

Alternative Financing and Procurement in Canada: Hope Springs Eternal?

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This article surveys the evolving Canadian experience with public-private partnerships (P3s), and the opportunities that are developing across the country in health care, energy and infrastructure.

Retiring baby boomers are not the only aging asset that will put pressure on Canada's public finances in coming years. Canada's sewers, utilities, water mains, roads, tunnels, bridges, hospitals, schools, courthouses, cultural centers, recreational facilities and other public infrastructure are rapidly and simultaneously coming to the end of their respective life spans. In Ontario alone, on average, 79% of the useful life of currently available public infrastructure has been exhausted.¹

Canada's national infrastructure deficit is currently projected at between \$50 billion and \$125 billion, approximately six to ten times the combined annual infrastructure budgets of all levels of government in this country.² The replacement cost for Ontario's aging infrastructure alone is currently estimated at \$57 billion and could run as high as \$110 billion by 2021 if nothing is done.³ The estimated cost of Ontario's infrastructure rehabilitation and maintenance (assuming a reasonable reinvestment rate of 2% per year) is \$5 billion to \$10 billion per year, which does not include the current repair deficit or any requirements for infrastructure expansion.⁴ This harsh reality, when combined with the existing legacy of large public sector debt and the daunting task of coordinating, managing and building new public works, has compelled certain provincial governments to partner with the private sector. These projects are officially called "alternative financing and procurement" ("AFPs") in Ontario, "public-private partnerships" ("P3s") in British Columbia and elsewhere and "private financing initiatives" ("PFIs") in some other countries. For the purposes of this article, we will use the term "P3s" to refer to all of these types of projects.

While the nomenclature for P3s is not uniform, the scope of the financing problem could not be more consistent: The public purse, at all levels of government, simply cannot fund the entire cost of infrastructure replacement, at least not at current levels of taxation. This conclusion is starting to penetrate the minds of more and more Canadians and has spurred a number of organizations to study alternative sources of capital funding. In June 2006, the Residential and Civil Construction Alliance of

Ontario (whose membership includes, among others, the Metropolitan Greater Toronto Apartment Builders Association and the Universal Workers Union, Local 183) released a report entitled "The Infrastructure Funding Deficit: Time to Act." The report recommends, among other things, that the Ontario government create the necessary conditions to capitalize on a shift in investment policy by pension funds away from equities and toward infrastructure as an asset class necessary to meet long-term pension requirements. Further, the Toronto-Dominion Bank, in a follow-up to its May 2004 report entitled "Mind the Gap—Finding the Money to Upgrade Canada's Aging Infrastructure," released another report on June 22, 2006, entitled "Creating the Winning Conditions for Public-Private Partnerships (P3s) in Canada." In that report, the Toronto-Dominion Bank also referred to the fact that the country's largest pension plans, with approximately \$800 billion in assets under management, are increasingly looking to P3 investments as a source of investment diversification. However, as the report notes, fewer than 20 design, build, finance and operate (or "DBFO") projects have reached financial close over the past few years in Canada, compared to some 600 P3 projects in the U.K. since 1990. As a result, Canadian pension funds are searching for opportunities to invest in public infrastructure outside Canada.

It is important to note that many other developed countries, industrialized at about the same time as Canada, are also facing problems with replacing aging and dilapidated public works. Couple that reality with the need of industrializing nations for capital to fund their own infrastructure developments and Canada could be faced with few sources of cheap capital to undertake public infrastructure renewal. Perhaps, as some suggest, it is time to "get on with it already" by clarifying the rules of engagement and fully embracing the P3 model in Canada in order to encourage a reversal of investment flows by Canada's pension funds back into Canadian public infrastructure development.

With several (but by no means all) public sector labor unions leading a well-orchestrated anti-P3 campaign, Canadians have

shown some ambivalence in the past about private sector involvement in essential infrastructure, particularly in the health-care sector. However, in 2004 the Canadian Council for Public-Private Partnerships (“CCPPP”) conducted a survey revealing that approximately 60% of Canadians support the use of P3s as an infrastructure solution.⁵ On October 13, 2006, pollster Ipsos Reid presented the results of a national public opinion survey at the Leaders’ Forum on Infrastructure hosted by Ontario’s Ministry of Public Infrastructure Renewal (the “MIPR”).⁶ When asked whether the provinces and municipalities were “doing a good job” with respect to infrastructure, only 36% of Canadians surveyed felt that provinces were doing a somewhat or very good job for hospitals, 41% for schools, 33% for roads, 50% for water treatment facilities (municipalities were rated at 66%) and 46% for public transit. Perhaps the most striking response was the view of 73% of Canadians surveyed who felt that roads and highways are in declining condition or in need of a complete overhaul. Interestingly, only 22% thought that electricity infrastructure (generation and distribution) needed a complete overhaul. Nationally, Canadians ranked hospitals as the first priority for infrastructure, followed by roads, highways, schools, water treatment, sewage treatment, public transit, electricity infrastructure (generation and distribution) and public recreation facilities. The survey also found that phraseology matters—for example, 37% of Canadians felt that P3s for hospitals were a bad thing; however, when asked the same question, substituting “AFP” for “P3,” only 22% responded that it was a bad thing, while 52% responded as neutral.

On May 25, 2005, the Ontario government announced the ReNew Ontario plan, whereby the government and its partners will invest more than \$30 billion in public infrastructure over the next five years. This plan includes approximately \$5 billion for health-care projects, more than \$10 billion to improve educational facilities and about \$11.4 billion to improve public transit and highways.⁷ MIPR recently published the ReNew Ontario Progress Report, 2006, which details the current and projected investments in infrastructure by the province since the ReNew Ontario plan was released. Ontario’s 2006 budget allocates approximately \$5.3 billion for transportation, health-care, education, waterworks and other public infrastructure projects. In November 2005, MIPR established the Ontario Infrastructure Projects Corp. (“Infrastructure Ontario”), the Crown agency that oversees all AFP projects in the province. In May 2006, the provincial government passed the *Ontario Infrastructure Projects Corporation Act, 2006*, amalgamating the Ontario Strategic Infrastructure Financing Authority (“OSIFA”) with Infrastructure Ontario. The Act defines the mandate, powers, governance

and administrative arrangements of this consolidated government agency. The legislation came into force on July 17, 2006, and, as of that date, Infrastructure Ontario assumed all of OSIFA’s assets and liabilities, including the payment of principal and interest of the Infrastructure Renewal Bonds and Ontario Opportunity Bonds.

