

***Exposing the Truth;  
Building the Alternative***

**A Presentation on  
Public Private Partnerships  
In Ontario**

Strategic Planning Committee

2004 OPSEU Convention  
April 16<sup>th</sup>, 2004



# Exposing the Truth; Building the Alternative

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In Ontario

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This presentation was prepared by the Strategic Planning Committee at the request of the Executive Board for consideration at this year's Convention.

The presentation touches on some of the current considerations facing us following the Liberal victory. It also details many of the concerns that have been raised by the union movement and others about the P3 model.

Finally, the resolutions that were distributed today provide a policy direction for your consideration: the first addresses our concerns about P3s, and the second commits us to proactively develop alternatives to the P3 model.



## What is a Public Private Partnership?

- Generic term for projects involving both the public and private sectors (with varying levels of involvement and responsibility)
- A working definition: **“A P3 is based on a contractual relationship (a legal agreement) between the public and private sectors to provide public services and/or public infrastructure”**
- Despite private sector profit motivation, boosters suggest a win-win scenario in which the public sector learns from private sector practices and innovations while shifting some risks involved in public service provision to the private sector

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P3s are also known as PPPs or, in Britain, PFIs (Private Finance Initiative). The term is often used very loosely to describe *any* relationship between the public and private sectors. It suggests a continuum between traditional public services on one hand and fully privatized, but regulated, services on the other.

Under a P3, a public agency or government contracts a private company to design, build, finance and then operate public services and/or a facility, such as a new hospital, school, or skating rink. Usually, the private sector borrows the money for the project and the public body pays an annual fee to the private company under a long-term operating contract. The workers that deliver the services may be transferred from the public sector to a private sector company.

Under traditional funding for projects to refurbish or build facilities – such as hospitals, schools, community centres, and libraries – the Government or non-profit agency receiving government funds borrows the capital required to build it and then owns and operates the facility.

In a P3, the public authority makes an annual payment to a private company to cover all the costs of designing, building, financing and operating the facility. Instead of paying for the facility over a few years the public authority often agrees to pay the private company for many years to come – often 20 or more years – thus arguably passing the real costs on to future generations.

## What's the rush?



- The public infrastructure deficit is huge but the political approach remains one of *spending restraint*
  - “Perfect storm” conditions for new wave of P3s?
- Estimated value of Ontario’s public infrastructure is \$240 Billion (4 times budget)
  - \$2.5 to \$7.5 Billion required every year just to maintain existing infrastructure
- Ontario’s population will grow by 40% over next twenty years
  - GTA alone will require \$55 Billion in new infrastructure over this period

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The Ministry of Public Infrastructure Renewal has been conducting public and private sessions with “stakeholders” across Ontario to detail the extent of the infrastructure deficit. In doing this they are recognizing a reality but also building support for infrastructure renewal – whatever the method used to address it.

It is evident that the new Liberal Government in Ontario is searching for some way to balance its promises to reinvest in and rebuild Ontario’s public services while avoiding ongoing deficits or personal income tax increases.

In the run-up to this year’s budget, the Government has admitted that it is exploring a number of options including selling, or leasing through a form of P3, crown assets (LCBO, TVO, Hydro One), dropping or transforming existing services to, in their words, “take pragmatic steps to generate more lump sum revenue in order to invest in transforming high priority services.”

The approach they are floating seems to be to promise the public greatly improved health care and education in return for swallowing some of the proposals floated or considered by the previous Conservative Government.



## Government Pushing P3s

- The Government of Ontario is developing a ten-year plan for public infrastructure renewal
- The Government is unwilling to raise personal income taxes and has floated radical ideas:
  - selling crown assets
  - using P3s to generate revenue from other assets
  - using P3s to develop new assets and services
- Ministry of Public Infrastructure Renewal has taken on P3 mandate from Tory's *Superbuild*
- Early decisions about P3s, ground rules, and labour protections will be crucial

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Premier McGuinty is a vocal fan of the Blair Government's approach to public service reform. P3s have been central to these "reforms". Ontario's interest in "exploring" the P3 model has subsequently been confirmed by the new Minister of Public Infrastructure, David Caplan.

For the Liberal Government, an ideal scenario might be to enter the 2007 or 2008 election with a balanced budget, no significant personal income tax increases, and a shiny, new "public" asset – a hospital or school, for example – in key ridings. P3s may provide them with the best way to achieve this outcome.

