information to the public. B.C.'s P3 guide says,

> "Electors must be given sufficient information to make an informed decision when voting or petitioning on the content of a partnering agreement, prior to the vote or during the counter petition period. Section 177 of the Municipal Act requires the disclosure of the agreement and records relating to the agreement to the extent that these documents would be available under the Freedom of Information and Protection of Privacy Act."

This caveat – "to the extent that these documents would be available under the Freedom of Information and Protection of Privacy Act" – opens up an enormous loophole that will keep information out of the hands of the public.



***"The Community Charter suppresses democracy and gives our local government carte blanche to behave like the most unaccountable corporate bully. It grants powers to city council to enter into P3s without public consultation and that threatens not only the immediate livelihood of working people in Prince George, but also the future of the community as decisions will be made with very short-term vision."***

***– Carlene Keddie, a city inside worker in Prince George, B.C. (Local 1048)***

# Risk transfer

One of the major reasons cited for Public Private Partnerships is that it allows risk to be shared between a public and private partner.  There is little evidence from other projects that this has been the case.  And where it does happen, the public partner pays a premium for it.

Once again, the government's P3 guide notes:

> "The degree of risk to be transferred to the private partner will determine the extent of the return or reward required by the private partner. The more risk, the higher the expected return.  The private sector will not be interested in opportunities in which the local government is unable or unwilling to offer rewards that are commensurate with the risks the private sector may be required to accept.  Proposals for public private partnerships that do not balance risks and rewards between the prospective partners have limited prospects for proceeding.  The issue of balance to the private sector is based on market conditions and other opportunities for investment."

In other words, the public pays a premium price for any risk the private sector decides it wants to absorb.  Who then is really carrying the risk?

The principal risk transferred to the private sector in P3s are those met during the construction phase of an infrastructure project, risks that disappear at an early stage in the life of the project.

In practice the risk to the private sector is limited.  The public sector increasingly bears the risks of P3 projects.  The ultimate risk is that if a project collapses, it will remain the responsibility of the public sector.  Most services provided under P3s are effectively public monopolies, so the risks stay in the public sector.  If the service fails, or is of poor quality, the public sector cannot go elsewhere.

What happens if a custodial contractor walks away from a school or a hospital or a municipal service?  The service must still be done and the hospital, school board or municipality will have to make sure it happens.  That ultimate risk resides with the public body.

# Loss of public control

According to school officials at Chicago Public Schools, private custodial crews have stolen computer equipment and one firm, now barred from future contracts, hired convicted felons to perform cleaning work. In addition, a $35 million cleaning contract originally bid in the summer of 1999 had to be rebid at a later date because the board of education was concerned that the firms had been talking to each other about pricing.[21]

When work is contracted out to a private partner the public body loses this level of control in the workplace.

# No going back

Public bodies involved in P3s may find themselves stuck with long-term contracts and unacceptable levels of service. In a P3 school arrangement where the company owns the school and maintains it, levels of cleanliness may be unacceptable to students, parents and teachers. But if the school board is involved in a lease of 25-35 years, there may be little that can be done about it. Normally, no public body would sign a contract this long for custodial services, but in this sort of P3 arrangement they might have no choice.

In some conditions, it may not be possible to go back at all.

International trade has become an issue of increasing concern for B.C. municipalities. Municipalities and their organizations have expressed fears that trade deals will undermine their ability to make decisions in the interests of their citizens. Two years ago the Union of B.C. Municipalities passed a motion urging the federal government to consult more widely on trade issues. It urged the federal government to exclude local governments from the control of the General Agreement on Trade and Services (GATS).

The Federation of Canadian Municipalities was sufficiently concerned about this that at their 2001 convention they passed a motion recommending "strongly to the federal government that it bring forward a proposal to the World Trade Organization to exclude 'local governments and authorities' from the definition of a 'measure' under Article I of the GATS agreement, and further that Canada work actively to seek support for this amendment from the other WTO members." This resolution was brought forward from the UBCM.

Speaking to the FCM conference Donald Lidstone of the Vancouver legal firm Lidstone, Younge and Anderson made these points:

> "In the May 2, 2001, decision of the Supreme Court of British Columbia in *United Mexican States v. Metalclad Corporation* (an appeal from the North American Free Trade Agreement tribunal), the court did not alter the tribunal's extremely broad definition of expropriation. The tribunal had held that expropriation under the NAFTA includes

incidental interference with the use of property which has the effect of depriving the owner, in whole or in part, of the use or reasonably to be expected economic benefit of property. Accordingly to Mr. Justice Tysoe of the British Columbia Supreme Court, 'This definition is sufficiently broad to include a legitimate rezoning of property by a municipality or other zoning authority'. In the end, the court found in favour of Metalclad, with Metalclad being awarded $16 million (U.S.) and 75 percent of the costs of the proceeding.

