

P3 advocates targeting city hall

BY JIM MIDDLEMISS, FINANCIAL POST MAY 2, 2013



Ian Bendell of Davis LPP speculates on the future of P3 projects in British Columbia, where he says there has been some "nervousness."

Photograph by: Brett Gundlock, National Post, Financial Post

The public-private partnership (P3) model for building infrastructure has made inroads into provincial projects such as hospitals and schools.

Now, municipalities are the targets, legal experts say, as Canada's growing P3 industry looks to evolve and expand its reach. Sitting in the bull's-eye are water and waste treatment facilities.

"I think the market is evolving," says Mark Bain, an infrastructure and project finance lawyer at Torys LLP in Toronto.

"I think we are getting away from big provincial hospital projects to different kind of projects at different levels. Water needs a huge capital investment."

However, with an election in British Columbia and a new government in Quebec - a province that is also probing corruption in the construction industry - questions remain whether the P3 push into new infrastructure areas will stall.

Public-private partnerships connect private-sector building contractors, financiers and engineers with governments to build public infrastructure. The idea is that a P3 model reduces the risk of construction costs to government.

<http://www.p3canada.ca/home.php>

Municipal projects are clearly the latest wave. A water and waste water treatment sector study completed by PPP Canada, a federal Crown corporation whose mandate is to promote the use of P3 models for building infrastructure, suggests Canadian municipalities need \$88-billion to refurbish or replace current water and sewage treatment systems.

"I think generally over the medium to long term across the country, my expectation is we will see expansion of the model into other areas of procurement," such as waste water treatment, says Jeffrey Merrick, an infrastructure projects lawyer at Blake, Cassels & Graydon LLP in Vancouver.

While Ontario experienced a scare with water treatment in Walkerton, and met failure with efforts to privatize water and sewage treatment in Hamilton, the public remains open to the idea. A survey for PPP Canada from 2011 showed a significant increase in the acceptance of P3 projects in Ontario - including water - which rose to 72% support from 48% in 2010.

Across the country, support for P3s is growing. About 70% of Canadians favour P3s, with the highest support for building recreation facilities (75%), transit (73%), roads (71%), sewage and water (67%), and hospitals and schools (66%).

More than 150 P3 infrastructure projects in Canada have been undertaken in the past decade, among them roads, transit, hospitals, schools, housing, athletic facilities, universities, jails, courts, and water and sewer projects.

More are expected, especially if P3 proponents can tap the municipal sector. A recent study of Canada's infrastructure gap by the Canadian Centre for Policy Alternatives found a \$145-billion shortfall in Canada's infrastructure spending. The problem has been that municipalities are shouldering more of the load, as the federal and provincial contribution to infrastructure has declined as a percentage of gross domestic product.

It's no wonder P3 advocates look for ways to drill down into the municipal sector.

"The big challenge will be the municipal sector," says Montreal lawyer Marc Dorion, a co-leader of the energy and infrastructure law group at McCarthy Tétrault LLP in Quebec City. "To us, it has potential for contracts. Water treatment in Quebec could at some point fly."

However, Mr. Dorion notes that the PQ government "is not as optimistic and doesn't favour P3s as much as the former government," which could affect their use by municipalities. Though, he says, the PQ has used the P3 model in the past for building roads and in the telecommunications sector.

The Charbonneau commission, which has heard testimony about the extent of corruption in Quebec's construction industry, including the P3 built McGill University Health Centre, doesn't help.

Mathieu Dubord, a project finance lawyer in McCarthy's Montreal office, believes Quebec needs to rebuild the public's confidence in the procurement process. "What we're dealing with is not necessarily the lack of rules, but people infringing those rules and violating the rules to get their way. You can't put

a policeman in every building or behind every civil servant."

Ian Bendell, a foreign legal consultant with Davis LLP in Toronto, says there's also some "nervousness about what's going to happen" in B.C., where the Liberal government is fighting for its life against the NDP. "It's going to be interesting. P3s have been a creature of the Liberal government. I don't think the NDP have been particularly positive toward P3s."

P3 projects have also come under the scrutiny of some provincial auditor-generals. The Quebec auditor-general found calculation errors related to P3 hospital projects that actually made them more expensive to build than the traditional public procurement model.

John Loxley, an economics professor at the University of Manitoba, opposes P3s and any expansion of them into the municipal sector.

"The argument in favour of P3s has been exaggerated," he says, noting there hasn't been any long-term analysis of benefits. He calls the risk calculations "highly dubious," also believing governments pay too much in interest payments and says P3s cut small, local contractors out of the picture.

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