This being said, the Government defends its approach by arguing that it is the first government to set out guiding principles for infrastructure renewal. This is a welcome departure from the previous government's approach to privatization and outsourcing. The Government's commitment is worth quoting in detail (see the next page).

Note in particular the reference to public health care – this is an area of special sensitivity for the current government:

## SLIDE 4 Notes (Continued)

### Excerpts from the Ministry of Public Infrastructure Renewal Discussion Paper ([www.pir.gov.on.ca](http://www.pir.gov.on.ca))

The Government of Ontario will pursue a balanced, pragmatic approach to infrastructure renewal, guided by the following principles:

- ✓ **Protection of the Public Interest:** The public interest is paramount in the government's public infrastructure renewal plan. All public infrastructure projects should be delivered efficiently; protect and promote public health and safety; ensure high quality public services; and be accessible to all Ontarians.
- ✓ **Value for Money:** Ontarians expect and deserve value for their tax dollars. All public infrastructure project investments should be cost effective, optimize risk allocation, and be completed on time and within budget. There must be appropriate safeguards against excessive financial returns where private financing is involved in the delivery of public infrastructure projects.
- ✓ **Appropriate Public Control/Ownership:** Appropriate public control/ownership of public assets must be preserved.
- ✓ **Accountability:** All stakeholders involved in delivering public infrastructure projects must be accountable. All public infrastructure projects should have clear lines of responsibility and accountability; rigorous and transparent reporting and oversight requirements; and clear, measurable performance measures.
- ✓ **Fair, Transparent and Efficient Processes:** The processes facilitating the development of public infrastructure projects must be fair, transparent and efficient. All public infrastructure projects should have efficient and fair bidding processes, and contractual agreements that are based on clear, comprehensive guidelines and full public disclosure.

#### The Government's Commitment to Public Health Care

Critical public infrastructure, such as hospitals, contributes to making communities healthy and strong. The government believes that it is important to state from the outset where it stands on protecting and promoting the public interest when it comes to the financing and procurement of hospitals. There is a clear need to protect and promote the public interest in the case of new hospitals to ensure that those hospitals will be publicly owned, publicly controlled and publicly accountable.



## P3 Supporters and Opponents

### P3 SUPPORTERS

- Canadian Council of Public-Private Partnerships
- Federal Dept of Industry
- Ontario Min. of Public Infrastructure Renewal
- Private-sector construction and service, accounting, and investment firms

### P3 OPPONENTS

- CLC, OFL, NUPGE, and other key unions
- Canadian Centre for Policy Alternatives
- Ontario Health Coalition
- Council of Canadians
- Various community groups
- Many opinion polls suggest voters are upset by the P3 model

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The principal lobby group for P3s is the Canadian Council for Public-Private Partnerships. The Council has shifted in its earlier strategy of seeking to work with unions to lobby for P3s. Their most recent conference – disrupted by our activists during the OFL Convention – was notable in its hostility towards unions and their message. Conference participants were repeatedly told that P3s can not survive without a strong communications plan in place. Clearly, real and potential public opposition – supported by the labour movement – is seen as the biggest threat to P3s.

In addition, many Canadian governments have openly promoted P3s and we should keep in mind that the federal and provincial governments have *in-house* supporters (akin to lobbyists) of the P3 process. For example, the Federal Department of Industry maintains the Public-Private Partnerships (P3) Office whose mandate is to “educate” the public and other levels of government and to build a home-grown P3 industry. It is highly likely that the provincial Ministry of Public Infrastructure Renewal is working closely with this federal office.

Also supporting P3s, not surprisingly, are those companies and advisors who have most to gain from the model. These include large service companies, engineering firms, and accounting firms like SERCO, MDS, SNC Lavalin, Carillion, US private prison firms, KPMG, PricewaterhouseCoopers, Ernst & Young, and Deloitte & Touche. Accounting firms, in particular, have a conflict-of-interest as they are used by both public-sector managers designing P3s and the companies that bid on these same contracts. (Continued...)

### **SLIDE 5 Notes (Continued)**

Opposing P3s are some of Canada's top academics and progressive think tanks. In particular, the OPSEU-supported Canadian Centre for Policy Alternatives has developed a large network of academics, accountants, and activists, and a growing library of critical reports. The OPSEU-supported Ontario Health Coalition is spearheading the fight against the use of P3s in the public health care system.