"*Metalclad* is a wakeup call for municipalities throughout North America. The enactment of regulatory bylaws that could have the effect of interfering incidentally with the use of property so as to deprive the owner of the use or economic benefit of the property could result in compensation for expropriation under Chapter 11 of the NAFTA and the analogous provision in the proposed FTAA." [22]

The Greater Vancouver Regional District in June 2001 abandoned a longstanding plan to build a water treatment plant through a design/build/operate model. The GVRD cited concerns over the implications of trade agreements as the reason. The district said,

"There is some uncertainty about the impact of international trade treaties, NAFTA and GATS, and even though the risks may be small, the public did not want to take those risks no matter what efficiencies may be gained. We said we would listen. And we did. We took that 'sober second look' and changed our minds.

"We very much need some clarity around how trade treaties affect the ability of local authorities to manage their water and other services," Mr. Hunt said. "We will alert federal authorities about the concerns raised in Greater Vancouver, and seek assurances that the Federal Government will absolutely protect the ability of local authorities to provide services without suffering repercussions from private companies, other nations or the government of Canada as a result of international treaties." [23]



The clarity demanded by municipalities has not been received. Local public bodies are now even more at risk than they were last year. The Campbell government has announced that it will impose the discipline of the Agreement on Internal Trade (AIT) on municipalities and school districts. This internal trade agreement may act as an entry point for even more restrictions under international trade agreements.

Public bodies should be careful before deciding to enter into an agreement that will bring them under the control of secret, international trade tribunals.

# What is the experience in the U.S.?

Given the almost religious fervour with which the U.S. approaches the private sector, one would expect to see huge and growing levels of P3s and privatization. This is not the case.

School districts and colleges are slowly reducing their use of privatized services preferring instead to keep the operation of non-educational services in-house. According to American School & University's seventh privatization/contract services survey, 23 per cent of school districts do not contract out any services. This compares with 21.7 per cent in 1999. At colleges and universities, 6 per cent did not outsource any services, compared with 5.3 per cent in 1999.

Custodial, facility management and grounds maintenance experienced the biggest shift away from being outsourced as more districts brought these services in-house. [24]

Municipalities too are skeptical about P3s.

> "Most governments which contract out also contract back in. From 1992-1997 88 percent of governments had contracted back in at least one service and 65 percent had contracted back in more than three services. On average, across all places, 5 services were contracted back in from 1992 to 1997 (more than half the level of new contracting out reported above)."

And,

> "Of the 144 county respondents [to a survey], fourteen percent (20) reported to bringing a previously contracted service back in-house during the last three years. Not surprisingly the highest levels of contracting back were for services where the contracting out was also high: data processing, garbage collection and disposal, building maintenance and emergency medical service. Respondents indicated factors important in their decision to bring service delivery back in-house. Half reported problems with the service provider, and economic concerns. A quarter reported problems with contracting and monitoring, and a quarter listed management and labour issues."

> "Additional case study evidence of 22 cases of contracting back in (drawn from the ICMA sample) shows that most government contracted back in because of dissatisfaction with contracts (Ballard and Warner 2000). Difficulty and costs of monitoring, problems with the service quality, cost and lack of flexibility in contracting, and failure to realize anticipated savings, were commonly cited as reasons for contracting back in." [25]



***"I don't want to see any public service work contracted out. Snow plowing doesn't make a profit but it shouldn't make a profit. You get a better job when you aren't basing the work on profit. Private contractors aren't there for the service. They are there to make money.…The tax cuts have been over-ridden by user fees, especially medical services. If the Liberals had not made the cut we wouldn't be in this situation now. They shouldn't be gambling with our lives by pushing for private service and a sell-off of services. Privatizing is short-term gain for long-term pain."***

***– Bruce Cramton, a city worker in Nelson, B.C. (Local 339)***

# The British example

The B.C. government is relying heavily on British experience to push its P3 agenda. Partnerships BC, the "arms length" agency that will be driving the process, is modeled on a similar British institution.

In Britain, as in Canada and other jurisdictions, auditors general have provided consistent criticism of the process.

In November 2000 the British National Audit Office issued a report on plans for a P3 for London's ageing subway system. The NAO said the case for the P3 "is clearly not proved." [26] After years of dramatic failure and accidents in privatizing railways, Britain's transport minister was recently sacked.

More recently Britain's Auditor General Jeremy Colman criticized some of the comparisons being used to support private sector solutions rather than the public sector. He described some of the comparators as "utter rubbish," and "utterly irrelevant." In Britain, public service managers know they must demonstrate that their plans are cost effective. "If the answer comes out wrong, you don't get your project. So the answer doesn't come out wrong very often." [27]

In May the British Medical Journal published an article examining private finance initiatives (P3s) in health care. They found value for money comparisons were skewed in favour of the private sector; that value for money could only be shown if an unjustified financial value of "risk factor" was used; and that P3s more than doubled the cost of capital. [28]

# Who's pushing for P3s?

There are a lot of questions about the value of P3s. There is clear evidence, at least in some jurisdictions, that possible savings from P3s have been oversold. Serious questions have been raised about issues like control and service quality. Trade issues raise the spectre of once in, never out. Why then is this model being pushed and who is pushing it?