A Canadian Definition of P3s

P3s encompass a range of models involving different degrees of private versus public participation and risk. Few involve true legal partnerships between government and the private sector. In Canada, governments wish to maintain the perception of ongoing public control while accepting the necessity of private sector innovation and funding.

The CCPPP broadly defines a P3 as “a cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards.”⁸

This definition is broad enough to encompass the Ontario AFP model contemplated in MIPR’s policy papers,⁹ the

Ontario budget and ReNew Ontario.

P3s in the Health-care Sector

The federal government funds Canada’s provinces for health, post-secondary-school education and social services through the Canada Health and Social Transfer program.

Transfer payments are made under the *Federal-Provincial Fiscal Arrangements Act* and are targeted to specific areas such as health care. Recipient provinces must adhere to the principles of the *Canada Health Act* (“CHA”), which require provinces to provide comprehensive universal coverage for all “medically necessary” hospital and physician services. “Extra billing” and user fees are prohibited for insured services. Any province permitting them is penalized through a reduction in cash transfers.

The CHA affects the development and scope of P3s in health care. It forces a distinction between “clinical” (i.e., those directly provided by regulated health-care professionals) and “nonclinical” services. To date, P3s have related to “bricks-and-mortar” and nonclinical services such as maintenance, food services, parking and certain technologies.

Public hospitals are governed primarily by provincial legislation and receive funding from various sources, including research grants and donations, patient revenues and retail operations. However, most funding comes from the provincial governments.

In January 2002, an Alberta Advisory Council on Health released “A Framework for Reform,” advocating an expanded private sector role in delivering and funding health care in the

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province. Its recommendations have been endorsed by the Alberta government. A Senate Standing Committee report issued in 2002 concluded that "Canada's publicly funded health-care system as it is currently organized and operated is not fiscally sustainable given current funding levels"¹⁰ and encouraged both federal and provincial governments to explore P3s for hospitals. A recent survey in Ontario concluded that over half of Ontario voters support or strongly support private sector financing of public hospitals.¹¹

An Ontario Hospital Association ("OHA") survey found that Ontario hospitals forecasted capital needs of \$8.4 billion over a three-year period. The average age of Ontario hospitals is 43 years, compared with 12 years in the United States. According to the survey, 106 Ontario hospitals indicated that they require a total of \$4 billion to bring their facilities into good repair, \$2.7 billion of which they plan to spend over the next three years.¹² A report by the Fraser Institute, released in March 2004, indicates that government spending on Ontario hospitals is on track to double, after inflation and population growth, by 2028.¹³

In Alberta, British Columbia and, more recently, Ontario, P3s (or AFPs) have emerged as the preferred method for tapping private sector resources.

University Health Network (Toronto)

University Health Network ("UHN"), Canada's largest acute-care teaching hospital, completed a five-year redevelopment project in 2003, partially financed by a \$281 million public bond issue, the first Canadian hospital "finance-only" P3. UHN's 25-year amortizing bonds are secured by charges on the hospital's assets but are not guaranteed by the province. Given the success of this project, the finance-only model was thought to be an attractive alternative to AFPs in Ontario but, to date, has not been replicated.

William Osler Health Centre and Royal Ottawa Hospital

In 2001–02, the former Ontario government approved two pilot P3 hospitals: the William Osler Health Centre ("WOHC") in Brampton and the Royal Ottawa Hospital ("ROH"). As part of his election platform, now-Premier Dalton McGuinty vowed to bring these P3 projects back into the public system, an election promise, critics maintain, he has broken. While the AFP framework will apply to all major projects in Ontario, the government has maintained that hospitals will always be publicly owned.

The WOHC entered into an agreement with the Healthcare Infrastructure Company of Canada ("HICC"), a private consortium, for the development of a new \$536 million, 608-bed facility that will accommodate 90,000 emergency patient

visits, 160,000 ambulatory care visits and 110,000 outpatient visits annually. While WOHC will continue to own the land, over a 25-year period HICC will design, build, finance, operate, manage and maintain the new hospital and provide certain non-clinical support services. Construction is scheduled for completion by July 2007.

In July 2004, an agreement was reached with HICC to build the ROH, a 399,178-square-foot psychiatric hospital and research institute. Under the arrangement, the ROH project will cost \$356 million over the course of a 20-year, eight-month period. The hospital will own the land and the facility, while HICC will design, construct, develop, lease and service the facility and deliver certain nonclinical services. Construction is scheduled for completion by December 2006. It was recently announced that construction is six weeks ahead of schedule and on budget.

Other

Following the release of the Ontario government's ReNew Ontario infrastructure plan, a number of hospital projects continue to be approved under the AFP model. As of October 2006, approximately 33 hospital projects were mentioned on Infrastructure Ontario's Web site. However, only the North Bay Regional Health Centre and St. Catharines Hospital can, at the time of writing, be confirmed as P3s (i.e., design, build, finance and operate) incorporating hard facilities management, as most of the other announced AFP banner projects appear to be design, build, finance only and/or traditional construction finance, for example: Bluewater Health Sarnia, Quinte Healthcare, Sault Area Hospital, St. Joseph's Health Care (London), Sudbury Regional Hospital and Trillium Health Centre in Mississauga.