In general, the labour movement has provided the strongest opposition to the P3 threat. And this response is critical because unions represent one of the few sources of institutional power in our society is regularly used for progressive purposes. P3 advocates, and the public sector decision makers, recognize the ability of the union movement to derail P3 projects and have shifted between strategies of accommodation and opposition to union claims.

If anyone can stop P3s, it is the union movement. However, that does not mean that we can stop either the development of a P3 framework by the Government or individual P3 projects launched by the province, municipalities, or other broader public sector transfer partners. What we do know is that we are already engaged in the battle to stop P3s and to reduce their impact on society, the public interest, and our own members.

## What's Wrong with this Picture?



- Private company invested \$2.5 Million to build a dome over this municipal rink
- Rink time extended from 10 weeks to 8 months per year
- Community has same access to free rink time as before deal
- Otherwise rink time costs \$220 an hour for a “public” facility

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### Why Can't Johnny Play Hockey After Dark?

The February 12<sup>th</sup> *Toronto Star* carried a story about a recent public-private partnership (P3) involving a Toronto skating rink. SportsCentre Design & Management, Inc., invested roughly \$2.5 Million to build a dome over an outdoor rink owned by the City of Toronto. This addition extends the available rink time from about ten weeks to eight months per year.

The company guarantees the community the same amount of free ice time it enjoyed before the project in return for the right to charge market rates (\$220 an hour during prime periods) for rink time outside this agreed-upon schedule. A company official explains some of the benefits, “In a nutshell, we spend the money, we operate it and we provide free access to the community on a defined number of hours per week... We also put up, at our cost, community programs like learn-to-skate, moms-and-tots programs, daycare programs and nutritional programs.”

After 15 years, ownership of the rink reverts to the city. One councillor adds, “we’re hoping that this is the first in a series (of domes) that we would eventually have around the city.” Depending on the results of this experiment, city officials will consider similar arrangements for the rest of Toronto’s 53 outdoor rinks.

## What's Wrong with this Picture?



- Who drives the Zamboni?
- Why can't the City build the domes and charge "market" rates for expanded access?
- Financing should be cheaper, public sector retains ownership *and* responsibility
- Are P3s a method to deflect anger over user fees to the non-elected?

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This kind of P3 seems far removed from more controversial projects – the dust-up over Highway 407 tolls and the recent P3 hospitals come to mind – but many of the elements of the deal are the same. And many of the issues that should concern the public sector – and its unions – are similar.

For example, one issue that is not addressed in this article is whether or not existing staff and new staff will be CUPE members – in other words, who will drive the Zamboni in the brave new P3 world?

The article also does not explore whether a public sector version of this development was possible. For example, why can't the City provide these roofs and charge market rates for expanded services? The benefits would include the fact that all new revenue generated would go back to the City and any new jobs created would be good union ones.

There could be political ramifications for the City that can now be blamed on a private sector contractor. If Johnny can't afford to pay \$220 an hour to use the rink he will have to bring it up with the owner, not his elected councillor.



## How do P3s Work?

A comparison of the  
P3 process  
and  
Traditional  
Infrastructure and service delivery

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## P3s and Traditional Service

- Traditional
  - Public funds are used to build a facility or provide a service
  - Employees are public sector workers
  - Public sector owns asset, controls service delivery
  - All gov't rules & regulations apply
- P3 model
  - Private funds are used to build a facility or provide a service
  - Employees are often private-sector
  - Private sector may own asset and/or control aspects of service delivery
  - Can involve exemptions from gov't rules & regulations

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## Components of P3 deals

- **Design**: architectural work on facilities, process development for services
- **Build**: physical construction process
- **Finance**: how the service or facility is financed
- **Operate**: how service is delivered or facility operated

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**DESIGN:** The private company does the architectural and engineering work involved in designing a public facility, such as a new health centre or hospital, housing, libraries, sports centres and schools. Ontario no longer uses in-house design staff to develop public infrastructure projects. There is no reason this situation could not be reversed.