It is not the general public. Polling consistently shows that people want to see public services publicly delivered. Last year, for example, a poll showed that two thirds of the population opposed letting a private company manage water for the GVRD.

However, while P3s may not be the promised panacea for public bodies, they are a guaranteed source of profit for private companies. Every school board, municipality and health region in B.C. is having dents pounded in their doors from companies that want a piece of the action.

The biggest push for P3s comes from companies who will profit from them. Consulting firms active in the P3 business are helping these companies. PriceWaterhouseCoopers, for example, is routinely hired to provide advice on P3 issues. In 2001 the City of Kamloops hired the firm to advise on a possible P3 for its water filtration plant. The firm recommended the city proceed with a P3 and denigrated the concerns of local citizens.

PWC is one of the founding members of the of the Canadian Council for Public Private Partnerships. The council is the lobby organization for privatizing government services in Canada. In a recent press release in the United Kingdom, PWC bragged they had hit the £one billion figure in working with privatization. They announced a new £110 million partnership with Edinburgh City Council to deliver new and refurbished school facilities.

PWC was also listed in Ottawa's register of lobbyists as a lobbyist for The Seagram Company Limited. When Seagrams recently merged with Vivendi, the world's largest private water company.

More recently PWC was engaged by the Fraser Health Region to report on the advisability of proceeding with a P3 hospital in Abbotsford. Not surprisingly, PWC recommended a private hospital in their report. The Fraser health Region attempted to prevent the financial information in the report from becoming public. Fortunately, they failed. An examination of the report by forensic auditor Ron Parks questioned any possible savings.

# Conclusion

When someone promises you the world and says it will be cheap, you would be well advised to keep both hands on your wallet.

P3s have a place. They have a proven record in designing and building facilities. Huge problems arise, however, when they move beyond this and begin to own and deliver public services.

There is a gold rush going on in B.C. encouraged by our provincial government. Grifters, hucksters and snake oil salesmen from across the world are washing up on our shores to try to sell their brand of patented P3 medicine.

If they have not been there already, P3 salesmen soon will be knocking at your door. On behalf of your employees, who live in your community, we urge you to send them packing.

If you must consider a P3, we urge you to adopt a policy that no P3 will be adopted without an in-depth analysis which may be examined by the union and the public and a full and public discussion well in advance. Above all we urge you to avoid unsolicited partnerships that we believe can undermine the public interest.

Public employees have a proven track record. They have provided honest, efficient and cost-effective services to the people of B.C. Too often they are being replaced without adequate analysis and without adequate public participation.

We urge you to avoid making this mistake. Look warily at P3s. They may not be in the best interest of keeping your community strong, healthy and safe. Stay public in the interest of all.

# End Notes


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# Appendix A

## Types of Public Private Partnerships



**1. Operations and Maintenance**

The local government contracts with a private partner to operate and maintain a publicly owned facility.

**2. Design-Build**

The local government contracts with a private partner to design and build a facility that conforms to the standards and performance requirements of the local government. Once the facility has been built, the local government takes ownership and is responsible for the operation of the facility.

**3. Turnkey Operation**

The local government provides the financing for the project but engages a private partner to design, construct and operate the facility for a specified period of time. Performance objectives are established by the public sector and the public partner maintains ownership of the facility.

**4. Wrap Around Addition**

A private partner finances and constructs an addition to an existing public facility. The private partner may then operate the addition to the facility for a specified period of time or until the partner recovers the investment plus a reasonable return on the investment.

**5. Lease-Purchase**

The local government contracts with the private partner to design, finance and build a facility to provide a public service. The private partner then leases the facility to the local government for a specified period after which ownership vests with the local government. This approach can be taken where local government requires a new facility or service but may not be in a position to provide financing.

**6. Temporary Privatization**
Ownership of an existing public facility is transferred to a private partner who improves and/or expands the facility. The facility is then owned and operated by the private partner for a period specified in a contract or until the partner has recovered the investment plus a reasonable return.

**7. Lease-Develop-Operate or Buy-Develop-Operate**
The private partner leases or buys a facility from the local government, expands or modernizes it, then operates the facility under a contract with the local government. The private partner is expected to invest in facility expansion or improvement and is given a specified period of time in which to recover the investment and realize a return.

**8. Build-Transfer-Operate**
The local government contracts with a private partner to finance and build a facility. Once completed, the private partner transfers ownership of the facility to the local government. The local government then leases the facility back to the private partner under a long-term lease during which the private partner has an opportunity to recover its investment and a reasonable rate of return.

**9. Build-Own- Operate-Transfer**
The private developer obtains exclusive franchise to finance, build, operate, maintain, manage and collect user fees for a fixed period to amortize investment. At the end of the franchise, title reverts to a public authority.

**10. Build-Own-Operate**
The local government either transfers ownership and responsibility for an existing facility or contracts with a private partner to build, own and operate a new facility in perpetuity. The private partner generally provides the financing.

***Source:*** *Province of British Columbia, Public Private Partnership: A Guide for Local Government, Ministry of Municipal Affairs, May 1999.*

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