On September 28, 2006, Cambridge Memorial Hospital announced that it had hired an interim chief of emergency medicine for a six-month period through Med-Emerg International Inc., an Ontario-based public company that provides health-care staffing solutions and medical services to governments, communities and facilities across Canada. Ontario Health Minister George Smitherman stated that Cambridge Memorial Hospital will only be allowed to hire the company on a short-term basis, while Premier McGuinty is quoted as saying that he would rather have a privately funded doctor than no doctor at all, as Cambridge Memorial Hospital has been crippled by staffing shortages.¹⁴

British Columbia

In May 2002, British Columbia's government established Partnerships BC to promote P3s and to identify options for maximizing the value of public capital assets. Partnerships BC

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is currently overseeing 14 P3 projects, five of which are health-care facilities.

The Gordon & Leslie Diamond Health Care Centre (previously known as the Academic Ambulatory Care Centre, or AACC) is a 365,000-square-foot facility located at the Vancouver General Hospital site with an estimated capital cost of \$95 million. It was substantially completed and occupied in August 2006. Access Health Vancouver ("AHV"), a private consortium, financed the construction of the facility under an agreement with Vancouver Coastal Health ("VCH"). Under the partnership agreement, VCH will own and operate the facility for the first 30-year operating period following construction, after which responsibility for maintenance and operation will revert to VCH.

As the project manager, Partnerships BC is overseeing all aspects of the Abbotsford Hospital and Cancer Centre ("AHCC") project. The AHCC will be a 300-bed, \$355 million facility that will replace the MSA Hospital in Abbotsford. The hospital will serve more than 150,000 people in the greater Abbotsford area, and up to 330,000 in the Fraser Valley region. The facility will be three times the size of the current MSA hospital at approximately 60,000 square meters. An agreement with Access Health Abbotsford was signed in December 2004. Construction of the first 261 beds is scheduled for completion in July 2008, with the remaining 39 beds to be phased in as needed. In March 2005, this P3 was given an award by *Finance Magazine* for the top partnership project in North America.

The *B.C. Health and Social Services Delivery Improvement Act, 2002* allows B.C. health sector employers to (1) contract out "nonclinical" services (laundry, maintenance, etc.), (2) reorganize services by transferring employees within a work site or to other work sites within a 50-kilometer radius and (3) ignore certain employment security contract terms. The B.C. Supreme Court dismissed a constitutional challenge by the unions. The B.C. Court of Appeal upheld that decision; however, leave to appeal was granted by the Supreme Court of Canada in April 2005. The Supreme Court of Canada has heard the appeal but has reserved its judgment. A final decision on the constitutionality of the Act has not yet been released as of the date of writing.

In November 2003, the B.C. government passed the *Health Sector Partnerships Agreement Act*, which applies to health sector employers who enter into agreements with the private sector to build or renovate health-care facilities. The Act allows employers to contract outside of collective agreements with trade unions for the provision of nonclinical services and prohibits actions for damages or compensation against the government or any person. The Act applies to the Gordon & Leslie Diamond Health Care Centre and the AHCC as well as to five other senior care facilities that have been designated under the Act by the B.C. Health Care Facility Designation Regulation. This legislation is intended to facilitate the development of new P3 health-care facilities and increase the capacity of B.C.'s health-care system.

In June and July of 2006, several contracts were awarded for

the residential care and assisted living capacity initiative by the Vancouver Island Health Authority ("VIHA"). The community of care initiative by the VIHA encompasses various design, build, operate and finance projects. The goal is to bring 795 complex care beds and 255 assisted living units online by 2008, with additional beds and units slated for 2010. The initiative includes (1) the Campbell River project (an 80-bed care facility scheduled to open in July 2008), which was awarded to New Horizons; (2) the Duncan project (a 160-residential-care-bed and 50-assisted-living-unit complex, scheduled to open in March 2008), which was awarded to Jones Development Corp.; (3) the Victoria and Parksville projects (a 185-residential-care-bed and 25-assisted-living-unit complex, scheduled to open in 2008 and a 140-residential-care-bed and 30-assisted-living-unit complex scheduled to open on June 30, 2008), which were awarded to Ahmon Group, and (4) the Courtenay project (a 90-residential-care-bed and 60-assisted-living-unit complex, scheduled to open in 2008), which was awarded to Retirement Concepts.

On August 4, 2006, Northern Health reached a preliminary agreement with Chartwell Seniors Housing REIT and Spectrum Seniors Housing Development to develop to design, build, operate and finance project for a residential care and assisted living project. The development and operation is for 93 complex care beds and 50 assisted living units in Prince George, B.C., and is scheduled to open sometime in 2008.

A fierce debate is taking place in the press in British Columbia over P3s in the health-care field. Several articles referred to reports released by the auditor general of British Columbia, which concluded that the Gordon & Leslie Diamond Health Care Centre, the Sea-to-Sky highway project and the Canada Line project all delivered value for money for B.C. taxpayers.¹⁵ The auditor general's reports are highly favorable to P3s, calling them a "step forward in improving openness, transparency and timeliness of reporting to legislators and the public on significant government issues."¹⁶ The Canadian Union of Public Employees immediately went on the offensive and criticized the reports as being biased and, together with the Hospital Employees' Union, produced its own report written by Ron Parks, a forensic accountant, questioning the auditor general's methodology and review engagement.¹⁷ B.C.'s Labor Minister, Michael de Jong, has defended the auditor general as an independent, nonpartisan government office.¹⁸

Alberta

Alberta has established a framework for P3s in health-care and other sectors. The Alberta Infrastructure Guidance Document (August 2003) is a comprehensive guide to the government's approach to assessing P3s.

Alberta's 2005 budget originally anticipated \$1.3 billion in alternative-financing projects. However, strong revenues from the oil and gas sector allowed the Alberta government to fund many capital projects with respect to health-care facilities on its

own. Indeed, the Alberta government's capital plan for 2006–09 only allocates funds for one P3 project—the Anthony Henday Southeast Ring Road (“Ring Road”) in Edmonton, discussed below.