**BUILD:** The facility is built by private contractors. In this area the public and private sectors have co-operated effectively for many years without the need for P3 arrangements. In Ontario, there has been a traditional bias towards using unionized labour for public infrastructure spending through the use of the Fair Wage Regulation. However, the likelihood of using union labour depends on the minimum wages set by the regulation keeping pace with union contracts.

**FINANCE:** The private sector has to borrow the money to finance the whole project. The P3 consortium then charges what is, in effect, a rental to the public authority.

**OPERATE:** Most public services are operated by public sector employees, skilled in delivering quality public services. Under P3s, the private contractor can operate the service and employ staff directly. This aspect of the P3 has often yielded the largest profits for private companies as they attempt to downsize staff, decertify, or strip benefits and wages from existing collective agreements. OPSEU's ability to continue to represent our members is greatly reduced because of the previous government's decision to take away successor rights for OPS employees. The current government has promised to restore successor rights.



## Design

### ■ Traditional

- For a service, the program goals and processes are developed *in detail* by the public sector
- For a facility, private-sector develops a design based on *detailed* public sector specifications

### ■ P3

- For a service, public sector *sets goals*, private sector *develops processes* to meet the goals
- For a facility, private sector develops a design to meet its *contractual obligation* only

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## Build

### ■ Traditional

- Private sector builds the facility
- Gov't regulations – in particular, the *Fair Wage Regulation* -- apply (if up-to-date, this means union wages and, usually, union labour)

### ■ P3

- Private sector builds the facility (no change)
- *Fair Wage Regulation* probably would not apply (encourages private sector to use non-union labour)

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## Finance

### ■ Traditional

- Public sector uses tax revenues or new borrowing to finance facility or service
- Public sector owns the facility

### ■ P3

- Private sector uses private sources to finance facility or service
- Private sector often owns the facility for the term of the contract or forever

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## Operate

### ■ Traditional


- Public service operates facility or service – may still choose to contract-out certain functions (cleaning, for example)
- Employees are, for the most part, public workers covered by collective agreements
- Service levels depend on decisions made within the public sector (can be affected by financial or public pressure)

### ■ P3

- Private sector operates facility or service and charges public sector a regular premium for use
- Employees are often private-sector workers with reduced or no union protection

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## P3 Claims

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- Private sector can borrow money more cheaply and more effectively
    - Demonstrated to be a false claim
  - Private sector provides up-front cash, so governments can focus on higher priorities
    - This is a shell game – overall costs are *higher* under P3s but, under arbitrary accounting rules, can be spread over life of contract (typically 10 to 30 years).

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Governments and private-sector contractors and investors often cite a number of positive benefits of P3s. As these have been challenged over the years, the justifications used have changed as well. As a result, the positive case for P3s is a moving target for the union movement. The key benefits that are often mentioned include:

- \* The private sector provides the necessary capital for construction and service improvements up-front, thus freeing government revenues for higher-priority projects. There is clearly a huge public infrastructure “debt” in Canada and the argument is, government is unwilling or unable to make the necessary level of reinvestment in public services and capital assets.
- \* The private sector can borrow money at a lower rate than governments or can borrow money from sources unavailable to governments.
- \* The private sector brings a higher standard to management – “running public services with private-sector efficiency” – that can reveal hidden value in public services (see the next slide).
- \* In return for a long-term contract and a guaranteed or, at least, comparatively safe rate of return, the private sector takes on risks that were formerly the entire responsibility of the public sector (see Slide 17).

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## SLIDE 15 Notes (Continued)

### Does the private sector provide money unavailable to the public sector?

One of the beliefs about P3s, which is often encouraged by the government, is that the project in question will provide a new source of money. This is because the company initially invests money into building or refurbishing schools, for example. However, any money which the company invests in schools will be paid eventually by the public – either directly, through contractual lease payments or government-guaranteed revenue streams, or indirectly, through user fees.

This is a bit like buying a car. When buying a car most people will borrow the money necessary to purchase the car from a financing company such as a bank. The bank will provide the money for the car up-front. However, the purchaser will still have to find the funding for this purchase from their own income, usually paying back the borrowed money in monthly installments over a number of years. As a result the bank does not actually pay for the new car at all.

There may be additional benefits for leasing a vehicle related to tax deductions – for example, for work-related use – but this is simply another public subsidy in the form of lost tax revenues.