In June 2004, the Calgary Health Region (“CHR”) opened the South Calgary Health Centre, Alberta's first P3 health-care center. Bentall Real Estate Services built and manages this \$33 million, 130,000-square-foot facility, which provides urgent care and other services. Over a ten-year period, CHR will lease back 70,000 square feet of this facility at an annual cost of \$800,000.

The new southeast Calgary hospital (which began construction on July 13, 2004, and is scheduled for completion in 2011) was previously announced by the Calgary Health Region as a P3. However, the funding for the hospital is now being shared between the provincial government and the Calgary Health Region.

The CHR has also approved a \$23 million P3 parking project for the Foothills Medical Centre. The consortium Foothills Parkade Ltd. leased land from the University of Calgary for 50 years, and the 1,558-stall parkade was completed in September 2005 as a design, build and operate project. However, it is to be noted that while this project started as a P3—design, build, finance and operate—in the end, the financing arrangements were altered, and CHR has assumed all the risks.

Quebec

In December 2004, the Quebec government adopted *Bill 61, An Act Respecting the Agence des partenariats public-privé du Québec*, the provisions of which came into force in May 2005. The agency created by the Act is responsible for (1) advising the Quebec government on P3-related matters, (2) operating P3 knowledge centers, (3) informing the public on the use of P3s for public management and (4) providing expert services related to the evaluation of the use of P3 projects, selection of partners and the negotiation and management of P3 contracts. The mandate of the agency is to contribute to the renewal of public infrastructure through P3s by advising the government on project selection and prioritization.

There has been much debate over the use of P3s for the building of two proposed “superhospitals” in Montreal—the Centre Hospitalier de l'Université de Montréal (“CHUM”) and the McGill University Health Centre (“MUHC”). The superhospitals are anticipated to cost approximately \$3.1 billion. In June 2006 the agency issued a request for bids, seeking specialized advisers to draw up the initial business cases for the components of both projects. On July 3, 2006, Raymond Chabot Grant Thornton was selected as the business case adviser for CHUM, while PricewaterhouseCoopers was selected as the business case for MUHC. The mandate for both firms is to carry out a comparative cost/benefit analysis of the P3 model versus conventional funding.

Quebec's Treasury Board's (the *Secrétariat du Conseil du trésor*)

second progress report on the government's modernization plans, released in May 2006, states that public-private components of the CHUM and MUHC projects are under way. This statement is promising for the prospect of an increased role for P3s, considering that both projects were absent from the first progress report issued by the Treasury in May 2005. The projects are scheduled for completion by 2010, and a director general was named in summer of 2005 to oversee their development.

Other Canadian Jurisdictions

New Brunswick's Provincial Health Plan, *Healthy Futures*, released in June 2004, does not mention P3s for hospitals within the province. However, New Brunswick's previous government was rumored to be looking at P3s in health care.

In 2004, the government of the Northwest Territories released a strategic plan for the region but did not identify any specific P3 opportunities for health care, merely stating that the government will “continue to explore private-public partnerships to build needed infrastructure.”¹⁹

Finally, in March of 2006, Newfoundland and Labrador government issued a request for expressions of interest from, among others, private organizations, to design, build and operate an 80-bed residential dementia care unit at the Corner Brook nursing home facility. The new dementia care unit will be an addition to the Corner Brook nursing home facility, which is currently under construction and is scheduled to open in 2008.

P3 Opportunities in Electricity

Historically, the generation, transmission and distribution of electricity in most provinces were the preserve of provincial and municipal governments. Over the past few years, with varying degrees of conviction, some have opened the way for P3s and other forms of private sector involvement.

Ontario

In October 2003, the Liberal Party came to power, inheriting a provincial electricity system that had undergone huge changes since a restructuring initiated by the Progressive Conservatives in 1998. The intended movement to a competitive market had been fitful and highly controversial.

In generation, Ontario Power Generation (“OPG”), one of the successors to the provincially owned Ontario Hydro, had “decontrolled” only two assets by 2003. In May 2001, the 6,000-MW Bruce nuclear plant was leased to a consortium led by British Energy. This innovative transaction, valued at \$3.2 billion, was structured as an 18-year renewable operating lease held by a limited partnership. At the end of the term, designed to coincide with the remaining life of the generators, the plant reverts to OPG, which will be responsible for decommissioning. In February 2003, British Energy, under financial pressure at home, disposed of its majority interest in Bruce Power so that the facility is now leased by an all-Canadian consortium, con-

sisting of TransCanada Pipelines, Cameco Corp., the Ontario Municipal Employees' Retirement System pension fund ("OMERS"), the Society of Energy Professionals and the Power Workers' Union. The transaction has been successful on many fronts. When the private sector consortium first took over, four of the eight units had been laid up. Since then, two have been returned to service, and Bruce Power has recently reached an agreement with the Ontario government to restart the remaining two units and refurbish two other units at a total cost of \$4.25 billion. The project will be supported by a long-term power purchase agreement for all of the output from the four Bruce A units. Bruce Power has now optioned its lease on the eight-reactor complex until 2043, and has completed a new \$70 million headquarters on site. During the summer of 2006, Bruce Power announced that it had filed for regulatory approval with the Canadian Nuclear Safety Commission to build new CANDU reactors at the Kincardine, Ontario, site. Such a project could cost approximately \$20 billion and would undoubtedly involve some form of P3 with large private sector institutions, such as pension funds. Using a P3/AFP would serve to transfer some risk away from Ontario taxpayers, who were saddled with cost overruns of approximately \$12 billion at the OPG's Darlington nuclear facility 12 years ago.