Governments like this way of paying for new capital investment because it does not appear as borrowing on their balance sheet. For all sorts of economic and political reasons it is good for the government to give the appearance that the nation is not heavily in debt to banks or other lending institutions. However, while the payments under P3s may not appear 'on the balance sheet' the public will still have to pay back the private lending institutions from the public purse in the same way as if it had borrowed it directly. P3s are thus government borrowing in a different form.

This justification for P3s rests on the way in which central government accounts for the money that it borrows and spends. The long-term financing of P3s is not cheaper than traditional government financing. Governments may enjoy a short-term benefit by hiding their costs but they are imposing higher long-term costs on existing and future taxpayers. There is nothing preventing governments from removing this false incentive. In fact, the Office of Public-Private Partnership notes, "the ability to finance a project so that the debt is "off book" should not be the prime motivation for entering into a public-private partnership in that the government and the ultimate users of the service are still responsible for servicing the debt in one way or another. The emphasis


should be on structuring creative and cost-effective ways of delivering services, not on creative accounting.”

Are borrowing costs always higher for the private sector?

In almost all cases, the answer is yes. Because governments have the legal authority to raise taxes or make any other legislative changes to cover expenses and because the likelihood of an advanced industrialized country defaulting on its debts is next to nil, they are almost always rated higher than private companies. We can safely assume that the Government of Ontario can borrow more cheaply than almost any private sector agent that would participate in a P3.

Finally, P3 proponents sometimes argue that sophisticated private sector financial institutions are uniquely qualified to access complicated financial instruments and unidentified funding sources for public investment. This is especially false in the Ontario context. Ontario has a long-history of debt financing – driven largely by Ontario Hydro’s historic needs – and has been one of the most innovative and cost-effective borrowers in world markets.

## P3 Claims

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- Private sector provides better management – “private sector efficiency” – that can produce hidden savings
    - This is an ideological argument – little evidence of added value from P3s, considerable contrary evidence

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In practice, P3 proponents have shown remarkable dexterity in shifting emphasis from discredited arguments to new ones.

It is always *possible* that private-sector managers could work harder or smarter at improving the delivery of public services. They may, in fact, be able to spot additional revenue options that public sector managers have missed.

Clearly, many OPSEU members would be sympathetic to the argument that public sector managers are not always the most competent and innovative individuals around. Like the private sector, the public sector has its share of “bad apples.”

However, to admit that the public sector is not perfect is not to imply that the private sector is not equally or more vulnerable to waste and mismanagement. In fact, much of the public sector’s growth can be traced to the decision by governments to intervene when markets fail the public interest. Obvious examples include the public health care system and Canada Pension Plan or the public auto insurance systems in place in British Columbia and Manitoba.

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## SLIDE 16 Notes (Continued)

Theoretically, P3s can encourage efficiency by limiting the role of the public sector to specifying contract results – for example, *more patients served* by a given hospital rather than *where* (in whose riding) the hospital is located. The private sector bidders then decide the best way in which to meet this need. Because the successful bidder will often own the asset, they will design and build it with efficiency in mind. Unfortunately, the private company will focus on delivering only those obligations to which it has agreed contractually – anything else, or anything overlooked, will be ignored or will come with a large financial penalty for the public.

The complexity and potential long-term liabilities involved in P3s leads to huge costs associated with developing and monitoring private-sector contracts. In some cases, these costs have actually reached one third of the total contract cost. For Royal Ottawa, the transaction costs associated with planning and developing the P3 contract reached \$8 Million – 9% of the total estimated cost of the facility. These costs are often hidden and need to be fully exposed in order to have any meaningful discussion of P3 cost savings.


One of the other serious problems with assessing private sector efficiency is that cost savings are often generated by broader social trends or by the public sector itself. In the first case, the private sector is awarded for being lucky, in the second case, the private sector is awarded for *public-sector* efficiency.

A familiar example of the first category would be the infamous Arthur Andersen social assistance contract. In effect, Andersen received bonuses for declining welfare rolls during an economic boom.

Many academics studying P3s in the United Kingdom question the value added by the private sector. In one study of a P3 high school project, researchers found that, “there has been little evidence of innovation in design [of the facility], with the only innovative features directed by the public sector and detailed in the original [RFP].” In another case – a hospital P3 – the innovative design used “appears to be based on another recently completed hospital, built under traditional procurement, with the same architect employed on both projects.” In other words, the public sector created the “efficiency” for which the private company was rewarded.

In conclusion, there is absolutely no reason to believe that the public sector can't be at least as innovative, if not more so, than the private sector.

## P3 Claims

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- Public sector transfers risks (of cost overruns) to private sector.
    - Risks are notoriously difficult to estimate and all risk transfers must be covered by the initial contract – if not, public sector bears the risk
    - Ultimate risk is private sector bankruptcy in which case the public sector is left scrambling to replace the facility or service

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One of the main claims for P3s are that important and potentially expensive risks related to construction and service delivery can be transferred from the public sector to the private sector. Describing, measuring, and valuing these risks is one of the main reasons for the complexity – and costs – associated with P3 contract development and negotiations.

Many critics question whether or not risks really can be transferred, however. Ultimately, the public sector retains the responsibility for services that are not delivered or poorly delivered, for spending that is not appropriate, or for any other “failure” of public services. Most services provided under P3s are public monopolies – there is no actual private-sector competition – so the risk stays with the public sector. If the service fails, there is no “marketplace” in which to find a replacement.

There are a number of other “risks” that are rarely mentioned by proponents of P3s but which should be of concern to the public service, unions, and the public in general.

## Proven P3 “Innovations”



- Cherry-picking
- Service cuts
- Two-tier service provision
- User fees
- Refinancing
- Low-ball bidding
- Contract stripping
- Tax avoidance
- Getting paid for good fortune

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Unlike governments with their (at least theoretical) commitment to the “public interest,” the prime motivator of private-sector investment is the highest possible profit rate. This dynamic undeniably generates innovations that can benefit the economy. However, balancing private sector “ingenuity” against the public interest is not that straightforward.

Private-sector companies involved in P3s often find additional revenues by compromising the public interest. Governments in turn hide behind their contracts with the private sector to try and minimize negative publicity. Examples of private sector innovations include:

\* **Cherry-picking.** Privatized labs in Ontario have successfully negotiated the provision of those tests that are most cost-effective while leaving the rest to public labs. This has the effect of stripping away the economies of scale enjoyed by monopoly public services and transferring risks back to the public sector.

\* **Service cuts.** The widespread use of P3s in Britain’s health care system has led to massive hospital bed cuts, reduced staff, and increased waiting time.

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### SLIDE 18 Notes (Continued)

- **Two-tier service provision.** P3s, because they are a step removed from the public sector, are better able to propose and implement enhanced service levels for the wealthy while negotiating service reductions for other citizens.
- **Introducing user fees.** This is less an issue of private-sector innovation and more one of political sensitivity. Where a government might shy away from increasing tolls on a highway – the 407 for example – private companies are largely immune from public pressure. Their obligation is to their shareholders and, unlike politicians, they are not elected by the public.
- **Refinancing.** Often governments will pay a large premium to the private sector in return for the latter taking on all risks associated with the construction on new public buildings. Typically, the construction phase of a long-term design, build, finance, and operate contract is the phase at most risk of construction over-runs. However, once construction is finished, the risks involved drop considerably. Private companies have now discovered that they can then refinance the debt associated with P3s to save huge sums of money.
- **“Low-ball” bidding.** Private companies often undercut their own contracts to design and build public services – in other words, they offer to build a facility, for example, for less money than it will actually cost – in order to win the more lucrative service contracts that accompany them. This experience suggests, therefore, that there the P3 model provides a false benefit to the public sector.
- **Contract stripping.** Private companies will often attempt to strip collective agreements, decertify existing unions, and vigorously oppose organizing drives in order to keep wage costs low.
- **Tax avoidance.** Because tax revenues go to governments rather than their shareholders, private companies have a much larger incentive to use every available tax loop-hole to increase profit margins. Some P3s base the bulk of their project revenues on this kind of tax rule manipulation. This form of “innovation” is clearly not in the public interest but one that governments often overlook or ignore.



## Additional Risks

- Loss of public sector capacity
- Loss of transparency
- Loss of flexibility
- Loss of sovereignty
  - Trade-agreement threat
  - Legislative/Regulatory chill
- Huge costs of contract development and monitoring

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Describing, measuring, and valuing these risks is one of the main reasons for the complexity – and costs – associated with P3 contract development and negotiations.