In addition to the restart of Bruce Power's remaining units, the Ontario government has unveiled several initiatives to produce over 7,500 MW of power from diversified sources to alleviate Ontario's pending energy crunch. The need for additional generation over the next several years has been exacerbated by the government's oft-repeated commitment to close all of the province's coal-fired plants. The first of the five coal-fired plants was closed in April 2005; three more plants are set to close in 2007, and the final plant is likely to close in 2009. Approximately 25% of Ontario's current generating capacity comes from coal. In a spectacular beginning of the end to an era of coal generation in Ontario, the "four sisters" at the Lakeview Generating Station (which ceased operations on April 30, 2005, after 43 years) were demolished on June 12, 2006.

The province has issued three RFPs for renewable energy supply: the first for 395 MW, the second for up to 1,000 MW, and the third seeking up to 200 MW. The first and second (MW) RFPs have concluded, and 19 renewable energy projects were announced. The province received 33 proposals for the first RFP and announced the first four winning projects, with a collective capacity of 1,675 MW, including a cogeneration project, a demand-response program and two combined-cycle natural gas-fired generating plants. For the second RFP, the province received more than 22 proposals totaling over 2,000 MW of

renewable energy generation, more than double the Ministry's request, for enough energy to power 200,000 homes. The successful projects awarded under the second RFP include eight new wind farms and a waterpower project totaling 975 MW. Two further projects, totaling 560 MW of gas-fired power, were commenced on May 30, 2005. A third request for proposals, culminating in 2006-07, was also issued for up to 200 MW of clean, renewable energy for projects under 20 MW. Combined, the three RFPs are designed to meet the province's target of generating 1,350 MW of renewable energy by 2007.

In early 2004, the province also issued an RFP for 2,500 MW of new generation (excluding renewables, coal and nuclear) of new clean generation and demand-side management or demand-response initiatives. This RFP is remarkable in that it combines new supply- and demand-side projects into a single RFP. On December 15, 2004, the proposal submission deadline, the government received 33 proposals, representing over 8,800 MW. The province announced five successful projects under the 2,500-MW RFP, which include the Greenfield Energy

Centre (a partnership between Calpine and Mitsui) for a 1,000-MW combined-cycle gas-fired generation facility in Sarnia-Lambton; the St. Clair power station (a partnership between Invenergy and Stark Investments) for a 570-MW combined-cycle gas-fired generation facility; the Greenfield South power project, a 280-MW combined-cycle gas-fired generation facility in Mississauga; a 90-MW cogeneration facility awarded to the Greater Toronto Airports Authority in Mississauga; and a 10-MW provincewide demand-response initiative for Loblaw Properties (a supermarket chain).

The counterparty for all of these new initiatives is a new government-controlled entity called the Ontario Power Authority ("OPA"). While the OPA is not a government or Crown corporation, it has been assigned an issuer rating of Aa2 by Moody's Investors Service. On June 19, 2006, the Dominion Bond Rating Service upgraded the OPA's rating from A (high) to AA (low). The OPA has also issued two RFIs with respect to new electricity generation and/or demand-reduction projects in York region. The OPA submitted its final recommendations regarding York Region electricity supply to the Ontario Energy Board (the "OEB") in September 2005. An OEB proceeding on York Region electricity supply occurred in fall 2005, where the OEB heard the OPA's preferred solution to install a new transformer station at the Holland Junction transmission point in the Township of King with associated distribution feeder lines (the "Holland Junction Proposal"). The Ontario Minister of Energy has also directed OPA to launch new procurement processes for additional power.

One impediment to private investment in generation in Ontario has been a retail price cap introduced by the previous government in late 2002.

Earlier this year, the Ontario Minister of Energy, Dwight Duncan, directed OPA to move ahead with its recommended 20-year electricity supply mix plan, subject to certain revisions, that includes up to 14,000 MW of installed nuclear capacity. The provincial government has set targets to double energy efficiency through conservation and to double the amount of energy from renewables by 2025. The provincial government has also directed OPG to undertake feasibility studies for refurbishing units at the Pickering and Darlington nuclear sites. Nuclear energy is expected to continue as the single largest source of Ontario's electricity. The provincial government also accepted the advice of the Independent Electricity System Operator ("IESO") in its Ontario Reliability Outlook Report dated June 9, 2006, that indicates a need for 2,500 to 3,000 MW of additional capacity to maintain current system reliability. As a result of the IESO report, the province has backtracked on coal-fired generation, announcing further delays in the government's plan to completely phase out coal and replace it with other sources of energy. The provincial government is also continuing with plans to establish a bioenergy research facility associated with the Atikokan generating station in northwestern Ontario, in accordance with the \$4 million in funding announced in the 2006 budget. Forest BioProducts Inc. was retained by the Ontario Ministry of Energy and submitted its prefeasibility study to the Ministry in April 2006 for the Atikokan project. The 20-year supply mix plan, revised every three years, will be submitted to the OEB for review and approval.

The OPA's biggest supply project, following the return to service of Unit 1 at Pickering, is the Niagara Tunnel, which involves the excavation of a 10.5-kilometer concrete-lined water diversion tunnel under the city of Niagara Falls. The tunnel is designed to divert more water to the Sir Adam Beck hydroelectric stations at Queenston. The tunnel, when completed, will increase the average annual output at the Beck complex by about 14%, or 1.6 TWh per year. A boring machine named "Big Becky" (named in honor of Sir Adam Beck, the first chairman of the Hydroelectric Power Commission of Ontario) is excavating a tunnel that is twice the diameter of the Chunnel under the English Channel. Other hydroelectric projects include construction of a new 12.5-MW hydroelectric station at Lac Seul in northwest Ontario and the redevelopment of four hydroelectric stations on the lower Mattagami River system in northeast Ontario.

A further impediment to private investment in generation in Ontario has been a retail price cap introduced by the previous government in late 2002. On April 1, 2005, OPG's prices were capped at an average price of 4.5 cents per kilowatt-hour (kWh) on its regulated assets, and its revenue has been capped at 4.7

cents per kWh on its unregulated assets. These prices affect large industrial and commercial customers. The retail price of electricity is subject to regulation by the OEB, which announced that, as of April 1, 2005, the price of electricity for residential, low-volume and other designated consumers has been set at 5 cents per kWh for the first 750 kWh used, and 5.8 cents thereafter. On February 9, 2006, the Minister of Energy announced that the government would extend the revenue limit on OPG's unregulated assets to April 30, 2009. At the request of the Minister of Energy, the OEB released its Regulated Price Plan, effective November 1, 2006, through October 31, 2007, whereby eligible consumers (which include residential consumers, small businesses and other consumers designated by the Ontario government, such as municipalities, schools, universities and hospitals but do not include large commercial or industrial consumers who use over 250,000 kWh per year) will pay 5.5 cents per kWh up to a certain threshold each month, and 6.4 cents per kWh for electricity used per month over this amount.

In transmission, the Ontario government is unequivocal: It has committed to keep the ownership of Ontario's electricity highway in public hands. The focus will be on efficiency and transmission grid improvements. New transmission, especially around the greater Toronto area, is urgently needed to alleviate congestion.

Under Ontario's restructuring, municipally owned electricity distribution utilities ("MEUs") were converted to for-profit business corporations. Monopoly distribution activities were separated from retail and other competitive services. Significant consolidation of MEUs occurred before November 2001, when a temporary "transfer tax" holiday expired. The transfer tax was again waived in 2004-05, and some additional consolidations occurred. The pressures on MEUs to respond to a performance-based regulatory regime while initiating new demand-side management initiatives has led the province to announce another two-year transfer tax holiday, which will expire in October 2008. As a result, even greater consolidation is expected over the next few years, though the terms of the tax holiday severely restrict private sector involvement.

Alberta

In Alberta, deregulation became effective on January 1, 2001, with the division of generation, transmission and distribution of electricity into three distinct functions.

Alberta is unique in Canada, since it never had a single vertically integrated, provincially owned monopoly. It more closely resembles the U.S. model. Half of the electricity generated in the province comes from coal-fired generators, with an increasing number of generators being fueled by natural gas. Several verti-

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cally integrated firms operate as franchise monopolies under cost-of-service regulation, together with an integrated transmission network. Three major vertically integrated utilities account for approximately 90% of the total generation capacity. Of these, Atco and TransAlta Utilities are investor-owned. The third, Epcor, is owned by the city of Edmonton. As part of the restructuring, the rights to the output of these formerly rate-regulated units were auctioned to nonaffiliated buyers in the summer of 2000. These buyers are now offering their output to the Alberta Power Pool.

In April 2002, a joint venture of Montreal's SNC-Lavalin, the Ontario Teachers' Pension Plan Board, Australia's Macquarie and U.S.-based Trans-Elect (Teachers and Trans-Elect are no longer shareholders) acquired the electricity transmission business of TransAlta for approximately \$850 million. The joint venture, AltaLink, now owns Canada's first major independent transmission company.

Generation in Alberta is primarily in the private sector. Alberta has added approximately 4,000 MW of new electricity generating capacity since 1998, with plans to invest in another 4,800 MW of new power development in the coming years. Generation from renewable sources, including hydro, wind and biomass (wood), has increased by almost 45% to 1,360 megawatts.

The boom in Alberta's oil sands production is fuelling a robust and increasing demand for electricity. Energy Alberta Corp. recently secured an exclusive deal with Atomic Energy of Canada Ltd. to market CANDU 6 nuclear reactors to firms in Calgary operating in the oil sands. Energy Alberta Corp. is pursuing developers who use steam injection to recover bitumen from the oil sands, and hopes to build a nuclear reactor worth about \$3 billion by 2014 to support the production of 220,000 barrels of bitumen per day.

British Columbia

Most electricity generated in British Columbia is hydroelectric and is controlled by provincially owned BC Hydro. In late 2002, the BC government undertook a major restructuring of its electricity sector. BC Hydro, previously an integrated generation, transmission and distribution company, is now divided into two publicly owned Crown entities. BC Hydro continues to be responsible for generation and distribution, while British Columbia Transmission Corporation operates the province's transmission grid.

Although these two companies will almost certainly remain in government hands for years to come, significant private sector opportunities do exist. Virtually all new generation is undertaken by independent power producers, which have historically benefited from the firm "take-or-pay" power purchase agreements with BC Hydro. On December 8, 2005, BC Hydro issued its Open Call for Power ("CFT"). On July 27, 2006, BC Hydro announced the results of the 2006 CFT, awarding 38 contracts to independent power producers throughout the province. The

new projects, once developed, will help to meet B.C.'s growing demand for electricity by adding more than 7,000 gigawatt-hours per year to BC Hydro's system. The contracts include 29 hydro, three wind, two biomass, two waste heat and two coal/biomass projects.

Manitoba

The Energy Marketing Services Alliance of Manitoba ("ESAM") was formed in 2002 with the goal of developing and using sustainable sources of energy worldwide. The ESAM is a P3 between private Manitoba companies and the Manitoba government that attempts to boost the number and value of international energy contracts that are awarded to Manitoba entities.

Atlantic Provinces

The single largest project on the horizon in the Atlantic provinces is the proposed development of the Lower Churchill River in Newfoundland and Labrador. It is a hydroelectric resource with the potential for generating almost 3,000 MW. In August 2005, it was announced that three development proponents had been chosen. On May 8, 2006, the government of Newfoundland and Labrador announced that the province, in partnership with Newfoundland and Labrador Hydro, will lead the development of the Lower Churchill project. However, Premier Danny Williams indicated that further decisions will be made on the construction of the project in the coming months.

Transportation

Ontario

Highway 407 serves the Toronto area as an alternative to Highway 401, one of the continent's most heavily used routes. Featuring the world's first all-electronic open-road tolling system (no toll booths), it was the first P3 highway project in the region and the largest highway privatization in the world.