Many critics question whether or not risks really can be transferred, however. Ultimately, the public sector retains the responsibility for services that are not delivered or poorly delivered, for spending that is not appropriate, or for any other “failure” of public services. Most services provided under P3s are public monopolies – there is no actual private-sector competition – so the risk stays with the public sector. If the service fails, there is no “marketplace” in which to find a replacement.

There are a number of other “risks” that are rarely mentioned by proponents of P3s but which should be of concern to the public service, unions, and the public in general.

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## SLIDE 19 Notes (Continued)

Capacity risk: one of the major implications of the P3 model is that it can erode the very capacity of Government to provide quality public services. As OPSEU has pointed out to the Government, “one of the central virtues of the public service is its consistency, stability, and institutional memory.”

P3s threaten the value developed within the public sector over decades of efficient program delivery by essentially shedding or selling this institutional memory. Because it becomes much more challenging to repatriate public service functions after years of private-sector delivery, there is a substantial risk involved in the P3 process.

The threatened closure of the Ministry of Health’s Fleet and Equipment Services Section (Judson Street), although it is not strictly a P3 model, provides a good example of this kind of risk. Eight of our members have years of experience overseeing the bulk purchasing and conversion of ambulances for Ontario municipalities. By getting rid of this service, municipalities will effectively be at the mercy of a handful of private-sector suppliers. In the near future, it will no longer be even possible to compare the relative value of public sector and private sector procurement.

At the municipal level, as well, the reality is that the introduction of P3s strips governments of their in-house expertise. Explaining his decision to oppose contracting-out sanitation in Vancouver, former 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 whomever won the contract.”

There is some evidence that the American public sector is now contracting-in former public services. The proportion of schools that do not contract out any services grew from 21.7% in 1999 to 23% in 2003. Between 1992 and 1997, 88% of municipal governments contracted-in at least one service and 65% brought three services or more back in-house. More work needs to be done to identify the cost to the public sector of failed privatizations.

Even if – and this is a big “if” – it can be shown that private sector companies are marginally cheaper than the public service, any cost advantage may quickly disappear once the public sector option is no longer available or prices explode following industry consolidation.

Contractual oversight risk: Briefly put, anything that is overlooked in a contract between a public authority and a private sector company can be used by the

private sector to leverage additional funding, thus undermining the original justification for the P3.

To give an absurd but real example from New Brunswick, the private operators of a P3 school were not required by the terms of their contract to install new furniture for the school. In this case, the furniture sat in a truck until local parents could organize a collective, unpaid effort to unload and install the supplies.

In the health care field, there is a potential conflict between the public health requirements of government and the cost-saving approach of the private sector. When developing, for example, a P3 hospital, a private sector owner/operator may build a smaller facility than that required by the level of demand for health care. There are many examples of P3 hospitals in Britain in which contract errors allowed private operators to drastically cut the number of beds available in order to increase profits.

Transparency risk: Under existing freedom of information rules, details of P3 contracts can be and are excluded on the basis of “commercial confidentiality.” This makes it very difficult to assess service agreements, risk transfer, or value-for-money. In short, commercial exemptions from FOI coverage mean that details about public services formerly available and accountable to the public are transferred to private contracts. In general, the confusion about the respective roles of the public and private sectors in providing public services is undermining the accountability originally promised by FOI legislation.

Conflict-of-Interest Risk. Related to transparency risk is the fact that governments often have to rely on private-sector accounting firms to help them assess whether or not a P3 represents value-for-money and to advise on the bidding process. These same firms have a strong bias towards P3s as they earn millions in commissions from both governments and private companies for their expertise in contract development and monitoring. They are not well placed to assess the merits of P3s versus traditional public sector procurement and service delivery.

Sovereignty Risk: In most democratic countries, Governments reserve the right and obligation to use legislation and regulation to protect the public interest. P3 contracts often shift the “risk” of legislative, regulatory and political change *back to the public sector*. They do this through contract clauses that force the public sector partner to reimburse the company for costs related to these changes – even if they are entirely outside of the public partner’s control (a municipality, for example, faced with provincial changes).

This aspect of P3 “risk-transfer” has a large potential for damage in that it may discourage governments from introducing progressive changes. If governments do summon up the courage to make changes, the public sector partner foots the bill, often undermining the original “cost-saving” rationale used to justify the P3.

We should not accept this restriction on our public rights and obligations.