In 1999, Ontario privatized the highway to a consortium comprising Ferrovial/Cintra of Spain and Canada's SNC-Lavalin and Caisse de dépôt. Initially funded by a combination of equity and debt, the project has since been refinanced through a series of public bond issues. In April 2002, following an earlier acquisition of a 40% interest in Cintra, Macquarie acquired a further 18.45% interest, taking its fully diluted interest in Highway 407 to 42.97%.

The long saga of litigation and arbitration between the Province of Ontario and the 407 ETR ended on March 31, 2006, when the 407 ETR announced that it reached a final settlement with the Province of Ontario regarding all outstanding disputes.²⁰ Terms of the settlement between the 407 and the Province of Ontario included (1) the introduction of a \$40 million customer benefit program, (2) savings for heavy usage and heavy-vehicle drivers, (3) the addition of over 100 kilometers of new highway capacity by late 2007, (4) settlement of all outstanding disputes between the 407 ETR and the province and

(5) the appointment of an ombudsman to advocate on behalf of 407 ETR users. As part of the settlement the Province of Ontario abandoned its pending appeals of the toll-setting and base-year disputes and will accept as final and binding all court and arbitration decisions released to date.²¹

In June of 2006, the City of Ottawa, in connection with its RFP process for a \$778.2 million design, construction, operation and 15-year maintenance contract for a portion of a light rail transit system, selected the preferred proponent team lead by Siemens Canada Ltd., PCL Constructors Canada Inc. and the Dufferin Construction Co. The Ottawa City Council approved the award of the contract on July 12, 2006. Construction is slated to begin late in 2006, with completion by fall 2009. The entire light rail system is to be finished by 2021.

Quebec

The ministère des transports du Québec ("MTQ") put out a request for expressions of interest regarding the design, construction, financing, operation and maintenance of seven service areas on the Quebec autoroute system, located in Saint-Jérôme, Rigaud, Rivière-Beaudette, Magog, Maskinongé, Melbourne and Saint-Augustin-de-Desmaures. It is estimated that investments required by the supplier could be around \$30 million. Requests for qualifications were closed on September 27, 2006. Completion of the seven service areas is scheduled for winter of 2007-08.

The MTQ has also proposed two further design, build, finance and operate highway P3 projects: (1) Autoroute 25, an estimated \$400 million investment that includes the construction of a 7.2-km autoroute, service roads, a 1.2 km bridge and a public transportation corridor; and (2) Autoroute 30, which includes the construction of a 35-km autoroute around Montreal. On March 31, 2006, the MTQ announced that three consortia met the criteria in the request for qualifications for the Autoroute 25 project, and on July 20, 2006, the MTQ issued RFPs to the three short-listed consortiums. At the time of writing, the MTQ was developing its request for qualifications for the Autoroute 30 project.

British Columbia

Partnerships BC is currently overseeing six highway projects, which are in different stages: (1) the Kicking Horse Canyon Project (phase 2), which involves the replacement of a bridge and an upgrade to 5.8 km of highway (financial close reached in October 2005, completion expected in 2009, value-for-money report released on June 6, 2006); (2) the Golden Ears Bridge, a \$808 million new six-lane bridge across the Fraser River (the contract to design, build, finance, operate, maintain and rehabilitate the bridge and its associated road network for 35 years was awarded to the Golden Crossing General Partnership; construction officially began on June 27th, 2006, and completion is expected by 2009); (3) the William R. Bennett Bridge (also known as the

Okanagan Lake Crossing), a new five-lane bridge to be designed, built, financed and operated by SNC-Lavalin, with a total cost for the 30-year agreement valued at \$179 million (completion expected by spring 2008); (4) the \$600 million Sea-to-Sky Highway Improvement Project, which will improve the highway linking West Vancouver and Whistler, to be designed, built, financed and operated by S2S Transportation Group (winner of the Best Global Project to Reach Financial Close Award at the Public-Private Partnerships Awards in London, England, on May 31, 2006, scheduled for completion in 2009); (5) the Sierra Yoyo Desan Road, a 188-km multiuser road aimed at resource companies for industrial activities (construction completed in December 2005); and (6) the Pitt River Bridge & Mary Hill Interchange Project, a \$194 million project component of the North Fraser Perimeter Road, which is part of the Ministry of Transportation's Gateway Program. The project includes a new high-level bridge across the Pitt River, replacing the two existing swing bridges, and a new interchange at the Lougheed Highway and the Mary Hill Bypass in Port Coquitlam (requests for proposals were offered on May 19, 2006, to Peter Kiewit and Sons Co., Pitt River Constructors and Vinci Construction Grands Projets S.A.S).

Partnerships BC is also overseeing the Richmond-Airport Vancouver Rapid Transit project, a 19.5-km rapid rail line connecting downtown Vancouver, central Broadway, Richmond and Vancouver International Airport. A contract was awarded in August 2005 to InTransit BC, and completion is expected by 2009. Construction cost is estimated at \$2 billion.

Alberta

Construction began in April 2005 on a \$493 million project covering an 11-km section of the southeast Edmonton ring road. The project is a 30-year agreement between the Alberta government and Access Roads Edmonton, a consortium of 12 engineering, construction and maintenance companies. The project is expected to be completed by October 2007. Requests for proposals were issued on May 9, 2006, to three qualified proponents for the northeast Calgary ring road, to design, build, finance and operate a project for 21 km of four- and six-lane roadways, six interchanges, and 22 bridge structures. The RFP is scheduled to close in November of 2006, with a successful proponent projected to be chosen by December 2006. If the project proceeds as a public-private partnership, construction would begin in spring of 2007 and be completed by fall 2009.

New Brunswick

The New Brunswick government has signed an agreement with the Brun-Way Group Joint Venture to design, build, operate, finance and maintain the Trans-Canada Highway. Construction began in July 2005 and is scheduled for completion by November 2007. The project is estimated to cost approximately \$543 million.

Water and Wastewater Ontario

The need for significant improvements in Canada's water and wastewater infrastructure was brought home to Canadians by events in the town of Walkerton, Ontario, in 2000. *E. coli* in the water system was responsible for seven deaths and hundreds of serious illnesses. A public inquiry into the tragedy confirmed that a major investment in Canada's water and wastewater systems is required.

The former Ontario government introduced legislation requiring all entities providing water or wastewater services (principally municipalities) to identify their infrastructure needs, including the full cost of providing the services and the revenue available to provide them. Once the government has approved these reports, the service provider must prepare a cost-recovery plan describing how it will pay the cost.

It is expected that these cost-recovery plans will compel municipalities to look for new ways of reducing costs, perhaps including private sector investment.

To date, one of the main participants in Ontario's water and wastewater sector has been the Ontario Clean Water Agency ("OCWA"), a provincially owned Crown agency. For decades, OCWA has operated various water and sewage systems in the province under contract, principally with municipalities. More recently, OCWA has competed against private sector water companies for various outsourcing mandates.

In July 2005, an independent Water Strategy Expert Panel delivered a report, called "Watertight: The Case for Change in Ontario's Water and Wastewater Sector," to the MPIR that is expected to initiate the development of a new investment and financing strategy for water and wastewater infrastructure. The report indicated that Ontario's water systems will require over \$30 billion in capital investments over the next 15 years. At present, it is unclear whether AFPs will play a role, though the report would pave the way for them.

On July 11, 2006, the municipality of Brockton, Ontario (which includes the town of Walkerton, township of Brant and the township of Greenock, which amalgamated January 1, 1999), announced that it had outsourced the operations and maintenance of three water treatment plants and one wastewater treatment plant to Veolia Water Canada. The five-year fixed contract (valued at approximately \$470,000 per year) closed on June 19, 2006, and operations were transferred to Veolia on June 28, 2006. The contract expires on June 30, 2011, and contains a five-year renewal option.

British Columbia

Partnerships BC is overseeing two projects with respect to improving its water and wastewater infrastructure. The first is a \$27.2 million design, build, finance and operate partnership between the province's Ministry of Sustainable Resource Management and Epcor Water Services Inc. to operate a water treat-

ment plant at the abandoned Britannia Mine site. The Britannia Mine water treatment plant was commissioned into operation on March of 2006. The second project involves the revival of the wastewater management system in Whistler; however, P3 procurement for this project was canceled on June 20, 2006.

Courthouses Ontario

A new courthouse facility in Ontario's Durham region will consolidate seven existing court facilities. Construction is scheduled to begin in early 2007, with completion of the project is expected by the winter of 2008-09. Three qualified private sector consortium bidders were invited to submit design, build, finance and maintain proposals for the new 350,000-square-foot facility. RFPs for the Durham courthouse were issued on February 15, 2006. Other announced projects include new consolidated courthouses for the Waterloo region and the Quinte area.

Alberta and British Columbia

Construction has begun on a \$300 million courthouse facility in downtown Calgary, under a partnership between the Alberta government and a private group of companies that includes SNC-Lavalin ProFac Inc. and GWL Realty Advisors. The private group will design, build and operate the facility. It should be noted that while this project initiated under a design, build, finance and operate scheme, the financing portion was ultimately assumed by the government. Completion is expected by mid-2007. With respect to P3 courthouse projects in British Columbia, the Chilliwack courthouse was completed in May 2002, and the Salmon Arm facility officially opened on June 23, 2006.

Other Facilities

Port Lands: Toronto

The largest development site in Toronto is the port lands, comprising almost 800 acres of "brownfields" on Toronto's waterfront. The vast majority of this land is government-controlled, most by the Toronto Economic Development Corp. ("TEDCO"). The infrastructure requirements for the site are huge: roads, bridges, sewers and water mains, flood control and the relocation of electrical utilities. Although it is still early, all three levels of government appear committed to this important project and recognize that significant private sector involvement will be required. Financing options may include municipal bonds, tax-incremental financing, grants and loans.

On September 15, 2005, TEDCO, along with Toronto Film Studios Inc. ("TFS") and its parent, Rose Corp., agreed to develop the first stage of a \$100 million film and media production complex. Under a lease agreement, TFS will start construction as soon as possible. The company hopes to complete the first stage by winter 2006, after which option rights may be exercised for further expansion.

Sports Centers: B.C.

In BC, the Northern Sport Centre Consortium was recently identified as the preferred proponent to design, build, finance and operate, for 25 to 30 years, the \$30.5 million Northern Sport Centre. The facility will be a multiuse sports complex on the University of Northern British Columbia campus. Furthermore, construction of the New Nanaimo Center—a revitalization project including the Vancouver Island Conference Centre and adjoining Marriott Hotel, a new museum and other related facilities—has been under way since 2005. Finally, on October 3, 2006, Simon Fraser University (through Partnerships BC) issued requests for expressions of interest to build an athletic complex and national training center at the Burnaby Mountain campus.

Cultural Centers: Montreal and Ottawa

On June 27, 2006, Quebec Premier Jean Charest announced the proposed construction of a concert hall mainly dedicated to the Montreal Symphony Orchestra. The hall will be built on the

eastern esplanade of Place des Arts, will house 1,900 seats and will accommodate 120 musicians and a choir of 200. The project is estimated to cost \$105 million and is projected to be completed in 2011. The City of Ottawa is currently in the procurement process to design, build, finance and operate the Orléans Arts Centre and Town Centre, a 500-seat arts center on the east side of Ottawa.

Conclusion

Successful P3 projects, such as those discussed above, continue to demonstrate that private sector funding and innovation can contribute significantly to vital infrastructure. The recent endorsement of the P3 concept under the AFP banner in Ontario is a much-anticipated positive development. However, governments at all levels must continue to push ahead in creating the conditions necessary for P3 projects to thrive and to foster increased pension fund and other investment. Enabling the P3 model across Canada's infrastructure. n

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