Another important kind of sovereignty risk is related to trade agreements. Prominent lawyers have prepared strong legal arguments that NAFTA and other international trade agreements threaten the ability of government to end P3 contracts and to reintroduce local purchasing, public health or environmental considerations in service delivery – was one of the main reasons the Romanow Commission rejected the P3 model as an answer to Canada’s health care challenges.



## Pension Plan Context

- Largest “private-sector” investors in Canada are public pension plans
- Some, like Teachers and OMERS, are already committed to P3s
- Lower market returns driving others, like OPT and CAAT, to explore private equity, including P3 schemes
- Union trustees can fight this but need to stay within trust legislation
- OPSEU may have stronger role as sponsor

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The largest “private-sector” investors in Canada include some of the top pension plans. For these plans, including those for which we have won full joint-trusteeship and control (the OPT and CAAT plans), investments that guarantee a good rate of return with minimal risk – regardless of whether or not they represent thoughtful and sustainable public policy choices – are extremely attractive.

Some pension plans – the Canada Pension Plan Investment Board, the Ontario Municipal Employee’s Retirement Plan, and the Ontario Teachers’ Pension Plan – have already embarked on the P3 road. Others, again including ours, may have a hard time justifying a decision not to invest in P3 plans.

The push to explore and invest in P3s is driven in part by the prospect of low stock market returns in the medium-term. Simply put, pension plans tend to seek the best possible return on investment – even if particular investments may be in conflict with broader social considerations or the particular interests of our members as public sector workers. P3s are not, however, the only way pension funds could invest in private equity.



## OPSEU Pension Policy (2003)

- “OPSEU has historically endorsed pension fund investment in public service infrastructure projects.”
- Our pension policy encourages the use of Economically Targeted Investments:
  - Real estate development
  - Regional development
  - Privatization alternatives
  - Job creation in both public and private sectors
- ETIs require proactive approach – pension funds are conservative investors, they do not seek out “progressive” investment opportunities
- Growing evidence, from other countries and provinces (especially Quebec), that pension funds can support social-democratic priorities

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ETIs are defined as, “investment funds set up to benefit workers and their communities, including: real estate development and mortgage funds, regional development, worker-friendly and privatization alternatives.”

Before we won joint control over our pension funds in 1993, the Province treated the pension contributions of our members as yet another source of government revenues. As such, they were made available to meet the general spending requirements of the province, including public infrastructure investment.

The crucial difference today is that now we control our own funds and can ensure that they are invested in the best interests of *our* members – rather than to support the Government of the day. We can not assume that our money was being spent appropriately before joint control. There are many examples of spending decisions that were driven by political considerations rather than the public interest.

The challenge we face is to direct our pension savings in such a way that we can both provide a larger benefit to our members as workers and as citizens *and* achieve the rate of return required to fund the pension promise (and, hopefully, provide surpluses to give our members’ immediate benefits and protect against future losses). OPSEU could explore this approach with the current provincial government as well as progressive municipal governments. But to do so, and to prevent our funds from investing in P3s, we need to be proactive.



## Where do we go from here?

- The Government must justify the case for P3s
  - if they can't explain P3s to the public they probably aren't a good idea
- Financing aspect of P3s can be a problem (long-term costs) but *operating aspect* poses the biggest threat to working people
- Please consider and debate the two resolutions on P3s distributed today.
  - The first outlines our concerns about P3s and suggests an action plan for OPSEU
  - The second suggests an alternative approach to P3s and next steps

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A final issue that needs to be raised is that OPSEU already represents workers who are involved in P3s or privatized services (over 1500 members across the BPS).

This is an inevitable development as OPSEU – like any union – has an obligation to continue to represent our members after their work place is contracted out, privatized, or leased to the private sector. Their needs, as well as those of our members facing P3 proposals, need to be taken into consideration.

In conclusion, the new Government of Ontario faces a huge challenge: to develop a ten-year plan to address our public infrastructure deficit and future needs with limited resources. They need to be pushed to explain how they will live up to the principles they have outlined for public infrastructure investment, how they will protect public health care and the other critical public services our members provide, and what alternatives, if any, they have considered to the P3 model.

In any event, the issue of P3s is coming into sharp focus and unions like ours have both a great deal at stake and considerable resources to bring to the public debate over public services and public infrastructure.